

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Changed Circumstances Review of the Antidumping Duty Order
on Certain Hot-Rolled Carbon Steel Flat Products from Thailand

Summary

We have analyzed the case and rebuttal briefs of interested parties in the changed circumstances review of the antidumping duty order on certain hot-rolled carbon steel flat products (“hot-rolled steel”) from Thailand, regarding the request to reinstate Sahaviriya Steel Industries Public Co., Ltd. (“SSI”) in the order, for the period July 1, 2006, through June 30, 2007. We recommend that you approve the positions described 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 and rebuttal comments by parties:

1. The Department’s Authority to Conduct the Changed Circumstances Review
2. Date of Sale for U.S. Sales
3. Segment Methodology
4. Warranty Expenses
5. Affiliated Transportation Expenses
6. Use of Cost of Goods Sold
7. General and Administrative (“G&A”) and Financial Expense Ratio Denominators
8. G&A Expense Ratio
9. Affiliated Party Inputs
10. Direct Materials Cost
11. Clerical Error

Background

On December 30, 2008, the Department of Commerce (“the Department” or “Commerce”) published the preliminary results of this changed circumstances review in the Federal Register. See Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Preliminary Results of Changed Circumstances Review and Intent To Reinstate Sahaviriya Steel Industries Public Company Limited in the Antidumping Duty Order, 73 FR 79809 (December 30, 2008) (“Preliminary Results”). The period of review (“POR”) is July 1, 2006, through June 30, 2007.

This review covers sales of hot-rolled steel made by one manufacturer/exporter, SSI. We invited interested parties to comment on our Preliminary Results. On February 4, 2009, we received petitioner United States Steel Corporation’s (“petitioner”) case brief (“Petitioner’s Case Brief”), interested party Nucor Corporation’s (“Nucor”) case brief (“Nucor’s Case Brief”), and SSI’s case brief (“SSI’s Case Brief”). On February 11, 2009, we received rebuttal briefs from petitioner (“Petitioner’s Rebuttal Brief”), SSI (“SSI’s Rebuttal Brief”), and Nucor (“Nucor’s Rebuttal Brief”). SSI requested a partially closed hearing, which was conducted on February 19, 2009.

Discussion of the Issues

Comment 1: The Department’s Authority to Conduct this Changed Circumstances Review

SSI’s Case Brief

SSI argues that, for a number of reasons, the Department does not have the authority to conduct a changed circumstances review (“CCR”) in order to reinstate an antidumping duty order against a company previously removed from the order. Specifically, SSI states that 19 U.S.C. § 1675(b) limits the types of CCRs that the Department may undertake. A review to reinstate a company into an order, according to SSI, is not authorized. SSI further asserts that the 19 CFR 351.216 does not authorize such a CCR, and that the 19 CFR 351.222(b) “does not otherwise cure the Department’s unlawful conduct.” See SSI’s Case Brief at 7. SSI states that the U.S. Court of International Trade (“CIT”) has ruled previously that the Department may not reinstate previously revoked orders through regulation, but must do so with a new antidumping investigation and injury determination. Finally, SSI argues that the initiation of the CCR is improper because SSI was denied access to confidential information while the Department was considering whether to initiate the CCR. Id. at 17-18.

SSI states that 19 U.S.C. § 1675(b) can be used by the Department to review only three specific types of CCRs. According to SSI, these are (1) a final affirmative determination that resulted in an order, (2) a suspension agreement, or (3) a final affirmative determination resulting from an investigation under section 704(g) or 734(g). SSI further states that nowhere in the statute is there evidence to suggest “that Congress intended to grant to the Department the authority to review a determination to revoke an order,” Id. at 8. SSI concludes that because Congress did not specifically authorize this type of review, the Department is limited to conducting CCRs only in the three instances cited above. Id. at 8-9. SSI cites the statutory construction expressio unius exclusion alteris, which is to name one thing is to exclude

everything else. *Id.* at 10. Since the current CCR does not fall into any of the three categories, according to SSI, Congress precluded the use of such reviews other than those expressly mentioned in the statute. According to SSI, therefore, the Department has exceeded its statutory authority. Additionally, SSI argues that 19 U.S.C. § 1675(b) provides a mechanism for revocation only, not reinstatement, in the review of “final affirmative determinations.” *Id.* at 9. SSI claims that the Department’s use of “a revocation statute to reinstate an antidumping duty order that has already been revoked turns the statute on its head, and undermines its very purpose, and the purpose of a CCR.” *Id.* at 10. SSI concludes by stating that the legislative history of 19 U.S.C. § 1675(b) indicates that Congress did not intend to provide a review of revocation determinations. *Id.* at 10-11.

With respect to the Department’s CCR regulations at section 351.216(b), SSI argues that the existence of this regulation “does not cure” the purported lack of statutory authority for the Department to reinstate a revoked order. SSI states that the regulations mirror 19 U.S.C. § 1675(b) in that only three types of CCRs are contemplated. None of these three types, according to SSI, contemplate allowing for the reinstatement of an order. SSI argues that 19 CFR 351.222(b) and (e) are “the only legal authority” that the Department relies upon that “actually contemplates reinstatement.” *Id.* at 12. However, SSI argues that this regulation is not harmonious with the revocation statute, which according to SSI only grants the authority to revoke orders and not reinstate them. SSI further argues that the revocation regulation has other flaws, stating that the requirement that a party agree in writing to reinstatement in an order if a party is found to be dumping is improper. Specifically, SSI argues that “a private party cannot by agreement confer legal authority on the Department when the Department lacks that authority on its own.” *Id.* at 13. In addition, SSI states that while the regulation allows for reinstatement so long as a separate producer or exporter is covered by an order, 19 U.S.C. § 1675(d) does not distinguish between partial and total revocation. Therefore, argues SSI, because the statute does not allow the Department to reinstate an order for merchandise covered by a partial revocation, the existence of the revocation regulation goes beyond the legal authority granted by Congress.

Concerning decisions by the CIT, SSI references Asahi Chemical Industries Co., Ltd. v. United States, 13 CIT 987, 727 F. Supp. 625 (1989) (“Asahi”) in support of its contentions. Specifically, SSI asserts that the CIT examined the Department’s previous reinstatement regulations prior to the implementation of the Uruguay Round Agreements Act (“URAA”) and found that the regulations were insufficient to reinstate a company in an order. According to SSI, Asahi clearly stated that after revocation, an antidumping duty order ceases to be operative and may not be reinstated. *Id.* at 14. SSI contends that the current Department regulations are substantially similar to those examined in Asahi and that the conclusions therefore must be the same, *i.e.*, that the regulations do not permit an order to be reinstated. SSI further states that Asahi does not distinguish between a partial and complete revocation. *Id.* at 16. Therefore, according to SSI, the Department’s initiation of this CCR ignores the key holding of Asahi, which is that a revocation determination “quashes the effect of an antidumping duty order.” *Id.*

In light of these requirements under Asahi, SSI contends that the Department previously has accepted that both an affirmative dumping finding and an injury determination are necessary to impose duties. SSI cites to the Department’s actions in Notice of Final Determination of Sales

at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil, 71 FR 2183 (January 13, 2006) (“Brazilian Orange Juice I”) and Final Determination; Antidumping Duty Investigation of Pads for Woodwind Instruments from Italy Manufactured by Music Center s.n.c. di Luciano Pisoni and Lucien s.n.c. di Danilo Pisoni & C., 58 FR 42295 (August 9, 1993) (“Woodwind Instruments from Italy”) in support of its contention. SSI states that, in the cases of both Brazilian Orange Juice I and Woodwind Instruments from Italy, the Department initiated new antidumping duty investigations against companies that had been previously revoked from an order.

Finally, SSI asserts that it was denied due process prior to the Department’s initiation of the instant CCR when it was unable to examine evidence presented by petitioner. SSI states that it requested, numerous times, access to the submitted information. Each time, according to SSI, the requests were denied. These denials, SSI avers, resulted in a denial of due process. See SSI’s Case Brief at 17-18.

Petitioner’s Rebuttal Brief

Petitioner argues that the Department has the authority to conduct this CCR, and that the arguments raised by SSI have been rejected in similar CCRs that were conducted previously. See Petitioner’s Rebuttal Brief at 1 n.4. Petitioner points to 19 U.S.C. § 1675(d)(1) as providing the Department sufficient discretion to initiate a CCR. 19 U.S.C. § 1675(d)(1) states in part that the Department “may revoke, in whole or in part, . . . an antidumping duty order or finding, . . . after review under subsection (a) or (b) of this section.” Petitioner avers that the language of the statute with respect to “in whole” covers situations where an order is revoked for all producers and exporters. In contrast, petitioner states that revocation “in part” is a “conditional” revocation that “takes place where the order is conditionally revoked with respect to one or more producers or exporters, but the order continues in effect as to other companies.” Petitioner’s Rebuttal Brief at 2. Because the statute does not provide guidance to the Department as to the procedures for granting conditional revocation, petitioner argues that the Department adopted sensible regulations to address the issue, i.e., 19 CFR 351.222(b)(2).

Petitioner states that the granting of a partial revocation under 19 CFR 351.222(b)(2) “is conditional because, so long as the order is still in effect, if a producer or exporter resumes dumping, then the company will be reinstated to the order.” Id. at 2-3. According to petitioner, determining whether a producer or exporter resumes dumping results from the use of a CCR initiated under 19 U.S.C. § 1675(d)(1). Citing Mittal Canada, Inc. v. United States, 461 F. Supp. 2d 1325, 1337 n.7 (“Mittal”), petitioner argues that the authority granted by 19 U.S.C. § 1675(d)(1) to the Department to conduct a CCR is broad. Id. at 3. Thus, petitioner asserts that a CCR to reinstate a company into an order is authorized under the statute when the fact pattern warrants such an action. Petitioner states that the initiation of a CCR in this case was warranted due to the underlying fact pattern. Id. at 3-4.

With respect to SSI’s arguments regarding expressio unius exclusion alterius, petitioner argues that SSI misstates the meaning of this interpretive canon. Citing Chevron U.S.A., Inc. v. Echazabal, 536 U.S. 73, 81 (2002), petitioner states that the U.S. Supreme Court has held that

“expressio unius exclusion alterius doctrine only applies when the language in question suggests that Congress intended to exclude the terms left out.” *Id.* at 4. Petitioner argues that because Congress constructed the statute in such a way that it does not appear to have intentionally excluded the use of CCRs for reinstatement of a company in an order, rather the omission indicates Congress left the agency to fill the gap. Therefore, petitioner avers that the doctrine of expressio unius exclusion alterius does not apply. *Id.* at 5. Petitioner further argues that since Congress was silent on the issue, pursuant to Chevron U.S.A., Inc. v. NRDC, Inc., 467 U.S. 837, 843-44 (1984), the Department has the discretion to provide a reasonable interpretation of the statute. The Department, according to petitioner, provided such a reasonable interpretation in the form of 19 CFR 351.222(b).

Petitioner notes that the Department has previously conducted CCRs to determine whether to reinstate companies into antidumping orders following conditional revocation. Petitioner cites to Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement of the Antidumping Duty Order, 73 FR 18259 (April 3, 2008) (“PET Film from Korea”) and Sebacic Acid from the People’s Republic of China: Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement of the Antidumping Duty Order, 70 FR 16218 (March 30, 2005) (“Sebacic Acid from China”) as instances where the Department conducted CCRs in order to reinstate companies into an order. Petitioner further states that in Louis Dreyfus Citrus, Inc. v. United States, 495 F. Supp. 2d 1338 (“Louis Dreyfus”), the CIT upheld the Department’s decision to reinstate a producer in Sebacic Acid from China. *Id.* at 7. Therefore, according to petitioner, SSI’s claims that the Department has no authority to conduct a CCR for purposes of reinstating a company into an order are baseless.

With respect to Brazilian Orange Juice I and Woodwind Instruments from Italy, petitioner states that the fact patterns in both cases are distinguished from those in this case. In Brazilian Orange Juice I, petitioner states that the new investigation contained a different and expanded scope of the new order than the antidumping order from which the producers had been revoked. *Id.* at 8. In Woodwind Instruments from Italy, petitioner states that the respondent, which was originally excluded from the order, had never before been found to be dumping under the order, and thus was not granted a conditional revocation. *Id.* Therefore, petitioner contends that SSI’s argument with respect to these cases is unsupported.

As to the ruling in Asahi and the underlying regulation affected by the ruling, petitioner avers that the defects identified in the Asahi decision were remedied by the issuance of 19 CFR 351.222(b). *Id.* at 8-12. In fact, according to petitioner, the CIT’s ruling in Louis Dreyfus “recognized that the holding in Asahi did not preclude the Department from initiating and conducting a CCR in Sebacic Acid from China to determine reinstatement under its current regulations where an order had been revoked as to one respondent, but otherwise continued in effect.” *Id.* at 12. Thus, according to petitioner, the concerns raised by the CIT in Asahi are no longer germane.

Nucor’s Rebuttal Brief

In its rebuttal brief, Nucor argues that both the statute and regulations give the Department the authority to conduct a CCR in order to reinstate a company into an order. Nucor cites to the Department's decision in PET Film from Korea, where the Department explained that its regulations for reinstatement of a company into an order arose due to silence on the part of the statute. See Nucor's Rebuttal Brief at 4. Nucor argues that if the information used in a partial revocation of the order is flawed, resulting in an improper revocation, then the use of a CCR for reinstatement is justified under the statute. Id. at 5. Therefore, according to Nucor, the statute and the Department's regulations together "permit the reinstatement of partially revoked antidumping orders if there is evidence that a party upon which an order was previously revoked has resumed dumping." Id.

With respect to Asahi, Nucor states that the issue in Asahi involved the propriety of reinstating an antidumping order after revocation. In the instant case, Nucor explains that, subsequent to SSI's revocation, the antidumping duty order remained in place and parties remained subject to it. Id. at 6. The CCR is thus not an investigation, but a review under the still-existing order, according to Nucor. Thus, Nucor asserts that SSI's reliance on Asahi is flawed. Nucor avers that this same reasoning served as the basis of the Department's rejection of similar arguments in Sebacic Acid from China. Id. at 7-8.

Finally, Nucor argues that the Department did not violate SSI's due process rights. Specifically, Nucor asserts that because there were no formal charges against SSI until the initiation of the CCR, and because SSI had full access to public information, there was no denial of due process.

Department's Position

There are two fundamental questions at issue in this review; first, whether the Department has the authority to reinstate a previously revoked company into an antidumping duty order, and second, whether a changed circumstances review is a proper proceeding to determine whether a company should be reinstated. We will first address the question regarding our authority to reinstate a revoked company because it is the dispositive inquiry.

The Department's regulations providing for the reinstatement of a previously revoked company into an antidumping order are consistent with its authority under the statute. The Department's authority to reinstate a revoked company is derived from section 751(d) of the Tariff Act of 1930, as amended ("the Act"), which provides the Department with the authority to revoke an order "in whole or in part." Because the statute does not define "in whole or in part," the Department promulgated regulations at 19 CFR 351.222(b) and (e) governing revocation and reinstatement. As we explained in the Initiation of Antidumping Duty Changed Circumstances Review: Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 73 FR 18766 (April 7, 2008) ("Initiation Notice"):

The statute, however, provides no detailed description of the criteria, procedures or conditions relating to the Department's exercise of this authority {revocation}. Accordingly, the Department has issued regulations setting forth in detail how the

Department will exercise the authority granted to it under the statute. In particular, the Department has reasonably interpreted the authority to partially revoke the antidumping duty order with respect to a particular company it finds to be no longer dumping to include the authority to impose a condition that the partial revocation may be withdrawn (*i.e.*, the company may be reinstated) if dumping is resumed during a time in which an antidumping order continues to exist. To interpret the statute otherwise would permit the Department to abdicate its responsibility to ensure that injurious dumping is remedied by imposition of offsetting antidumping duties.

Id. at 18770. Specifically, 19 CFR 351.222(b)(2) provides procedures for revocation. The regulation states:

- (i) In determining whether to revoke an antidumping duty order in part, the Secretary will consider:
 - (A) Whether one or more exporters or producers covered by the order have sold the merchandise at not less than normal value for a period of at least three consecutive years;
 - (B) Whether, for any exporter or producer that the Secretary previously has determined to have sold the subject merchandise at less than normal value, the exporter or producer agrees in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than normal value; and
 - (C) Whether the continued application of the antidumping duty order is otherwise necessary to offset dumping.
- (ii) If the Secretary determines, based upon the criteria in paragraphs (b)(2)(i)(A) through (C) of this section, that the antidumping duty order as to those producers or exporters is no longer warranted, the Secretary will revoke the order as to those producers or exporters.

19 CFR 351.222(b)(2). Additionally, 19 CFR 351.222(e) further clarifies the Department's revocation procedures by setting forth the procedures for a request for revocation, which includes a certification from the requesting company that it agrees to reinstatement if it resumes dumping. The regulation states:

- (1) During the third and subsequent annual anniversary months of the publication of an antidumping order or suspension of an antidumping investigation, an exporter or producer may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (b) of this section with regard to that person if the person submits with the request:
 - (i) The person's certification that the person sold the subject merchandise at not less than normal value during the period of review described in § 351.213(e)(1), and that in the future the person will not sell the merchandise at less than normal value.
 - (ii) The person's certification that, during each of the consecutive years referred to in

- paragraph (b) of this section, the person sold the subject merchandise to the United States in commercial quantities; and
- (iii) If applicable, the agreement regarding reinstatement in the order or suspended investigation described in paragraph (b)(2)(iii) of this section.

19 CFR 351.222(e). Thus, Commerce's regulations provide procedures for the express statutory mandate – revocation – and its natural corollary – reinstatement. This regulation is reasonable because it “places exporters and producers which the Department has previously found to be dumping, on notice that they are subject to immediate reinstatement once they are revoked from the order, if the Secretary later concludes that they have resumed dumping.” Initiation Notice, 73 FR at 18770. Without procedures for reinstatement, it is conceivable that a party could be revoked from an antidumping order and subsequently resume dumping without penalty, even where an antidumping order remains in place.

The Department's interpretation of its statutory authority concerning revocation has been affirmed by the CIT. In an opinion issued pursuant to SSI's challenge to this review, the CIT affirmed that Commerce's regulations at 19 CFR 351.222 constitute a reasonable exercise of the authority granted by Congress to the Department under section 751(d) of the statute. See Sahaviriya Steel Indus. Pub. Co. Ltd. v. United States, Slip Op. 09-15 (CIT 2009) (“SSI v. US”). The CIT stated:

In the case at bar, Commerce bases its authority for reinstatement on sections 1675(b) (changed circumstances review) and (d) (revocation of antidumping/countervailing duty order). Although neither section specifically provides for reinstatement, Commerce is endowed with both an explicit and implicit grant of authority to adopt regulations administering the antidumping statute. It is well settled that when Congress leaves a gap within a statute administered by an agency, Congress impliedly entrusts the agency with the authority to fill such gap, but where, as here, Congress has expressly authorized Commerce to engage in rulemaking, the Court must infer that Congress has delegated authority to the agency to address statutory ambiguities. See United States v. Mead Corp., 533 U.S. 218, 229 (2001) (citing Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984)). . . . Currently, one of the mechanisms by which Commerce has chosen to administer sections 1675(b) and (d) is 19 CFR § 351.222. This regulation describes in detail the procedures to be followed and the conditions imposed on a producer seeking to avail itself of partial revocation. As such, it is a proper exercise of the Department's explicit authority to resolve the ambiguity left by Congress in the relevant sections of the antidumping statute.

SSI v. US at 24-25. Therefore, the Court's finding is clear; 19 CFR 351.222 provides a reasonable exercise of its authority under section 751(d) of the Act.

The Department properly conducted the instant review in accordance with its regulations and practice. Pursuant to 19 CFR 351.222(b)(2)(i), Commerce determined that SSI qualified for revocation because SSI did not make sales at less than fair value over the course of three consecutive administrative reviews. See Certain Hot-Rolled Carbon Steel Flat Products from

Thailand: Final Results of Antidumping Duty Administrative Review, Partial Revocation of Antidumping Duty Order and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 28659 (May 17, 2006); see also Certain Hot-Rolled Carbon Steel Flat Products From Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 69 FR 19388 (April 13, 2004); Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Rescission of Antidumping Duty Administrative Review, 69 FR 18349 (April 7, 2004). Pursuant to 19 CFR 351.222(e), at the time of its request for partial revocation, SSI submitted company certifications that: (1) the company sold subject merchandise at not less than NV during the POR, and that in the future it would not sell such merchandise at less than normal value (see 19 CFR 351.222(e)(1)(i)); and (2) the company sold the subject merchandise to the United States in commercial quantities during each of the past three years (see 19 CFR 351.222(e)(1)(ii)). SSI also included a certification that the company agrees to immediate reinstatement of the order if, subsequent to revocation, the Department concludes that the company sold the subject merchandise into the United States at less than normal value (see 19 CFR 351.222(b)(iii)). Petitioner included a copy of this letter in its November 8, 2006, request for a changed circumstances review to reinstate SSI into the antidumping duty order on hot-rolled steel from Thailand. See Letter from United States Steel Corporation to the Department of Commerce, November 8, 2006, at Exhibit 1.

The Department is responsible for ensuring that parties adhere to the terms of the revocation. As explained in our Initiation Notice, we initiated this changed circumstances review based upon evidence that SSI, in violation of the terms of its revocation agreement, had resumed selling hot-rolled steel from Thailand in the United States at prices below normal value. See Initiation Notice, 73 FR at 18766-18767. As noted in our Initiation Notice, “one such basic principle of administrative law is that an administering agency must abide by its own rules to safeguard expectations.” Id. at 18770. Implicit in SSI’s certification that it agreed to immediate reinstatement in the order, should it be found to be selling at less than normal value in the future, is the expectation that the Department would in fact reinstate SSI in the order should the Department determine that SSI had resumed dumping. As demonstrated in these final results, SSI violated the terms of its revocation by selling hot-rolled steel from Thailand in the United States at prices below normal value during the period July 1, 2006, through June 30, 2007, i.e., subsequent to its revocation from this order.

With respect to the propriety of using a CCR to reinstate a company into an order, pursuant to section 751(b) of the Act, the Department will conduct a changed circumstances review upon receipt of a request “from an interested party for review of an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order.” Given this statutory mandate, SSI is mistaken in its narrow construction of the statute as authorizing only three types of reviews. Rather, as acknowledged by petitioner, the Courts have recognized that the Department has broad authority to conduct changed circumstances reviews in situations not expressly set forth in the statute. For example, in Mittal, the Court addressed the Department’s authority to conduct changed circumstances reviews:

The scope of Commerce’s authority to initiate changed circumstances reviews under 19 U.S.C. § 1675(b) is delimited only by the general requirement that there be “changed

circumstances sufficient to warrant a review” of the antidumping order. See 19 U.S.C. § 1675(b)(1) (2000). Commerce’s discretion is broad, and the range of matters subject to changed circumstances reviews is wide.

Mittal, 461 F. Supp. 2d at 1332 n.7. In this case, Commerce has satisfied the Mittal court’s standard for initiation of a changed circumstances review. Specifically, in its Initiation Notice, the Department stated that “[p]etitioner’s allegation, with supporting documentation, that SSI has resumed dumping hot-rolled steel subsequent to its revocation from the order is an appropriate basis for a changed circumstances review.” Initiation Notice, 73 FR at 18770. This satisfies the Mittal court’s statement that initiation of changed circumstances reviews is limited only by the “general requirement that there be ‘changed circumstances sufficient to warrant a review’ of the antidumping order.” Mittal at 461 F. Supp. 2d at 1332 n.7.

Moreover, this review is consistent with the Department’s practice established in Sebacic Acid from China and PET Film from Korea, where the Department conducted changed circumstances reviews to determine whether revoked companies had resumed dumping and should therefore be reinstated in an order. See Sebacic Acid from China, Issues and Decision Memorandum at Comment 1; PET Film from Korea, Issues and Decision Memorandum at Comment 1. Contrary to SSI’s contentions, both Brazilian Orange Juice I and Woodwind Instruments from Italy are not instructive here because the facts are distinguishable. In Brazilian Orange Juice I, the Department initiated a new investigation before reinstating respondents because the scope of the order had been expanded since the time of revocation. See Brazilian Orange Juice I, 71 FR 2183 and accompanying Issues and Decision Memorandum at Comment 1. Here, the scope of the order remains the same as when SSI was revoked. In Woodwind Instruments from Italy, the respondent was excluded from the original order, had never before been found to be dumping under the order, and thus was not granted a conditional revocation. See Woodwind Instruments from Italy. Here, SSI was covered under the original order, had previously been found to be dumping, and was granted a conditional revocation.

With respect to SSI’s arguments concerning the application of Asahi, SSI has misconstrued the case on several accounts. First, Asahi concerned, in relevant part, whether respondent’s challenge to the Department’s determinations under an antidumping order was mooted by the order’s revocation in whole. Asahi, 727 F. Supp at 625 (“Two main questions are raised: (1) whether revocation of an antidumping duty order by the Department . . . during the pendency of judicial consideration of the order renders the case moot . . .”). The Asahi court found that the total revocation of the order quashes the order’s effect, and that the Department’s reinstatement regulations alone were insufficient to accomplish reinstatement of the revoked order. Id. at 627-28. The Asahi court was most concerned that the Department reinstated a previously revoked order without the requisite showings of both sales at less than fair value and injury to the domestic injury. Id. at 627 (“It is an impermissible proposition that Commerce will impose antidumping duties based on a finding of dumping alone, without the requisite additional injury finding by the ITC.”). The key difference between Asahi and the instant case is that the antidumping order here was not wholly revoked, and the injury determination stands. As we explained in the Initiation Notice:

The partial revocation of the order with respect to SSI did not nullify the validity of the underlying injury and less than fair value determinations that resulted in issuance of an antidumping order which remains in force, particularly when the partial revocation is the result of behavior subsequent to those earlier determinations.

See Initiation Notice, 73 FR at 18771. Thus, SSI's attempt to apply the Asahi court's reasoning is misplaced because that decision concerns "revocation in whole," not "revocation in part."

Furthermore, Asahi concerned the Department's prior reinstatement regulation, which has since been replaced. The Asahi court expressly recognized that the prior regulations themselves were problematic, not the concept of reinstatement. Asahi, 727 F. Supp. at 628. The concerns enumerated by the CIT in Asahi concerning the Department's prior regulation have since been addressed through the Department's current regulation and practice. The CIT identified three specific concerns with the prior regulation: "{1} The provision does not specify the circumstances under which Commerce will consider reinstatement, {2} nor the type of investigation which will precede reinstatement. The provision also is {3} silent regarding the inter-relationship between reinstatement and the existing statutory framework for imposing duties." Id. With regard to the first concern, the current regulation states that, in determining whether to revoke a company from the order, the Secretary will consider whether the revoked company agrees in writing to its immediate reinstatement under the order if the Secretary determines that the company resumed dumping and any other company remains subject to the order. 19 CFR 351.222(b)(2)(B). Thus, companies granted a conditional revocation are made aware, by virtue of their certification to the Department, that the Department will consider their reinstatement if there are allegations of resumed dumping and other companies remain subject to the order. As stated in the Initiation Notice, this regulation "places exporters and producers which the Department has previously found to be dumping on notice that they are subject to reinstatement once they are revoked from an order, if the Secretary later concludes that they have resumed dumping." Initiation Notice, 73 FR at 18770. There is, therefore, no ambiguity concerning the circumstances under which revocation will be considered.

With regard to the Asahi court's second concern, the Department's practice is to conduct a changed circumstances review to determine whether dumping has resumed, as demonstrated in PET Film from Korea, Sebacic Acid from China, and now, the instant case. As explained above, the Department's reliance upon a changed circumstances review for this purpose is consistent with the statute.

With regard to the third concern regarding the inter-relationship between reinstatement and the existing statutory framework, under the current regulation, the antidumping order must remain in force and another party must be subject to it in order for the Department to determine whether dumping has resumed. 19 CFR 351.222(b)(2)(B). This means that reinstatement cannot occur without a standing determination of injury, as evidenced by the continued existence of an antidumping order. Thus, the regulation sets forth that statutory requirements of both injury and, pursuant to the Department's determination of whether sales at less than fair value have resumed, dumping must be satisfied for reinstatement.

SSI's claims that it was denied due process prior to the Department's initiation of this CCR are unfounded. SSI was provided with notice concerning the Department's consideration of petitioner's allegation that SSI had resumed dumping and given an opportunity to comment upon the public information submitted by petitioner. In fact, SSI received all public information submitted by petitioner, including public summaries of the business proprietary information, prior to the Department's initiation of this review. Based upon these submissions, SSI provided pre-initiation comments. See, e.g., Letter from SSI to the Department of Commerce, dated December 12, 2006; Letter from SSI to the Department of Commerce, dated March 7, 2007; Letter from SSI to the Department of Commerce, dated March 16, 2007; and Letter from SSI to the Department of Commerce, dated April 10, 2007.

The Department's rejection of SSI's request for access to confidential information prior to the initiation of this review was in accordance with its regulations in effect at that time.¹ The Department's regulations governing the release of proprietary information under administrative protective order ("APO") did not permit an APO to be placed on the record until after the initiation of the changed circumstances segment of the proceeding. Specifically, at the time the Department considered SSI's requests for access to confidential information, 19 CFR 351.305(a) stated:

The Secretary will place an administrative protective order on the record within two days after the day on which a petition is filed or an investigation is self-initiated, or five days after initiating any other segment of a proceeding.

19 CFR 351.305(a) (2007) (emphasis added); see also 19 CFR 351.305(a) (2006). Therefore, providing SSI access to confidential information prior to the initiation of this review would have violated the Department's regulation. Adherence to the Department's APO regulations is critical to protect confidential information provided to the Department by parties in a proceeding. Moreover, as demonstrated above, SSI was not fundamentally disadvantaged by the regulation as it commented upon public versions of confidential filings prior to initiation.

Additionally, SSI's request for access to business proprietary information subject to APO was granted on April 8, 2008, the day following the initiation of this review.² On April 9, 2008, petitioner served SSI's counsel with the proprietary versions of the documents filed prior to the initiation of this review. See Letter from United States Steel Corporation to the Department of Commerce, dated April 9, 2008. Thus, SSI was provided with access to all confidential information in this review without any undue delay.

Based upon the foregoing, we continue to maintain that our conduct of a changed circumstances review under section 751(b) of the Act to determine whether reinstatement is

¹The Department has since promulgated new regulations that provide for the establishment of an APO "within five days after the day on which a request for changed circumstances is properly filed" 19 CFR 351.305(a) (2008).

² We established an APO for this CCR on April 7, 2008, i.e., the date on which the initiation notice was published in the Federal Register. See <http://web.ita.doc.gov/ia/webapotrack.nsf/homepage?openform>.

appropriate is a legitimate exercise of the authority governing revocations granted by Congress, and that section 751(d) of the Act provides the Department with the authority to reinstate SSI in the order.

Comment 2: Date of Sale for U.S. Sales

SSI's Case Brief

SSI states that the Department's preliminary determination that the invoice date is the proper date of sale flies against the finding in the original investigation and previous reviews that contract date is the proper date of sale. Additionally, SSI argues that the Department's preliminary determination regarding date of sale disregards the Department's own regulations, as well as the evidence on the record. For these reasons, SSI urges the Department to use contract date as the date of sale for its U.S. sales.

SSI states that, in the original investigation, SSI initially reported the invoice date as the date of sale. See SSI's Case Brief at 21. SSI maintained in the investigation that the invoice date was the appropriate date of sale because the U.S. sales contracts had a built-in +/-10% quantity tolerance, thus the quantity terms are not set until the final invoice is issued. Id. According to SSI, the Department rejected SSI's arguments and relied upon contract date during the investigation because prices had not changed between the contract date and the invoice date, and that quantity changes were minimal and affected a relatively insignificant volume of subject merchandise. Id. at 22. SSI claims that the Department chose the contract date as the date of sale in the subsequent administrative reviews because SSI's U.S. sales process had not changed between reviews. SSI argues that the Department's decision in the preliminary results to use invoice date is "in sharp contrast" to its earlier practices. Id. at 23.

SSI challenges the Department's reliance upon invoice date as the date of sale, stating that SSI's U.S. sales process has not changed since the investigation and prior reviews, and that the material terms of sale are set on the date of the last amendment to a particular contract. SSI points to Notice of Final Results of Antidumping Duty Administrative Review and Final Partial Rescission: Certain Cut-to-Length Carbon Steel Plate from Romania, 72 FR 6522 (February 12, 2007) and accompanying Issues and Decision Memorandum at Issue I ("Romanian Plate 04-05"), where the Department determined to use contract date as the date of sale even though one sale fell outside of the quantity tolerance limits set in the contracts. SSI believes that the fact pattern in prior reviews covering SSI and the instant review is essentially the same as in Romanian Plate 04-05; that the changes in the sales quantities do not represent any meaningful changes between the contract date and the invoice date. Id. at 24-25. SSI argues, in addition, that the Department has stated in a separate case that there must be more than changes in aggregate quantity to constitute changes to the material terms of sale that are meaningful.³ SSI asserts that the changes in the contracts used by the Department to determine preliminarily that

³ SSI cites to the Department's Draft Results of Redetermination Pursuant to Second Remand, Nakornthai Strip Mill Public Co. Ltd. v. United States, CIT No. 07-180 (January 9, 2009), at 3. This has been superseded by the Court's decision in Nakornthai Strip Mill Public Co. Ltd. v. United States, Slip Op. 09-27 (April 7, 2009) ("Nakornthai").

invoice date is the proper date of sale are “not meaningful in relation to the total quantity of U.S. sales.” *Id.* at 25. Therefore, according to SSI, the date upon which the final amendments were made to SSI’s U.S. sales contracts is the appropriate date of sale because the sales pattern in this proceeding has not changed as compared to previous proceedings where the Department relied upon the final amended contract date as the date of sale.

SSI also states that, as in Romanian Plate 04-05, it has provided affidavits from U.S. customers concerning parties’ understanding about the material terms of sale. Specifically, SSI claims that the affidavits state that, once a sales contract is signed, parties share an agreement that there cannot be amendments to the material terms of sale without a contractual amendment later signed and agreed to by the customer. *Id.* at 26. SSI argues that these affidavits are further evidence that the contract date is the appropriate date of sale.

Finally, SSI claims that, by reporting the final amended contract date as the date of sale, it has simply followed past practices and findings in reporting contract date as the date of sale for this proceeding. SSI argues that if the Department maintains that contract date is not the appropriate date of sale, then contract terms would never be considered as set and any change, however, small, would be considered meaningful and would result in a date of sale as the invoice date. Such a result, states SSI, would render the Department’s date of sale regulations meaningless. Therefore, SSI contends, the Department should reject the date of invoice as date of its U.S. sales and use the contract date instead. *Id.* at 27.

Petitioner’s Rebuttal Brief

Petitioner argues that the Department should continue to find that the date of invoice is the most appropriate date for the date of SSI’s U.S. sales. Petitioner states that the Department’s preliminary determination to rely upon invoice date as the date of sale is in accordance with the Department’s regulations and based on record evidence. Citing to 19 CFR 351.401(i), petitioner maintains that the Department’s regulations consider invoice date to be the presumptive date of sale. An earlier date, according to petitioner, must be supported by evidence showing that the material terms of sale do not undergo any meaningful changes between the earlier date and the invoice date. Pointing to Allied Tube & Conduit Corp. v. United States, 132 F. Supp. 2d 1087, 1090 (“Allied Tube II”), petitioner notes that a change in the quantity term in excess of the specified tolerance level for one sale is sufficient to show that material terms of sale are subject to change. *See* Petitioner’s Rebuttal Brief at 16. In the instant case, petitioner notes that there were multiple contracts between SSI and its customers in the United States where the final quantity shipped fell outside of the aggregate quantity tolerance level specified in the final contract addenda. *Id.* at 18. For those reasons, petitioner states that the proper date of sale for SSI’s U.S. sales is the invoice date.

Petitioner counters SSI’s arguments by stating that the facts in the present review are substantially different from previous administrative reviews. Petitioner notes that in previous reviews, unlike the current review, the Department found that the material terms of sale did not change between the final contract date and the invoice date. *Id.* at 19. With respect to the investigation, petitioner states that the Department found changes in the quantity and/or price

after the initial contract date. However, between the final contract date and the date of the invoice, there were no instances where the total quantity changed outside of the delivery tolerance levels, according to petitioner. *Id.* at 20. Similarly, in all of the subsequent administrative reviews, petitioner asserts that the Department did not find quantity changes outside of the delivery tolerance level between the final contract date and the invoice date. *Id.* at 20-21.

Petitioner states that the Department must examine the issue of date of sale in each segment of a proceeding, and determine the correct date based on the unique facts of the segment. Citing the CIT's decision in *SeAH Steel Corp. Ltd. v. United States*, 25 C.I.T. 133, 137 (2001) ("*SeAH Steel*"), petitioner argues that determinations in previous segments of a proceeding are not binding with respect to the decisions made in a current segment of a proceeding. *Id.* at 21. Petitioner asserts that the Department has consistently applied a fact-based methodology in each segment of this proceeding. That is, petitioners claim that the Department has examined whether there were material changes in quantity, outside of agreed tolerance levels, between the final sales contract dates and the invoice dates. Petitioner states that the difference in this segment is that there were outside-of-tolerance sales here. Therefore, petitioner believes that the Department properly applied its fact-based methodology in this segment. *Id.* at 22.

With respect to SSI's claim that its sales process to the United States has remained the same since the investigation, petitioner avers that this claim "misses the point." The point, according to petitioner, is not the process of making sales, but the fact that there were purported material changes in the terms of the sale between final contract date and invoice date for a number of contracts (*i.e.*, outside-of-tolerance sales quantities). Therefore, petitioner argues, the change in the fact pattern with respect to the material terms of sale is the critical item in the analysis. *Id.*

Petitioner challenges SSI's reliance on *Romanian Plate 04-05*, stating that the fact pattern there is different than in the instant case. In *Romanian Plate 04-05*, there was one change in the quantity shipped that fell outside of the tolerance level, for a small sale between contract date and invoice date. Petitioner claims that, in contrast, the instant review involves changes to multiple contracts covering multiple sales. Petitioner also states that there were no changes between acknowledgement date and invoice date in *Romanian Plate 04-05*, though SSI's contracts were frequently amended. Petitioner claims that SSI's reliance upon the *Nakornthai* case is unavailing because the Department determined that because the final quantity shipped fell within, not outside of, the aggregate quantity tolerance level, it was insignificant. *Id.* at 25. Petitioner further states that SSI has provided no other information to support the contention that contract date is the appropriate date of sale.

Petitioner also asserts that the Department should not give weight to affidavits supplied by SSI, stating that they are "general and conclusory in nature and do not address the specific facts of the case." Petitioner also states that the statements in the affidavits "are belied by the record evidence here that clearly shows that there were, in fact, changes to the material terms of sale." *Id.* at 24 n.90. Finally, petitioner argues that SSI's reliance on the quantity of the changes

related to the total quantity of all sales to the United States is misleading. Petitioner states that the comparison made by SSI “is not the relevant measure of whether the quantity changes are meaningful. Rather, the relevant measure involves comparing the quantity in each individual contract to the quantity shipped in the corresponding invoices for each contract and assessing whether any differences between them are outside the tolerance level.” *Id.* at 25. By applying such a measure, petitioner attempts to demonstrate that the tonnage in the contracts subject to change is meaningful when compared to the total tonnage that SSI sold to the United States. For all of these reasons, petitioner contends that the invoice date is the appropriate date of sale.

Nucor’s Rebuttal Brief

Nucor argues that the Department should reject SSI’s argument that the Department’s prior practice in previous reviews dictates the use of contract date in this review. Additionally, Nucor argues that SSI’s analysis using Romanian Plate 04-05 should also be rejected. Nucor cites to 19 CFR 351.401, stating that the Department’s preference is to use the date of invoice absent evidence establishing an earlier date of sale. According to Nucor, SSI failed to meet the burden of proving that a date other than the invoice date was appropriate. *See* Nucor’s Rebuttal Brief at 11.

Nucor notes that, during the investigation, the Department found differences between the quantity ordered and quantity shipped. However, those differences fell within the tolerance specified by the contracts. *See id.* at 13. In contrast, Nucor states that the final delivery of merchandise on multiple sales contracts from SSI to U.S. customers in the instant review resulted in SSI shipping quantities that fell outside of the specified delivery tolerance levels. Nucor also notes the same differences distinguish the fact pattern between this review and Romanian Plate 04-05. Because of these differences, Nucor asserts that the terms of sale were not fixed by SSI’s contracts, and, thus, the date of invoice is the appropriate date of sale.

Department’s Position

The Department continues to find that the invoice date is the appropriate date of sale for SSI’s sales to customers in the United States. The regulation governing date of sale determinations, 19 CFR 351.401(i), states the following:

In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

The regulation makes clear that while the date of invoice is the preferred date of sale, the Department will consider a different date if it is satisfied that the material terms of sale are established on a date other than the invoice date. In determining the date of sale, the Department considers which date best reflects the date on which the exporter/producer establishes the material terms of sale (e.g., price and quantity). *See SeAH Steel Corp. v. United States*, 25

C.I.T. 133, 134-35 (2001).

The instant case involves numerous contracts, most covering a number of U.S. sales. Under the terms of SSI's U.S. sales contracts, revisions are permitted, which are treated as addenda to the original contract. See SSI's Section A questionnaire response, dated May 23, 2008, at A-41 ("Section A response"). The addenda may involve changes to the quantity order, the product mix, or the quantity tolerance allowances of the merchandise ordered. Id. For some of its U.S. sales contracts, where there were addenda to the contracts, SSI reported the date of the last addendum to be the final contract date. See SSI's Section C questionnaire response ("Section C response"), dated June 9, 2008, at C-1 and C-13; see also SSI's Sections A-C supplemental response ("First Supplemental response"), dated August 15, 2008, at S1ABC-41, and Letter from SSI to the Department of Commerce, dated August 25, 2008. However, in other instances, there were no amendments to SSI's U.S. sales contracts. See SSI's sections A-C supplemental response ("Third Supplemental response"), dated October 2, 2008, at appendix S3C-2. SSI explained in its Section A response that it used the final contract date as the date of sale because the material terms of the sale were fixed on that date. See Section A response at A-41 through A-42. SSI therefore argues that the date of the final addendum, or the date of the contract if there were no addenda, is the appropriate date of sale.

On July 18, 2008, the Department requested that SSI provide a chart with a complete listing of all of its U.S. sales contracts, including a chart showing the original contracts, any addenda and the changes based upon the addenda, the final contract terms (including the final agreed quantity and value, as well as agreed tolerances), and the final quantity and value shipped to the customer. See Letter from the Department to SSI, dated July 18, 2008. On August 15, 2008, SSI filed the First Supplemental response, providing the requested information. However, after reviewing the information, the Department issued a subsequent supplemental questionnaire requesting additional information from SSI regarding differences between the final quantity and value of the contracts and the final quantity and value shipped to the customers. See Letter from the Department to SSI, dated September 18, 2008. Specifically, in reference to the chart provided by SSI in the First Supplemental response, the Department asked that SSI "amend the chart to indicate the final contract quantity and value, the final quantity and value shipped to the customer, and any differences. If there are differences in either the quantity or value, please indicate the actual difference as well as the difference expressed as a percentage." Id. SSI provided the requested information on October 2, 2008. See Third Supplemental response at appendix S3C-2.

In examining the information provided by SSI, the Department looked to the differences between the final contract terms (*i.e.*, the terms expressed in the addenda to amended contracts or the terms of un-amended contracts) and the actual shipments to determine if there were any price or quantity changes outside of the contract tolerance limit. The Department found that more than one delivered contract exceeded the specified "Delivery Allowance" per the respective contract. Id. In addition, at least one of these contracts contained multiple sales. Id. Thus, SSI had multiple contracts, representing multiple sales, with final shipment quantities that fell outside of the quantity tolerance specified on the final contract terms.

Based upon these outside-of-tolerance sales, the facts of this review resemble the facts of Certain Cut-to-Length Carbon Steel Plate from Romania: Preliminary Results of the Antidumping Duty Administrative Review and Intent to Rescind in Part, 72 FR 36658 (July 5, 2007) (“Romanian Plate 05-06”), unchanged in Notice of Final Results of Antidumping Duty Administrative Review and Final Partial Rescission: Certain Cut-to-Length Carbon Steel Plate from Romania, 72 FR 63555 (November 9, 2007). In that case, the Department relied upon the date of invoice as the date of sale. The Department’s determination was based, in part, upon its finding that the respondent’s U.S. sales quantities admittedly “varied between the order acknowledgments and the invoices,” or in other words, “there were various sales with changes outside of the allowable tolerance for quantity that took place after the order acknowledgment date.” See Romanian Plate 05-06, 72 FR at 36659. As in Romanian Plate 05-06, the instant case involves U.S. sales that fell outside of the quantity tolerance level specified in the final contract, whether the final contract reflects modifications by addenda or is an unmodified original contract. See Memorandum to the File from John K. Drury, “Analysis Memorandum for the Final Results of Changed Circumstances Review of Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Sahaviriya Steel Industries Public Co., Ltd. (“SSI”),” dated May 7, 2009 (“Analysis Memorandum”), for further discussion.

With regard to SSI’s argument that the instant case is similar to Romanian Plate 04-05, we disagree. First, although both cases involve outside-of-tolerance sales, Romanian Plate 04-05 involved only “one small sale” outside of the specified quantity tolerance, which the Department did not consider to be “meaningful” to its date of sale analysis. See Romanian Plate, Issues and Decision Memorandum at Comment 1. In contrast, the instant case involves numerous sales outside of quantity tolerance for a number of contracts. Given the breadth of the departure from these contracts for a material term of sale, *i.e.*, quantity, these outside of tolerance sales are meaningful to Commerce’s date of sale analysis. In addition, the CIT’s recent decision in Nakornthai is not instructive here. In Nakornthai, the Court found that sales within an aggregate quantity tolerance level, even if some of those sales exceed line-item tolerances previously contained in the contract, were insignificant to the date of sale analysis. See Nakornthai at 16-20. Here, the sales fall outside of the quantity tolerance levels, not within them, thus Nakornthai is inapposite on a factual basis. (Because of the proprietary nature of relevant information, the materiality of these outside-of-tolerance sales is further addressed in the Analysis Memorandum.)

Moreover, SSI mistakenly claims that the instant case is similar to Romanian Plate 04-05 because SSI has provided affidavits from customers which state that their contracts did not allow for any changes to material terms between the final contract date and invoice date without written agreements confirming the changes. See SSI’s Submission of Customer Affidavits, dated August 25, 2008. Although both cases involve customer affidavits submitted by respondents, SSI’s affidavits lack probative value because they are contradicted by the data for several U.S. sales. The fact that there were a number of sales that did not conform with the contractual terms demonstrates that parties did not share an agreement upon the material terms of sale at the time of the un-amended or final addenda to their U.S. sales contracts, regardless of the affidavits.

With regard to the SSI’s argument that the Department is bound by its date of sale

determination in previous segments of this proceeding, the Department's date of sale determinations in previous segments of a proceeding are not binding on subsequent segments of the proceeding. In fact, SSI's argument has been expressly rejected by CIT. In SeAH Steel, the CIT rejected the claim that, in the interest of "administrative consistency," the Department must rely upon the same date of sale from a previous review. The CIT stated:

The date of sale determination inherently places certain sales outside the scope of the POR that would have been examined in the present review had an alternative date of sale been utilized. It does not follow from this self-evident characteristic of date of sale analysis, however, that Commerce is "required" to employ the same date of sale in an ongoing review as it had relied upon in a previous review. First, there is no requirement that all sales be examined by means of a series of reviews. Second, such a requirement would obviate the need for any date of sale analysis in all reviews beyond the first administrative review. A date of sale analysis is essential in each review "to guarantee that [Commerce] makes the fair value comparison on a fair basis -- comparing apples with apples." Koyo Seiko Co. v. United States, 36 F.3d 1565, 1573 (Fed. Cir. 1994) (quoting Smith-Corona Group v. United States, 713 F.2d 1568, 1578 (Fed. Cir. 1983), cert. denied, 465 U.S. 1022, 79 L. Ed. 2d 679, 104 S. Ct. 1274 (1984)). The Department, under the guise of "administrative consistency," may not thus abdicate its statutory duty to ensure that normal value is calculated "at a time reasonably corresponding to the time of the sale used to determine the export price or constructed export price." 19 U.S.C. § 1677b(a)(1)(A).

SeAH Steel, 25 C.I.T. at 137. Based on this finding, the Department's date of sale determination is not limited by its determinations in prior reviews. See also Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review, 67 FR 11283 (March 13, 2002) ("PRC Fresh Garlic") and accompanying Issues and Decision Memorandum at Comment 3 (each "review is a separate reviewable segment of the proceeding involving different sales, adjustments, and underlying facts. What transpired in previous reviews is not binding precedent in later reviews.").

Based upon the foregoing, the Department has relied upon the invoice date as the appropriate date of sale for SSI's U.S. sales. This issue is further discussed in the Analysis Memorandum.

Comment 3: Segment Methodology

SSI's Case Brief

SSI claims that the Department has been inconsistent in its conduct of this review. According to SSI, the Department "has switched back and forth between the requirements for an original investigation and that of an administrative review." See SSI's Case Brief at 19. As an example, SSI claims that the Department suspended liquidation of entries after the preliminary results of this review and that the Department corrected an alleged ministerial error, both actions consistent with the methodology of an original investigation. In contrast, according to SSI, the

Department employed zeroing and calculated margins using a weighted-average-to-transaction methodology, consistent with an administrative review. Additionally, SSI states that the Department set the de minimis rate at 0.5 percent, the rate employed in an administrative review. Id. at 19-20.

SSI argues that the Department must be consistent, and states that the Department must use an original investigation methodology in all respects. Id. at 20-21.

Petitioner's Rebuttal Brief

Petitioner argues that the Department has already examined this issue in other cases and rejected requests that the Department not use the zeroing methodology or set the de minimis level at 0.5 percent. Petitioner cites to PET Film from Korea, stating that the Department found in that CCR that the proper procedures are those of an administrative review. Petitioner states that the suspension of liquidation after the preliminary results does not negate the fact that the use of administrative review procedures is proper. Likewise, according to petitioner, the correction of an error after the issuance of the preliminary results does not change the propriety of using administrative review procedures. Petitioner notes that the Department also corrected an error in the preliminary results of a CCR, citing to Polyvinyl Alcohol From Japan: Notice of Amendment of Preliminary Results of Changed Circumstances Antidumping Duty Review and Intent To Revoke Order in Part, 63 FR 32809 (June 16, 1998) ("Alcohol from Japan"). Thus, petitioner states that SSI's arguments should be rejected. See Petitioner's Rebuttal Brief at 13-15.

Nucor's Rebuttal Brief

Nucor states that the Department should not employ an original investigation methodology because this is not an original investigation. Nucor points out that the Department has already concluded that producers and exporters were selling subject merchandise at less than normal value in September 2001, consistent with the original investigation for this product. See Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 49622 (September 28, 2001) ("Hot-Rolled Thailand Investigation"). Nucor contends that, as this is not an investigation of all exporters and producers selling subject merchandise in Thailand, but instead an examination of a particular company's exporting activities, it is properly a review and the Department should use review methodology. Therefore, Nucor argues that the Department should continue to employ zeroing and weighted-average-to-transaction methodology for the final results. See Nucor's Rebuttal Brief at 10-12.

Department's Position

Section 751 of the Act pertains to "Administrative Review of Determinations." This proceeding is a changed circumstances review conducted pursuant to section 751 of the Act, and not an investigation conducted pursuant to section 731 of the Act. Accordingly, this proceeding is governed by procedures applicable to administrative reviews. The Department requested, and

SSI provided, transactions for the relevant period of review, and the agency's analysis of these sales was consistent with its review procedures. As we noted in the Initiation Notice, the less-than-fair-value investigation has been completed; the Department has made a final determination of dumping, the International Trade Commission has made its final injury determination, and the antidumping order on hot-rolled steel from Thailand remains in place. See Initiation Notice, 73 FR at 18770-18771. Moreover, as noted in the Initiation Notice, SSI's revocation was "premised on the absence of dumping rather than the absence of injury and was expressly conditioned on the possibility of reinstatement should dumping resume." Id. In this proceeding, petitioner provided credible evidence suggesting SSI may have resumed dumping. Id. at 18769-18770. As such, we initiated a changed circumstances review pursuant to section 751(b) of the Act to determine whether SSI has adhered to the terms of its revocation.

The Department's actions here are consistent with its practice in Sebacic Acid from China and PET Film from Korea, where the Department also conducted CCRs to determine whether to reinstate a company into a standing antidumping order, including the Department's instructions to U.S. Customs and Border Protection pursuant to the Preliminary Results to suspend of liquidation of SSI's entries. Because neither the antidumping statute nor the Department's regulations instruct the Department regarding suspension of liquidation for a reinstated company, the Department continues to take the reasonable approach that entries should be suspended at the time that the Department preliminarily determines that dumping has resumed. Establishment of a cash deposit rate and suspension of liquidation at the time of the Preliminary Results is a prophylactic measure that ensures the domestic industry obtains the relief from unfairly traded imports intended by Congress. Second, the suspension of liquidation can be removed should the Department determine as a final matter that the respondent has not resumed dumping.

In addition, contrary to SSI's claims, the Department did not correct the preliminary results notice based upon an alleged ministerial error. Rather, the Department issued a correction notice because the notice was "internally inconsistent" with respect to the antidumping margin established and the Department reasonably sought "to resolve this discrepancy and prevent confusion." See Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Correction to Notice of Extension of Time for Final Results of Changed Circumstances Review, 74 FR 6136 (February 5, 2009). In particular, prior to the publication of the notice in the Federal Register, the Department found that the antidumping margin indicated in the "Reinstatement and Suspension of Liquidation" section of the notice did not reflect the calculated antidumping margin stated in the "Preliminary Results of Review" section of the notice and in the accompanying analysis memorandum. See Memorandum to the File, Analysis Memorandum for the Preliminary Results of Changed Circumstances Review of Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Sahaviriya Steel Industries Public Co., Ltd. ("SSI"), dated December 19, 2008. Therefore, the Department issued a correction to the notice, consistent with its practice. For example, the Department issued a similar correction notice when it noted that the period of review referenced in the first notice extending the time limits of this CCR was incorrect. See Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Correction to Notice of Extension of Time Limit for Final Results of Changed Circumstances Review, 73 FR 75079 (December 10, 2008).

Comment 4: Warranty Expenses

Petitioner's Case Brief

Petitioner argues that the Department should treat all merchandise with warranty claims as non-prime merchandise. Petitioner argues that it is the Department's "normal practice" to treat damaged merchandise as non-prime. See Petitioner's Brief at 10. Petitioner cites to the Department's decisions in Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, 65 FR 5554 (February 4, 2000) ("Cold-Rolled from Brazil") and Hot-Rolled Thailand Investigation in support of its contention. Id. Petitioner states that many of the warranty amounts are large, indicating that the merchandise is not prime and should not be classified as such.

Nucor did not comment on this issue.

SSI's Rebuttal Brief

SSI argues that the Department should reject petitioner's arguments and should not treat sales with warranty expenses as non-prime. SSI states that it is not the Department's "normal practice" to treat merchandise with warranty claims as non-prime. See SSI's Rebuttal Brief at 13. In response to petitioner's citations of Cold-Rolled from Brazil and Hot-Rolled Thailand Investigation, SSI states that the Department rejected the idea of all material with warranty claims as non-prime in the Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 66 FR 3540 (January 16, 2001) ("Steel Flat Products from Korea"). According to SSI, the Department stated in Flat Products from Korea that the Department's findings in Cold-Rolled from Brazil were "unique" and that the basis for paying a warranty claim does not necessarily coincide with a non-prime classification. Id. at 14. SSI further claims that the facts in Hot-Rolled Thailand Investigation were also unique and thus distinguishable from the instant case. SSI claims that the Department specifically examined warranty claims in Hot-Rolled Thailand Investigation at verification, whereas the Department did not make a specific examination during verification in this CCR. Id.

SSI also argues that the Department's actual practice with respect to warranty claims is to look at all such warranty expenses that were reported and determine if there should be a circumstance of sale adjustment. Id. at 15. Citing to 19 CFR 351.410, SSI states that the Department normally engages in an analysis of warranty expenses to determine if they are direct or indirect selling expenses. SSI argues that the reported warranty expenses are indeed direct selling expenses, as they are directly related to individual sales. Such an analysis, SSI asserts, is distinct from a product characterization analysis that petitioner suggests. SSI claims that the sales in question were sold as prime because there were no defects apparent at the time of sale. Id.

SSI states that the Department requires that SSI report warranty expenses as specifically

as possible in relation to sales, and that SSI has done what was requested. *Id.* at 15-16. Additionally, SSI states that the sales in question were made as part of a customer order for prime merchandise. SSI postulates that, were the Department to do as petitioner requested, all warranty expenses in all proceedings would convert the associated sales to non-prime merchandise. Such an outcome, according to SSI, is absurd. *Id.* at 16. Finally, SSI notes that the sizes of the warranty claims vary greatly and that not all are large. For all of these reasons, SSI argues that the Department should continue to treat these as sales of prime merchandise.

Department's Position

The Department's treatment of warranty expenses has evolved over time. Previously, the Department's preference was to make specific adjustments where warranty claims could be tied to specific sales. However, at the time of sale, warranty claims for specific customers or transactions cannot be known or quantified. It is reasonable to assume that merchandise sold as prime material will be sold with the logical expectation that there will not be warranty claims. When they do arise, warranty claims can occur some time after the completion of the sale associated with the warranty claims. For these reasons, if the warranty terms offered by a respondent at the time of sale vary significantly from customer to customer, a customer-specific allocation of warranty expenses may be appropriate. However, if the warranty terms offered by the respondent at the time of sale are not significantly different from customer to customer, an allocation of warranty expenses over total sales or sales to the market in question is more reflective of the nature of the expense and the respondent's expectation that its pricing behavior will allow it to recoup these costs over time. Furthermore, because warranty expenses are not incurred until after a warranty claim has been received from a customer, can vary greatly from year to year, and can occur months or years after the relevant date of sale, the Department often bases warranty expenses on historical data rather than the expenses incurred during a single POR. See Honey from Argentina: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent Not to Revoke in Part, 70 FR 76766, 76769 (December 28, 2005), unchanged in Honey from Argentina: Final Results, Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 71 FR 26333 (May 4, 2006) and accompanying Issues and Decision Memorandum at Comment 1 ("Honey from Argentina"). See also Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review, 72 FR 28676 (May 22, 2007) and accompanying Issues and Decision Memorandum at Comment 7.

The Department's antidumping duty questionnaire for administrative reviews, with respect to sales in the home market, states in part the following with respect to warranty expenses: "Include a schedule of direct and indirect warranty expenses incurred for the foreign like product for the three most recently completed fiscal years. In addition, calculate a cost per unit for each year." See Letter from the Department to SSI, dated April 11, 2008, Section B of the Antidumping Duty Questionnaire at page B-26. SSI provided this information for its home market sales. See SSI's Response to Section B, dated June 6, 2008, at pages B-60 through B-61 and appendix B-31 ("Section B response"). SSI provided the information in the requested format. Based on our analysis, the reported figures in appendix B-31 appear to include all home market sales by SSI and its affiliated resellers. Therefore, we have taken the warranty expenses

as reported in SSI's Section B response at appendix B-31, and applied this average warranty expense to all home market sales during the POR. We did not find any evidence that warranty terms offered by SSI at the time of sale varied from customer to customer. See SSI's Section A response, dated May 23, 2008, at pages A-28 through A-29 ("SSI's commitment to product quality is uniform across all markets and channels of trade . . .").

We disagree with petitioner and are not reclassifying sales which incurred warranty expenses as non-prime merchandise. Unlike the fact pattern in Hot-Rolled Thailand Investigation, there is no evidence on the record to suggest that the merchandise sold by SSI was defective, damaged, or non-prime at the time of sale. Rather, evidence on the record indicates that SSI sold the merchandise in question as prime, with the expectation that it was indeed prime merchandise. Therefore, we will continue to treat these sales as sales of prime merchandise.

Comment 5: Affiliated Transportation Expenses

Petitioner's Case Brief

Petitioner argues that the Department should find that SSI's reported affiliated transportation costs for one affiliated transportation company are not at arm's length and increase the reported affiliated transportation costs for certain reported expense fields, based on the affiliated company financial statements. Petitioner avers that SSI has failed to demonstrate that the prices charged by the affiliated transportation company are at arm's length. Petitioner's Case Brief at 12-13.

Specifically, petitioner notes that the transportation and loading services incurred by SSI in transporting merchandise from the plant to the port were provided by an affiliated transportation company. Petitioner argues that SSI was provided with an opportunity to demonstrate that the prices charged were at arm's length, but failed to do so. Id. at 13. Petitioner notes that the price quotes for similar services provided by the affiliated transportation company were to another affiliated reseller, thus not demonstrating an arm's length transaction. Petitioner further notes that the services reported by SSI for an unaffiliated company are for unloading merchandise at the port, not loading it. As such, petitioner argues that the services are not comparable to those provided to SSI by its affiliate. Id.

Petitioner notes that although SSI's affiliate was profitable, the Department's practice does not consider an affiliate's profitability to determine whether to rely upon the price charged by that party. Petitioner cites to Certain Steel Concrete Reinforcing Bars from Turkey, 72 FR 62630 and accompanying Issues and Decision Memorandum at Comment 10. Id. Moreover, petitioner claims that the financial statements indicate that the transportation services provided to SSI did not generate a profit. Id. at 13-14. For the final results, petitioner recommends raising the reported transportation expense by the difference between the cost and the revenue. Id. at 14.

Nucor did not comment on this issue.

SSI's Rebuttal Brief

SSI argues that the Department may decline to make an adjustment if the Department deems the adjustment to be “insignificant” under 19 CFR 351.413. SSI states that the practical effect is that the margin would be changed very little, qualifying the change in the adjustment as “insignificant.” SSI also states that petitioner’s arguments regarding the financial statements do “not take into account variations in costs and profits unassociated with the subject merchandise.” See SSI’s Rebuttal Brief at 17. Therefore, SSI argues that the Department should decline to make the adjustment requested by petitioner.

Department’s Position

The Department will continue to rely upon SSI’s reported transportation costs, rather than adjust the reported transportation costs according to petitioner’s request.

SSI reported certain expenses associated with moving merchandise from the plant to the port in the PORTCRNE, INLFTCH, INLFTWH and INLFTW2H fields for home market sales, and in the DBROKU and DINLFTWU fields for U.S. sales. As discussed above, petitioner proposed to increase the values in these fields based on a ratio derived from the financial statements of one affiliated transportation company which reflects the difference between the cost and revenue for providing transportation services.

We find that the proposed adjustment is inappropriate because the revenue and cost figures used by the petitioner cover services provided by the affiliated transportation company to both SSI and to at least one unaffiliated company. Furthermore, different types of services were provided to SSI and to the unaffiliated company. Specifically, the affiliated transportation company provided SSI with services related to exportation, and it provided an unaffiliated company with services related to importation. This distinction is important because it means that, although the affiliated transportation company provided somewhat similar loading/unloading and forklift services to both SSI and the unaffiliated company, the affiliated transportation company also provided lashing/stowing/dunnage services to SSI but not the unaffiliated company. That is to say, the financial statements for the affiliated company include different services provided to SSI and unaffiliated companies. Thus, when comparing the services provided and related expenses, there are expenses associated with SSI’s shipments of the merchandise under consideration that cannot be compared directly with the information available for the expenses related to the services provided to the unaffiliated company. See SSI’s Section B response at Exhibit B-21, which includes the affiliated company’s financial statements; see also SSI’s Supplemental Response, dated October 2, 2008, at 5-6. Additionally, we note that some of the expenses contained within some of the named fields above are from other affiliated transport companies. See Section B response at Exhibit B-20. Thus, the adjustment proposed by the petitioner would not necessarily be reflective of the services provided by the affiliated transportation company to SSI.

Although SSI was unable to demonstrate that the reported affiliated company freight rates were provided at arm’s-length, we disagree with petitioner that an adjustment to SSI’s reported transportation expenses is appropriate. The Department has previously declined to adjust

affiliated expenses in the absence of information concerning comparable unaffiliated transactions. In Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from France, 64 FR 73143 (December 29, 1999) (“CTL Plate from France”), the Department declined to adjust respondent’s reported affiliated brokerage, handling, and transportation costs based upon adverse facts available, as suggested by petitioners. The Department rejected this request despite its determination that the respondent was unable to demonstrate that the reported affiliated freight forwarder rates were at arm’s length. Specifically, the Department determined that “the affiliated transport companies did not provide the same kind of services to an unaffiliated company that they provided to (the respondent’s affiliates), and (the respondent’s affiliates) did not purchase similar services from an unaffiliated company.” CTL Plate from France, 64 FR at 73147. Because there are no unaffiliated party transactions for similar services, we have used the movement expenses reported by SSI for purposes of these final results. See Analysis Memorandum for a further discussion of this issue.

Comment 6: Use of Cost of Goods Sold

SSI’s Case Brief

SSI asserts that for the final results the Department should calculate the cost of production (“COP”) and constructed value (“CV”) using SSI’s reporting methodology which is based on the cost of goods sold (“COGS”) of the merchandise. SSI argues that the Department erred in the preliminary results when it adjusted SSI’s reported costs to reflect the cost of manufacturing (“COM”) during the POR. See SSI’s Case Brief at 30. SSI claims that its methodology satisfies the requirements of 19 U.S.C. § 1675b(f)(1) because it is based on SSI’s normal accounting records which are kept in accordance with generally accepted accounting principles (“GAAP”) and reasonably reflect the costs associated with the production and sale of the merchandise. Id. at 28. SSI contends that because its methodology is based on the actual coil-specific COGS it provides a more accurate comparison of sales and costs for the Department’s cost test. Id. SSI claims that its coils do not have long inventory periods and therefore production and sales periods are closely aligned. Id. SSI holds that costs calculated on a COM basis would neither be as accurate nor as reliable as the COGS unit costs. Id. at 28-29. SSI claims that in prior segments in this proceeding the Department has examined SSI’s reporting methodology and determined that it is consistent with antidumping duty law and is the most accurate method of reporting the costs. SSI asserts that the Department may normally rely on COM because most companies cannot track costs on a product specific basis, but that SSI’s COGS reporting is more accurate than COM. Id. at 30.

Petitioner’s Rebuttal Brief

Petitioner asserts that the Department should continue to use SSI’s COM rather than COGS to calculate the COP and CV for the final results. Citing Thai Pineapple Canning Indus. Corp., Ltd. and Mitsubishi International Corp. v. United States, 24 C.I.T. 107, 111 (2000) (“Thai Pineapple Canning I”). Petitioner claims that the Department’s longstanding practice is to use COM to calculate the COP. See Petitioner’s Rebuttal Brief at 28. Petitioner claims that the

Department departs from using COM only under unique circumstances and contends that there are no unique circumstances in this case, citing Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India, 73 FR 52294 (September 9, 2008) and accompanying Issues and Decision Memorandum at Comment 2 (“Stainless Steel Bar from India”). Id. Petitioner asserts that the use of COM is not a deviation from SSI’s normal books and records and points out that the Department used COM from SSI’s normal records for its adjustment in the preliminary results. Id.

Petitioner contends that SSI’s use of COGS is distortive because it includes costs for products that were sold out of beginning inventory and excludes costs for products produced during the POR. Id. Petitioner states that SSI’s COGS methodology not only includes costs from outside the POR but also excludes costs of products produced but inventoried during the POR. Therefore, COGS does not represent COM of products produced during the period. Id. at 28-29. Petitioner argues this makes SSI’s COGS distortive and thus, they must be adjusted. Petitioner contends that, according to Stainless Steel Bar from India, the Department will not use an expanded cost reporting period that pre-dates the POR. Id. Petitioner also alleges that, contrary to SSI’s claim and according to the facts gathered at verification, SSI does not have short inventory periods and that SSI kept subject merchandise in inventory during the POR and that it did so for a period of time. Id. at 30. Further, petitioner contends that because the Department has accepted a respondent’s methodology in the past does not mean it is appropriate to do so thereafter, and cites Final Results of Antidumping Administrative Review: Stainless Steel Sheet and Strip in Coils from Mexico, 73 FR 7710 (February 11, 2008) and accompanying Issues and Decision Memorandum at Comment 3 (“Stainless Steel Sheet and Strip in Coils from Mexico”) in support of this contention.

Nucor’s Rebuttal Brief

Nucor also argues that the Department should continue using COM to calculate COP/CV. Nucor insists that the Department’s practice of using COM is consistent with the statute. See Nucor’s Rebuttal Brief at 16. Nucor cites to Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Indonesia, 63 FR 72268 (December 31, 1998) (“Mushrooms from Indonesia”) in support of its contention that the Department’s normal practice is to use COM. Id. at 16. Nucor also argues that while COGS may be kept in the ordinary course of business, it does not represent the actual production costs as defined in Mushrooms from Indonesia. Nucor further states that the Department has found the use of COGS to be unreliable and inaccurate. Id. at 16-17. For these reasons, Nucor urges the Department to continue using COM.

Department’s Position

According to section 773(b)(3)(A) of the Act, the COP shall include “the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product, during a period which would ordinarily permit the production of that foreign like product in the ordinary course of business.” Similarly, section 773(e)(1) of the Act stipulates that CV shall include “the cost of materials and fabrication or other processing of any kind

employed in producing the merchandise, during a period which would ordinarily permit the production of the merchandise in the ordinary course of business.” The period to be used is not further defined in the statute, nor does the statute dictate the methodology the Department must use to calculate COP or CV. Therefore, the Department has developed a longstanding and consistent practice whereby it calculates COP and CV using COM during the POR or investigation (POI) rather than COGS. The Department’s practice has previously been articulated in Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Indonesia, 63 FR 72268, 72273 (December 31, 1998) at Comment 3 (“Certain Preserved Mushrooms from Indonesia”) as follows:

The Department’s long standing practice is to calculate the cost of production (“COP”) and CV based on the COM of the subject merchandise during the POI. The COM represents the cost to manufacture the product during the period. The Department does not use the COGS because it typically includes the value of merchandise held in inventory at the beginning of the period and excludes the value of merchandise produced but not sold during the period. The value of the merchandise sold from the beginning inventory relates to a previous period. Additionally, COGS may include inventory values that have been adjusted (e.g., inventory written down) to the lower of cost or market...”

The Department has stated in Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Spain, 59 FR 66931, 66938 (December 28, 1994) (“Stainless Steel Bar from Spain”) at Comment 12, that absent strong evidence to the contrary, the Department assumes that the cost structure during the POI or POR is representative and can be used to calculate an estimate of the cost of production, and we have departed from this general policy only in unique circumstances. We recognize that the statutory language is broad enough to accommodate calculating COP and CV on a different basis, but we have chosen to use costs incurred during the POR or POI as a consistent and predictable approach. In some instances, the cost of manufacturing the particular product sold during the POR or POI is higher than the cost of the identical product manufactured during the POR or POI, however sometimes it is lower. We believe that having a consistent and predictable approach as to which method we use eliminates results-oriented arguments regarding which approach to take in a given case. See Thai Pineapple Canning I at page 112.

The fact that a practice is longstanding, however, is only justification for the practice’s use if it is also reasonable and in accordance with law. See Mitsubishi Heavy Indus., Ltd. v. United States, 15 F. Supp. 2d 807, 813-14 (Court of International Trade 1998) (approving the Department’s test because it was both longstanding and consistent with law). The calculation of COP based on the COM during the POR or POI is reasonable and in accordance with law. See Thai Pineapple Canning I, 24 C.I.T. at 110 (the CIT deferred to the Department’s reasonable interpretation of the statute).

The Department has departed from using an annual average COM during the POR or POI in a few rare instances. For example, in Notice of Final Determination of Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Taiwan, 55 FR 34585 (August 23, 1990) at Comment 20, the Department departed from using an annual average COM

because there was a significant variation between what was produced during the POI and what was sold during the POI. In Thai Pineapple Canning Indus. Corp. v. United States, 273 F.3d 1077, 1085 (Fed. Cir. 2001) (“Thai Pineapple Canning II”), the court found that there were two elements operating together that distorted the dumping margin, and therefore a departure from the Department’s normal practice was required. Specifically, there was a dramatic change in the cost of the product’s main raw material input, and there was a significant delay between the production and sale of the product. However, neither of the fact patterns present in these two cases are present here. In this case there is no evidence on the record of a significant variation in the quantity or type of hot-rolled coil produced and sold during the POR. Likewise, SSI has not argued and it has not been demonstrated that there was both a dramatic change in the cost of slab during the POR and a significant delay between the production and sale of hot-rolled coil. At verification, we compared costs for products produced during the POR to costs for products included in the same control number (“CONNUM”) that were produced prior to the POR. See Memorandum to the File from James Balog, “Verification of the Cost Response of Sahaviriya Steel Industries Public Co., Ltd. in the Antidumping Changed Circumstances Review of Certain Hot-Rolled Carbon Steel Flat Products from Thailand” dated January 27, 2009 (“Cost Verification Report”), at 11-13. We found a general trend of rising product costs from prior to the POR to the end of the POR, and we also noted some instances where product costs were lower during the POR. Based on our analysis, we concluded that in the aggregate the changes in costs were small.

We determine that, based upon the facts of this case, we must make a limited departure from our normal practice of reliance upon COM data. In the original investigation and in the subsequent administrative reviews covering this order, the Department had relied on SSI’s CONNUM-specific COGS reporting methodology that was based on its normal books and records. In those segments, SSI’s cost reporting methodology was not raised as an issue by any party, and there was no evidence of substantive cost differences between the two methods (*i.e.*, COM v. COGS). In this segment, the issue was brought to the Department’s attention only shortly before the date of the preliminary results, and because of the short amount of time prior to verification we were unable to obtain CONNUM-specific COM data from SSI. The Department therefore lacks CONNUM-specific COM data. Thus, SSI’s CONNUM-specific COGS data is the most accurate data available on the record of this case. However, to ensure consistency with our practice, as described above, we will require SSI to report its costs based on the COM of the merchandise under consideration during the POR in all future proceedings in this case.

In sum, though we intend to continue to rely upon COM reporting in future segments of this proceeding and, to the extent practicable, in other proceedings, the Department will rely upon COGS data in this review for the limited purpose of reinstating SSI into the order because CONNUM-specific COM data is unavailable.

Comment 7: G&A and Financial Expense Ratio Denominators

SSI’s Case Brief

SSI notes that the Department adjusted the denominators for both the INTEX and G&A ratios in the preliminary results by removing a portion of the scrap revenue used to offset part of the COM. See SSI's Case Brief at 30-31. SSI argues that these adjustments should be corrected for the final results. Id. at 31.

SSI states that G&A expenses relate to the administrative activities of a company, not to the manufacture of products. Id. According to SSI, it does not record G&A and INTEX expenses separately for merchandise types and scrap, as all sales incur such expenses. Id. Therefore, SSI argues that both ratios should be calculated on the same basis in the numerator and denominator, which reflects SSI's books and records.

Petitioner's Rebuttal Brief

Petitioner argues that the Department should continue to subtract scrap sales revenue from the denominators in the calculation of the G&A and financial expense ratios for the final results. Petitioner asserts that this is necessary in order to keep the ratios on the same basis as the COM to which they are applied because SSI reported COM net of scrap sales revenue. Id. at 31. The petitioner contends that this is consistent with the Department's determination in the third administrative review in this case and in Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 46584 (August 11, 2008) ("Brazilian Orange Juice II"). Id. at 32-33. Petitioner points out that, in that case, the Department found that if the revenues from the sales of by-products were removed when calculating COM then what was left in COM was the COM of subject and non-subject products. The petitioner holds that the Department then reasoned that in order for the entire amount of G&A and financial expenses to be allocated to the COM of those remaining products the G&A and financial expense ratios must be calculated with an adjustment to remove the surrogate cost (i.e., the revenue) of the by-products from the denominators of the ratio calculations. Id. The petitioner notes that SSI did not present any reason for the Department to depart from its determination in Brazilian Orange Juice II.

Nucor did not comment on this issue.

Department's Position

We disagree with SSI that it is not appropriate to deduct the COGS of scrap from the COGS denominators in the calculation of the G&A and financial expense ratios. Consistent with our practice, we have determined that it is appropriate to include this adjustment in the ratio calculations. In order to produce an accurate result, the bases upon which the ratios are calculated must be the same as the basis of the COM upon which they are applied. See, e.g., Brazilian Orange Juice II, Notice of Final Determination of Sales at Less than Fair Value: Live Cattle from Canada, 64 FR 56738, 56756 (October 21, 1999) and accompanying Issues and Decision Memorandum at Comment 2 ("Live Cattle from Canada"); Notice of Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Ecuador, 69 FR 76913 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 29 ("Warmwater Shrimp From Ecuador"). In the past, the

Department has specifically reduced the company-wide cost of sales used as a denominator to compute the G&A expense ratio by by-product and scrap revenues. See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances, 72 FR 20820, 20824 (April 26, 2007) (“Lemon Juice from Argentina”); Notice of Final Results and Rescission of Antidumping Duty Administrative Review in Part: Certain Steel Concrete Reinforcing Bars from Turkey, 71 FR 65082 (November 7, 2006) and accompanying Issues and Decision Memorandum at Comment 10 (“Rebar from Turkey”).

Pursuant to section 773(b)(3)(B) of the Act, in calculating the COP of the merchandise under consideration, the Department adds to COM an amount for G&A and financial expenses. These amounts are determined by calculating G&A and financial expense ratios and multiplying these ratios by the COM of the merchandise under consideration. The ratios are calculated by dividing total G&A and financial expenses by the company’s COGS. We subtracted the COGS of scrap from the G&A and financial expense COGS denominators for the preliminary results in order to keep the denominators of the calculations on the same basis as the COM to which they were applied (i.e., the COGS of scrap was also subtracted from the COM). In order to correctly allocate the G&A and interest expenses incurred by a company to products, the ratios must be calculated using a COGS figure that includes the scrap COGS offset, which is consistent with the COM to which they are applied.

G&A and financial expenses are borne by the sales of all products of the corporation and apply to the costs of sales of all products sold. If the COGS of scrap is removed from the total costs of the company in the calculation of COM then what is left in total costs is the costs of merchandise under consideration and non-subject products. In order for the entire amount of G&A and financial expenses to be allocated to the costs of these remaining products, the G&A and financial expense ratios must be calculated with an adjustment to remove the COGS of the scrap from the denominators of the ratio calculations. Therefore, contrary to SSI’s assertions, the ratio calculations would be skewed and unbalanced if the COGS of scrap were not removed from the COGS denominators of the ratios.

As explained earlier, in making this adjustment the Department is being consistent with the methodology it has employed in other cases with similar fact patterns. See, e.g., Brazilian Orange Juice II and Lemon Juice from Argentina. For these final results, we have continued the methodology established in the preliminary results where the COGS denominators of the G&A and financial expense ratios include an offset for the COGS of scrap. Further analysis is available in the Memorandum to Neal M. Halper from James Balog, “Cost of Production and Constructed Value Calculation Adjustments for the Final Results - Sahaviriya Steel Industries Public Co., Ltd.,” dated May 7, 2009 (“Final Cost Calculation Memorandum”).

Comment 8: G&A Expense Ratio

SSI’s Case Brief

SSI argues that the Department should allow the offsets to G&A for the “reversal of allowance for diminution in value of raw materials and finished goods” and the “reversal of

allowance for diminution in value of spare parts and consumable goods” in the calculation of the G&A expense ratio. See SSI’s Case Brief at 32. SSI claims that it compares the inventory cost for coils and slab to the market value for the coils and slab and if the market value for the coils or slab is higher than the cost then no adjustment is made, but if the coil or slab cost is higher than the market value, then SSI records a provision to the slab or coil inventory. Id. at 32-33. SSI claims further that, on a quarterly-basis it also reverses the provision it had recorded at the end of the previous quarter. Id. at 33. SSI asserts that the net reversal balance in this account at fiscal year-end 2007 was the result of the total quarterly reversals recorded during the year exceeding the total quarterly provisions that were recorded during the year. Id. SSI adds that the reversal for spare parts and consumable goods was calculated in the same manner. SSI asserts that at verification SSI provided substantial support for these offsets. SSI points out that both the provisions and reversals took place during the cost reporting period and claims that to include the provisions but not the reversals is inconsistent with SSI’s normal books and records and would be unfair.

Petitioner’s Rebuttal Brief

The petitioner cites Certain Final Results of Antidumping Administrative Review: Certain Steel Concrete Reinforcing Bars from Turkey, 70 FR 67665 (November 8, 2005) (“Certain Steel Concrete Reinforcing Bars from Turkey”) and accompanying Issues and Decision Memorandum at Comment 13, in support of its assertion that SSI has the burden of establishing that it is entitled to its proposed offsets. See Petitioner’s Rebuttal Brief at 34. The petitioner argues that the Department reviewed the proposed offsets at verification and found that SSI did not meet its burden to establish that it is entitled to the offsets. Id. Further, the petitioner asserts that the offset for the adjustment for finished goods should also be disallowed because, according to Final Results of Antidumping Administrative Review: Stainless Steel Wire Rod from the Republic of Korea, 69 FR 19153 (April 12, 2004) (“Stainless Steel Wire Rod from the Republic of Korea”) and accompanying Issues and Decision Memorandum at Comment 7, the Department’s practice is to exclude gains caused by changes in the valuation of finished goods inventory because such gains are more closely associated with the sale of the subject merchandise rather than its production. Id.

Nucor did not comment on this issue.

Department’s Position

We agree with SSI in part that certain net reversals of its lower of cost or market (“LCM”) adjustments should be included in calculating the reported costs. As noted in its significant accounting policies (i.e., note 5.4 to its financial statements), SSI compares the cost of its coils, slabs, spare parts and consumables to their net realizable value (i.e., market value) and reports these items on its balance sheet at the lower of cost or market. We noted from a review of note 8 to the financial statements for the year ended December 31, 2007, that the net balance of inventories was stated at market value because the net balance was calculated as the cost of inventory less a provision to reduce the cost to market (i.e., finished goods less allowance for diminution in value of finished goods, raw materials less allowance for diminution in value of

raw materials, spare parts and consumable goods less allowance for diminution in value of spare parts and consumable goods). See SSI's Section A response, dated May 23, 2008 at Exhibit A-14. In its normal books and records, SSI records an adjustment on a quarterly basis throughout the fiscal year to reflect the current LCM status of its raw materials and finished goods inventories accounts. See Cost Verification Report at pages 4-5. In addition, on a quarterly basis SSI reverses the prior quarter's LCM provision and adjusts the balance of the allowance based on its current analysis. Id. Throughout the period these adjustments represent an ongoing fluctuation of the allowances for the diminution in value of raw materials, spare parts, and finished goods on the balance sheet. The net effect of these entries throughout the year is reflected on the year-end income statement. Id. These quarterly adjustments to the LCM provision are recurring entries that both increase and decrease inventory depending upon the fluctuations in market values. Accordingly, we deem it appropriate to include both the increases and the decreases to the provision account to reflect accurately the changes in the value of its inventory during the year.

Because both raw materials and spare parts inventories are inputs to the merchandise produced by SSI during the year, the LCM adjustments to these accounts should be included in determining the reported costs. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Italy, 63 FR 40422, 40430 (July 29, 1998) ("Stainless Steel Wire Rod from Italy"). However, LCM adjustments to finished goods are more closely associated with the sale of the merchandise rather than the production of the merchandise. When finished goods are adjusted, the merchandise has already been fully manufactured and fully costed in the COM statement. Since the full cost of the finished goods has already been included in COM prior to the adjustments, it is appropriate to exclude the LCM adjustment for finished goods from the reported costs. See Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from Taiwan, 64 FR 56308 (October 19, 1999) at Comment 24 ("DRAMs from Taiwan"). While in DRAMs from Taiwan we excluded the write-down of finished goods, we consider the reason for the exclusion to apply equally to the reversals of finished goods write-downs. Therefore, for the final results, we included in the G&A expense ratio calculation the net reversals of the allowance for the diminution in value of raw materials and spare parts but not the reversal of the allowance for the diminution in value of finished goods.

Comment 9: Affiliated Party Inputs

SSI's Case Brief

SSI argues that its purchase of slab from an affiliate was at arm's-length, and therefore the Department should not adjust the price of such purchases for the final results. SSI claims that, according to 19 U.S.C. § 1677b(f)(2), when evaluating an affiliated party transaction for arm's length treatment the Department must first look at transactions occurring in the market in question, and only when there are no market prices available can the Department make necessary adjustments. See SSI's Case Brief at 33-34. SSI argues that when applying the transactions disregarded rule in the Preliminary Results, the Department was required to compare the transfer price of the slab to the price at which SSI's affiliate acquired the same slab from an unaffiliated

party. SSI asserts that this acquisition price represents a market price in the market in question. SSI points out that, for the Preliminary Results, the Department compared the transfer price to the affiliated party's derived COP of the slab (*i.e.*, the affiliated party's acquisition price of the slab plus an amount for G&A expenses and financial expenses). Id. at 34. SSI contends that if the transfer price is compared to the acquisition price of the slab that was paid by the affiliated party then no adjustment to reflect an arm's-length price is necessary. Id. at 35.

Similarly, SSI argues that when applying the transactions disregarded rule for slab movement services provided by an affiliate, the Department must compare the transfer price paid to the affiliate to the price the affiliate charged an unaffiliated customer for a similar service. Id. at 35. At the same time, the Department must take into consideration that the service provided to the unaffiliated party would be of higher value because of its slightly different nature. Id. at 35 n.84. SSI again contends that if the comparison is done in this way then no adjustment to reflect an arm's-length price is necessary.

Petitioner's Rebuttal Brief

Petitioner argues that the transfer prices SSI paid for the inputs in question do not fairly reflect the value of these inputs, and so the Department should continue to apply the transactions disregarded rule for the final results. Petitioner contends that SSI did not show that the value of slab movement services provided by its affiliate was fairly reflected in the transfer price. See Petitioner's Rebuttal Brief at 35-36. In support of this assertion, petitioner claims that the services for which SSI provided a market price for the arm's length comparison were different than the slab movement services provided by SSI's affiliate. Id.

Further, the petitioner contends that the market price that SSI provided for slab for the arm's length test, which was the price at which SSI's affiliate acquired the slab from an unaffiliated supplier, does not fairly reflect the value of the slab because it does not include a value for the service provided by the affiliate. Id. at 36-37. In order to properly value the slab, petitioner argues that it is necessary to include both the value of the slab plus the value of the affiliate's service. Petitioner points out that the amount the Department used for the arm's length test contained these essential elements. Id. at 37. Petitioner therefore contends that the Department correctly applied the transactions disregarded rule for the preliminary results and should continue to do so for the final results.

Nucor did not comment on this issue.

Department's Position

SSI purchased inputs from affiliates, including slab from an affiliated reseller and slab movement services from another affiliated supplier. Section 773(f)(2) of the Act (*i.e.*, the "transactions disregarded rule") allows the Department to disregard transactions between affiliates if the transfer price does not fairly reflect the value in the market under consideration. The rule further allows the Department to replace the transfer price with an amount that is based on the information available concerning what the amount would have been had the transaction

occurred between unaffiliated persons. The Department's practice in conducting this analysis has been to compare the transfer price for the inputs charged by the affiliate to the market price for the same input. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Germany, 67 FR 3159 (January 23, 2002) and accompanying Issues and Decision Memorandum at Comment 35. To determine if an input is major and section 773(f)(3) of the Act applies, the Department reviews the percentage of the input received from the affiliated company relative to total purchases of the input and the percentage that input represents to the total COM. See e.g., Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 27802 (May 17, 2007) and accompanying Issues and Decision Memorandum at Comment 3. In the current review, we analyzed the quantities and values of the inputs that SSI purchased from its affiliates and determined that these purchases do not constitute a major input in accordance with section 773(f)(3) of the Act. See Final Cost Calculation Memorandum. Therefore, we compared the average POR transfer price for the inputs to the market prices and used the higher of the two, in accordance with section 773(f)(2) of the Act, to value these purchases from the affiliates.

When applying the transactions disregarded rule with regard to SSI's purchase of slab from its affiliate, we agree with the petitioner that the transfer price should be compared to a slab price including the affiliated supplier's G&A and financial expenses. The affiliated supplier provided both the slab as well as the administrative services related to acquiring the slab. As there is an administrative cost associated with purchasing the slab and with coordinating its delivery, we disagree that it is appropriate for SSI to exclude G&A and financial expenses associated with the services provided by its affiliate. See Notice of Final Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate Resin from Indonesia, 70 FR 13456 (March 21, 2005) and accompanying Issues and Decision Memorandum at Comment 12. Further, because the affiliated slab supplier is not consolidated with SSI and its results are not included in the financial expense ratio calculation, it is appropriate to add financial expenses to the slab price. Therefore, for the final results, we compared the transfer price for the slab to the market price of the slab which included the acquisition cost of the slab as well as amounts for G&A and financial expenses. See Final Cost Calculation Memorandum.

As for the slab movement expenses, we agree with SSI that the market price provided by SSI is an acceptable market price to use in applying the transactions disregarded rule, and that no adjustment is necessary. Under section 773(f)(1) of the Act, the Department will rely on a respondent's normal accounting records if those records are kept in accordance with GAAP and reasonably reflect the costs associated with the production and sale of the merchandise. For a market price, SSI provided the price it paid to an unaffiliated supplier for a service that was similar to the slab movement services at issue. Although the price paid for these services was slightly different than the price paid to the affiliated supplier, we find that this is a reasonably comparable price because of the difference in the services provided by the unaffiliated supplier in this instance. The service provided by the affiliated supplier was for the movement of slab, whereas the service provided by the unaffiliated supplier was for the movement of a similar product. This similar product required a higher value service that would reasonably require more delicate handling of the goods being moved.

Comment 10: Direct Materials Cost

Petitioner's Case Brief

Petitioner contends that for the final results the Department should follow its normal practice and calculate direct material costs using a single average cost for all slab consumed that have identical product characteristics per the Department's model match criteria (i.e., use the field DIRMAT2 as direct material costs for the cost calculation). See Petitioner's Case Brief at 2. Petitioner asserts that the Department determined in Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from the United Kingdom, 72 FR 43598 (August 6, 2007) and accompanying Issues and Decision Memorandum at Comment 1 ("Stainless Steel Bar from the UK") that a slab-specific type direct material cost calculation methodology, which SSI reported in the field DIRMAT, would distort the difference in merchandise ("DIFMER") adjustment and the sales-below-cost test. Id. at 2. Petitioner alleges that in that case the Department determined that direct material costs based on the billet-specific cost methodology would cause non-physical differences to impact the DIFMER adjustment, which would violate the Department's regulations at 19 CFR 351.411(a). Id. Petitioner maintains that the instant case is the same in that SSI's methodology includes factors that cause cost differences between products that are not based on physical characteristics, such as the timing and terms of the purchase of slabs. Petitioner claims that the record confirms that the prices SSI paid for slabs were influenced by non-physical and purchase-specific factors. Petitioner asserts that under 19 U.S.C. § 1677b(f)(1)(A) the Department will normally rely on a respondent's normal books and records unless those records are distortive. Petitioner contends that SSI's reporting methodology is distortive because using its slab specific cost methodology would cause cost differences between products that are not based on physical characteristics. Id. at 6.

Additionally, petitioner claims that SSI's methodology would prevent the Department from determining whether the respondent could recover all of its costs within a reasonable period of time as required under section 773(b)(1)(B) of the Act. Id. at 4. Petitioner points out that in Stainless Steel Bar from the UK, the Department found that because producers do not charge their customers based on when the primary input is requisitioned, the billet-specific cost methodology distorted the sales-below-cost test. Id. at 4. Petitioners argue that this case is the same. Further, petitioner asserts that the direct material costs for CONNUMs with similar characteristics that are determined by the slab should not differ and claim that under SSI's methodology they differ significantly. Petitioner asserts that SSI's methodology causes distortions in product comparisons because U.S. sales included in certain CONNUMs would match to home market CONNUMs with physical characteristics less similar than if a single average cost methodology was used, according to the model match hierarchy. Id. at 6-7. Petitioner contends that SSI's argument that the slabs' characteristics do not dictate the physical characteristics of the resulting hot-rolled coil is false because the carbon content and largely the quality and yield strength of the subject merchandise are determined by the slab. Id. at 7-8. Petitioner asserts that at a minimum the Department should average direct material costs by carbon content because the carbon content of the slab determines the carbon quality of the hot-rolled coil. Id. at 8-9.

Nucor's Case Brief

Nucor argues that the Department should use DIRMAT2 in the calculation of direct material costs. See Nucor's Brief at 1. Nucor states that the Department normally calculates a single average cost for all slab that has certain identical characteristics, as defined by the model-match criteria issued by the Department. Id. According to Nucor, the Department has in the past rejected the use of specific costs in favor the average cost. Id. at 2. Nucor cites specifically to Stainless Steel Bar from the UK, where the Department declined to use specific costs. In Stainless Steel Bar from the UK, the Department stated that averaging smoothes out the effect of fluctuating raw material costs and other items which might cause distortions. Id. In light of the determination in Stainless Steel Bar from the UK, Nucor states that SSI's arguments regarding actual slab costs are not persuasive. In fact, according to Nucor, evidence on the record indicates that SSI's slab purchase do include fluctuations and problems that averaging would eliminate. Id. at 4-5. Therefore, Nucor avers that the use of coil-specific slab costs would distort the dumping calculations and should be rejected.

SSI's Rebuttal Brief

SSI asserts that the slab-specific cost methodology that it used to calculate direct material costs meets the statutory requirements under 19 U.S.C. § 1677(b)(f)(1) and should be used in the final results. See SSI's Rebuttal Brief at 5. Specifically, SSI argues that its methodology is based on the company's normal books and records that are kept in accordance with Thailand's GAAP and reasonably reflects the costs associated with the production and sale of the merchandise under consideration. Id. SSI points out that in the first administrative review of the antidumping order on hot-rolled steel from Thailand, the Department determined that DIRMAT2 did not take into account that slabs of different dimensions were used to make coils of differing dimensions, and as a result DIRMAT2 for certain CONNUMs included the cost of slabs which could not have been used to produce that CONNUM. Id. at 7. SSI claims that, therefore, the Department concluded that SSI's reporting methodology should be used. Id. at 8. SSI asserts that because its reporting methodology is based on actual costs, it is more accurate than the DIRMAT2 methodology, and it would distort SSI's true costs to use DIRMAT2. Id. SSI contends that, except for carbon content, the DIRMAT2 methodology wrongly assumes that a slab's characteristics dictate the physical characteristics of the hot-rolled coil. Id. at 9-10. For example, SSI claims that slabs of different thicknesses are used to produce hot-rolled coils under a single CONNUM, while slabs of the same thickness may be used to produce hot-rolled coils of various thicknesses. In addition, SSI claims that other finished product characteristics such as cut-to-length verses coil, temper rolling, pickling and oiling, edge trimming, and patterns in relief are determined solely by post hot-rolling production processes.

SSI asserts that the DIRMAT2 methodology does not calculate the costs of identical slabs but instead groups dissimilar slabs into overly broad groups. SSI alleges that end products with the same quality and yield strength are sometimes produced from non-identical slab, and conversely, end products with different quality and yield strengths are sometimes produced using identical slab with the differentiation effected through the production process. SSI asserts that

the Department is required to calculate product-specific or CONNUM-specific costs and that DIRMAT2 distorts the product-specific costs because it ignores other physical differences in slab like thickness. SSI argues that an attempt to weight-average costs of physically identical slab would cause some hot-rolled coils to have multiple CONNUMs. SSI claims that, for example, if thickness was included as one of the weight-averaging criteria then identical end products rolled from slabs with different thicknesses would have different CONNUMs because the slab thicknesses would differ. Id. at 10. SSI asserts that DIRMAT2 is a hypothetical cost calculation and is not considered in SSI's pricing. SSI argues that DIRMAT costs are the basis of SSI's pricing, and therefore are appropriate to use for the cost test and DIFMER adjustment. SSI asserts that using DIRMAT2 would distort the cost test because it would compare sales of a particular product to costs for sales of several different products. Id. at 11.

SSI contends that the facts in this case are different than in Stainless Steel Bar from the UK. SSI alleges that in that case the respondent manipulated its costs through discretionary steps in its inventory valuation method, purchase transaction terms, purchase dates, raw material inventory period, long term contract purchases, and the selling of finished merchandise on an inventory or made to order basis when convenient. Id. SSI asserts that no such manipulation is present in this case. Id. SSI contends that because the respondent in that case produced and sold the subject merchandise only a limited number of times during the cost reporting period, the costs were not representative of the subject merchandise produced during the period. Id. SSI claims that at verification the Department confirmed that for each individual product that was sold, SSI reported the cost of the specific slab that was used to produce the product. Id. at 12. SSI asserts that, therefore, the weight-averaging method was not necessary. SSI maintains that the petitioner's reliance on Stainless Steel Bar from the UK is also misplaced because it wrongly assumes that a slab's characteristics dictate the physical characteristics of the hot-rolled coil. SSI asserts that its actual slab costs most accurately reflect the direct material portion of the subject merchandise produced. Id. Finally, SSI argues that averaging slab costs by just using carbon content would be an overly broad criterion because it would fail to account for differences in grade, quality, yield strength, thickness, and width among slabs used to produce different hot-rolled products. Id. at 13.

Department's Position

The Department's standard under section 773(f)(1)(A) of the Act is to rely on a company's normal books and records if those records are kept in accordance with the exporting or producing country's GAAP and reasonably reflect the costs associated with the production and sale of the merchandise under consideration. SSI's normal books and records are based on actual coil-specific slab costs and SSI's audited financial statements are prepared in accordance with Thai GAAP. In this instance, the Department believes that the slab costs reported by SSI reasonably reflect the costs associated with the production of hot-rolled coils.

As the petitioner points out, the Department found in Stainless Steel Bar from the UK that the respondent's billet-specific direct material cost calculation methodology caused non-physical differences to impact the DIFMER adjustment in violation of the Department's regulations at 19 CFR 351.411(a). Although the fact pattern in this case is similar to Stainless

Steel Bar from the UK, we evaluated the reasonableness of SSI's reporting methodology in the context of other factors present. For example, we considered that virtually all of the U.S. sales observations match to identical CONNUMs in the home market. See Final Cost Calculation Memorandum for further details. We also noted that the low number of U.S. sales observations that do not have an identical match represents an insignificant quantity. See Final Cost Calculation Memorandum for further details. Therefore, the DIFMER adjustment does not play a prominent role in this case.

We note that the DIRMAT2 field represents the weighted-average cost of dissimilar dimensions of slabs that produced finished coils having identical quality, carbon content, and yield strength product characteristics. The DIRMAT2 field, however, does not take into account the fact that slabs of different dimensions were used to make coils of differing dimensions. As a result, the DIRMAT2 field for certain CONNUMs includes the cost of slabs which could not have been used to produce that CONNUM. In addition, for each CONNUM, we compared the direct material costs included in the fields DIRMAT and DIRMAT2 and found that for the vast majority of the CONNUMs there was a minimal difference in cost between the two calculation methodologies. See Final Cost Calculation Memorandum for further details.

Given the standard as set forth in section 773(f)(1)(A) of the Act, we conclude that SSI's reporting methodology reasonably reflects the cost of the merchandise. We note that this is consistent with what we have used in previous segments in this proceeding. Therefore, for the final results, we have continued to rely on the slab costs calculated in SSI's normal books and records, *i.e.*, costs reported in the DIRMAT field. In future segments we will continue to analyze the impact of using DIRMAT versus DIRMAT2 and, accordingly, determine which methodology is appropriate.

Comment 11: Clerical Error

SSI's Case Brief

SSI states that the Department made a clerical error in the arm's length test portion of the Department's calculation program. Specifically, SSI states that when the Department consolidated home market databases it used the field CCUSCODH. Because this field only existed in SSI's database, the field was set to "missing" for all other sales by other affiliated parties. SSI states that the Department should correct this by inserting the following language:

CCUSCODH = CUSCODH;

SSI states that this language should be inserted at lines 22738, 22751, and 22758 of the SAS log.

Neither petitioner nor Nucor commented on this issue.

Department's Position

We agree with SSI and have made the suggested changes to the arm's length test portion of our margin calculation program for these final results. However, we note that correcting for this error does not affect SSI's margin calculation. See Analysis Memorandum.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and changes to the dumping calculation. If these recommendations are accepted, we will publish the final results of the changed circumstances review and the final weighted-average dumping margin for SSI in the Federal Register.

AGREE _____ DISAGREE _____

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

Date