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

In the Matter of: Oil Country Tubular Goods from Mexico; Final Results of Antidumping Duty Review and Determination Not to Revoke,
Secretariat File No. USA-Mex-2001-1904-05 (Panel Decision, January 27, 2006)

Summary

In accordance with the remand instructions of the North American Free Trade Agreement ("NAFTA") Bi-National Panel ("Panel") in the above-referenced case, the Department of Commerce ("the Department") has recalculated the final antidumping duty margin with respect to Hylsa S.A. de C.V. ("Hylsa") for the fourth administrative antidumping review on Oil Country Tubular Goods ("OCTG") from Mexico. While the Department respectfully submits that its calculation of packing costs and cost of production ("COP") were in accordance with law and supported by substantial evidence on the record, the Department has recalculated both costs in accordance with the Panel's instructions. As a result, the recalculated margin for Hylsa is zero.

Consistent with the Panel's instructions, in light of the finding of a zero margin for the fourth administrative review, the Department has considered Hylsa's request for revocation from the order under 19 CFR § 351.222(e)(1). After a thorough analysis, the Department has determined that Hylsa did not meaningfully participate in the marketplace for purposes of qualifying for a revocation inquiry and thus, because it has not sold the subject merchandise for three years in commercial quantities within the meaning of section 351.222(e) of the

Department's regulations, Hylsa does not qualify for revocation. Moreover, as the Department determined that Hylsa sold subject merchandise at less than fair value during the ninth administrative review, the Department finds that continuance of the order is necessary to offset dumping pursuant to 19 CFR § 351.222(b)(2)(i)(C).

Background

On July 20, 1994, the Department initiated an investigation on sales at less than fair value of OCTG from Mexico. The Department reached a negative preliminary determination on February 2, 1995 (see Preliminary Determination of Sales at Not Less Than Fair Value: Oil Country Tubular Goods From Mexico, 60 FR 6510), and a final affirmative determination on June 28, 1995 (see Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Mexico, 60 FR 33567 ("LTFV Determination")), finding a weighted-average margin of 23.79 percent. After affirmative investigations by both the Department and the International Trade Commission ("the ITC"), the Department published an antidumping duty order ("Order") on August 11, 1995 (see Antidumping Duty Order: Oil Country Tubular Goods From Mexico, 60 FR 41056). The only company investigated in the proceeding was Tubos de Aceros de Mexico, S.A. ("TAMSA").

Subsequent to the Order, TAMSA challenged the Department's findings and requested that a Bi-National Panel review the final determination. That Panel remanded the Department's final determination and directed the Department to (1) substitute a weighted-average factor for the adverse factor used in the calculation of nonstandard costs for certain products, and (2) provide a complete explanation of its reasoning for its use of 1994 data in calculating general and administrative ("G&A") expenses. See In the Matter of: Oil Country Tubular Goods from Mexico; Final Determination of Sales at Less Than Fair Value, USA-95-1904-04 (July 31, 1996).

The Department recalculated the nonstandard costs using a weighted-average factor and provided an explanation of the use of 1994 data in calculating G&A expenses. The Department submitted its remand determination on October 25, 1996. On December 2, 1996, the Panel affirmed the remand determination of the Department. See Oil Country Tubular Goods From Mexico: Notice of Panel Decision, Amended Order and Final Determination of Antidumping Duty Investigation in Accordance With Decision Upon Remand, 62 FR 5612 (February 6, 1997). As a result, the margin for TAMSA was reduced from 23.79 percent to 21.70 percent.

The Department terminated the first administrative review because it found that no requesting party had shipments of subject merchandise during the period. See Oil Country Tubular Goods from Mexico; Notice of Termination of Antidumping Duty Administrative Review, 62 FR 19309 (April 21, 1997). However, Hylsa requested administrative reviews for the second and fourth administrative reviews. In each case, Hylsa had small sales of subject merchandise. Hylsa also certified that it had shipments of merchandise during the third administrative review. In the second administrative review, the Department found a dumping margin of zero. However, in the fourth administrative review, the Department found a dumping margin of 0.79 percent for sales of subject merchandise by Hylsa. See Oil Country Tubular Goods from Mexico: Final Results of Antidumping Administrative Review, 64 FR 13962 (March 23, 1999) ("96-97 Administrative Review"), and Oil Country Tubular Goods from Mexico: Final Results of Antidumping Review and Determination Not To Revoke in Part, 66 FR 15832 (March 21, 2001) ("98-99 Administrative Review").

In the fourth administrative review, both TAMSA and Hylsa requested revocation from the Order in accordance with 19 CFR § 351.222(e)(1). The Department declined to revoke the Order in part with respect to TAMSA, as it determined that TAMSA "did not sell the subject merchandise in the United States in commercial quantities in each of the three years cited by TAMSA to support its request for revocation." See 98-99 Administrative Review, Issues and Decision Memorandum at page 10. The Department declined to revoke the Order in part with respect to Hylsa due to the finding of a dumping margin in the fourth administrative review. Id. at 23.

Subsequent to the completion of the fourth administrative review, both Hylsa and TAMSA challenged the Department's findings and requested that a Bi-National Panel review the final determination. A public hearing was held on July 20, 2005, in Washington, D.C., at which oral arguments were presented by the parties. The Panel issued a Decision of the Panel on January 27, 2006, upholding the Department's determinations with respect to TAMSA, but remanding the review to the Department with respect to Hylsa. See In the Matter of: Oil Country Tubular Goods from Mexico; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke, USA-MEX-01-1904-05 (January 27, 2006) ("Decision").

On March 13, 2006, the Department placed new information on the record, consistent with the Panel's instructions that the Department consider information from the records of the administrative reviews with respect to the issue of revocation. See Letter to Interested Parties, March 13, 2006. The Department released a draft of the redetermination on remand to all parties on March 31, 2006. See Letter To All Interested Parties, March 31, 2006. The Department received briefs from petitioner, United States Steel Corporation ("U.S. Steel"), and Hylsa on April 7, 2006. The Department received rebuttal comments from U.S. Steel, Hylsa, and interested parties, Maverick Tube Corporation, IPSCO Tubulars, Inc., and Bellville Corporation (collectively "Maverick"), on April 11, 2006. All party comments are summarized and discussed below.

The Panel's Remand

The Panel upheld the Department's decision that TAMSA did not meet the commercial quantity threshold for revocation. See Decision at 11. The Panel also upheld the Department's position that zeroing in an antidumping duty administrative review is not contrary to U.S. law. Id. With respect to Hylsa, the Panel also upheld the Department's inclusion of the cost of export credit insurance as a direct cost of sale. Id.

The Panel also found, however, that the Department, in calculating packing costs, "did not make a reasonable interpretation of the statute that requires it to use costs 'during a period which would ordinarily permit the production' of the foreign like product or the merchandise 'in the ordinary course of business.'" Id. at 31. Specifically, the Panel stated that "Commerce's methodology to recalculate Hylsa's packing costs by dividing the total annual costs for cost center 2052 by the total annual quantity packed in that cost center, whether OCTG products were packed or not, in order to reflect restructuring costs, is not consistent with the evidence on the record." Id. at 32-33. With respect to the calculation of control number ("CONNUM") specific costs, the Panel acknowledged the Department's general practice of calculating production costs on a CONNUM-specific basis. However, the Panel further stated that the Department's "primary obligation is to use a process that will provide the most accurate cost figures in its calculations" and that the Department's failure to average production costs for all OCTG product CONNUMs produced in June and July defeats the goal of accurate production cost calculations "in light of the absence of information in the record reflecting cost difference factors other than the months of production." Id. at 40.

The Panel directed the Department to recalculate packing costs by "(a) taking into account that the cost for automation was captured as an overhead fixed asset; (b) not averaging the packing costs for cost center 2052 for the entire POR[1] because it is not reasonable; and (c) taking into consideration only the packing costs reported by Hylsa for cost center 2052 and only for the two months in which OCTG products were packed." Id. at 55. The Panel also directed the Department to recalculate "the cost of production by averaging the costs of production for both sizes of pipe and for both months to determine a single average cost given the absence of any basis in the record justifying different production costs based on size." Id. Finally, the Panel stated that should the recalculation result "in a zero or de minimis antidumping margin, the Panel directs the Department to address Hylsa's request for revocation of the antidumping duty order." Id.

Analysis and Redetermination

The Department respectfully submits that the statute is clear with respect to calculation of both packing costs and CONNUM-specific costs of production, and that there is sufficient evidence on the record to support the Department's normal practices in both instances. The

[1] Period of Review.

Department respectfully requests that the Panel reconsider its order for the Department to recalculate the packing and CONNUM costs based upon the analysis and explanation set forth below.

This request notwithstanding, the Department has followed the Panel's order and has recalculated both the packing and CONNUM costs in accordance with the Panel's instructions. As a result, the recalculated margin is zero.

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

<u>Packing Costs</u>

The Department acknowledges that the arguments and information presented to the Panel on this issue are complex. However, after further examining the evidence on the record, the Department believes that its calculation methodology is reasonable and reflects both the facts on the record and the statutory provisions under 19 USC § 1677(b).

To begin, it is worth examining the Department's questionnaire with respect to packing. The questionnaire sent to Hylsa states the following:

> Report the unit cost of packing the foreign like product for sale in the foreign market. Include the cost of labor, materials and overhead. If a product is produced at more than one plant, report the weighted average packing cost of all plants combined.
>
> Describe the packing types used in the foreign market. For each type of packing, provide a worksheet that demonstrates the calculation of packing material, labor and overhead for a single unit.
>
> The worksheets should include a list of packing materials, the average cost of each material, and how much of each material was used. In addition, report the average labor hours by packing type and the average labor cost per hour including benefits. Include also a list of overhead expenses incurred in packing and demonstrate how these expenses were allocated to each packing type.

See Letter from the Department of Commerce to Hylsa, S.A. de C.V., Questionnaire, October 4, 1999 (Pub. R. 1042, Fiche 05-06).

Hylsa did not follow these instructions. Instead, it reported only the labor and materials costs in the PACKU field as captured in cost center 2052. As the Panel noted, Hylsa claimed during verification that the packing equipment was upgraded and this upgrade was considered an overhead fixed asset. Thus, the significant cost of the packing line upgrade, i.e., the depreciation on the new equipment, was captured as a fixed overhead expense. See Memorandum from John K. Drury, Phyllis L. Hall, and Dena M. Aliadinov to Richard O. Weible; "Verification of Sales and Constructed Value Data of Hylsa S.A. de C.V. ('Hylsa') in the Fourth Antidumping Duty Administrative Review of Oil Country Tubular Goods ('OCTG') from Mexico" ("Sales Verification Report") (Prop. R. 1125, Fiche 105) (August 30, 2000) at 25. We note that cost center 2052 was included in the finishing stage costs reported in the cost of manufacturing. Therefore, to eliminate the possibility of double counting costs in both the packing field and the cost of manufacture ("COM"), the Department removed the materials and labor costs related to packing from COM in the process of calculating CONNUM-specific TOTCOMCV (total cost of manufacturing for constructed value) figures, and did not add fixed costs to the packing cost calculation. See Memorandum from Gina K. Lee to Neal M. Halper; "Constructed Value Adjustments for Final Results," March 12, 2001, at pages 1-3. Any additional costs associated with the upgrade of the packing line, that are not otherwise fixed costs, appear to be captured in Hylsa's cost account 2160. See Memorandum from Gina K. Lee to Neal M. Halper; "Verification Report on the Constructed Value Data Submitted by Hylsa S.A. de C.V." ("Cost Verification Report") (Prop. R. 1194, Fiche 104) August 24, 2000, Verification Exhibit B1 (Prop. R. 1249, Fiche 161, Frame 69) at page 2.[2] Although cost center 2052 contains entries for fixed costs,[3] these were not included in the calculation of packing and instead appear to be captured in COM as fixed costs. See Cost Verification Report at pages 25-26, Sales Verification Report, Verification Exhibit 16 (Prop. R. 1247, Fiche 117, Frame 52 at 58, 59) at pages 6-7. Thus, the only figures reported by Hylsa for use in calculating packing costs, as listed in Verification Exhibit 16 of the Sales Verification Report, are the costs of materials and labor associated with the actual packing of merchandise. Therefore, the Department respectfully submits that the Panel reconsider this issue because the costs used from cost center 2052 to

[2] Page 2 of the exhibit shows an analysis of the cost centers in the Tubular Products Division and demonstrates where each cost was captured. For cost center 2160, an amount was captured under the "Special Items, Net" column which, based on the G&A exhibit, was part of G&A costs. The G&A calculation is found at Verification Exhibit F1 (Prop. R. 1249, Fiche 163). A hand-written note for the figure in this column indicates that it is for "2160 Severance pay + dumping fees."

[3] Cost center 2052 contains a number of sub-accounts that begin with the number 4. Accounts starting with the number 4 denote fixed costs. See Cost Verification Report at pages 25-26 (Prop. R. 1247, Fiche 117, Frame 52).

calculate packing costs include the cost of materials and fabrication, specifically labor, but do not otherwise 'double-count' any overhead or G&A costs.

Further, the Department's use of POR-wide packing costs is reasonable for a number of reasons. First, as the Panel recognized, the Department must calculate costs equal to the sum of "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." See Decision at 31 and 19 USC § 1677b(b)(3)(A). In addition, 19 USC § 1677b(e)(1) states that the Department will calculate the constructed value of imported merchandise equal to the sum of "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." No party has argued that Hylsa was not permitted, or was unable, to produce the subject merchandise at any time during the POR. Additionally, the evidence on the record indicates that the like product was packed only on the packing line corresponding to cost center 2052. Based on the plain language of the statute, and given that the packing line packed both subject and non-subject merchandise identically and that the line was operational for the entire POR, the use of a POR-wide packing cost calculation is warranted and consistent with the requirements of the statute in order to distribute evenly the costs of the line to all products accessing the line for an identical service during the period under consideration.

As the Panel noted, there are times when the Department deviates from its normal practice of using POR-wide costs, such as "...in unusual cases where this preferred method would not yield an appropriate comparison." See Decision at page 32 and footnote 189. The Panel cites a number of cases where the Department did deviate from its standard practice. Id. However, all but one of these examples concerns rapid or dramatic fluctuations and/or declines in either prices or currency exchange rates.[4] Such fluctuations are akin to circumstances that exist in high inflationary economies, where a month-to-month, transaction-specific, or smaller reporting period is more appropriate. No such price or currency fluctuations existed during the POR to warrant the use of this methodology, and the Department believes that there is no basis to conclude that it would be appropriate to apply such a methodology to the packing costs.

The Department also finds that the information on the record supports the use of a POR-wide period to calculate packing costs. As the Department noted in the Sales Verification Report:

> We found out that the costs are averaged (not FIFO) by month. That is, purchases made within the month are later averaged, and this cost is applied to any withdrawals for consumption.

See Sales Verification Report at 25. For example, Hylsa will take the costs of all straps purchased in a month, average those purchases with adjustments for inflation and previous inventory, and apply the average cost to the number of straps withdrawn from the warehouse in the month. Thus, the per-unit cost of materials such as packing straps and labels are the same throughout a month but vary between months. As long as Hylsa uses in a month what it

[4] The exception is Final Determination of Sales at Less than Fair Value: Erasable Programmable Read Only Memories from Japan, 51 FR 39680, 39682 (October 30, 1986) ("Erasable Programmable Memories from Japan"). See Decision at footnote 189. In this instance, a shorter period of time for cost calculation was appropriate due to technological advancements and changes in the production process. These technological advances caused decreases in both the sales price and cost of the merchandise under consideration; however, in the instant case, only the cost of packing was affected.

withdraws from the warehouse for consumption in that same month, the material cost per ton would reflect actual usage.

However, materials withdrawn for consumption and expensed in one month may be used in a different month. Thus, it is reasonable to conclude that costs booked in a particular month do not exactly correspond to the actual costs of packing incurred in that month. In order to appropriately capture those costs, it is more accurate to average costs beyond the months in which they were expensed to allow for a correction of the timing differences experienced on a month-to-month basis. Additionally, it would allow for the capture of the annual physical inventory adjustment, where the company corrects this month-to-month timing difference in order to prepare the annual audited financial statements.

Averaging packing costs over the entire POR, in addition to being in conformance with the statute, prevents an interested party from selecting months that are more advantageous than a POR-wide rate. It also provides the Department with a consistent procedure that is recognized by all parties. Deviation from this standard practice would bring into question the Department's transparency in applying the statute. For example, were Hylsa to have packed OCTG only in the first two months of the POR, and the Department deviated from its standard methodology in calculating a POR-wide packing cost by using only the months in which Hylsa hypothetically packed merchandise, the resulting cost would be much higher and would be subject to complaint from Hylsa. By adhering to its standard practice, the Department maintains a consistent and predictable methodology, known to all, that prevents manipulation and is not results-oriented. The Department respectfully submits that the Panel's order deviates from that practice and does not reflect an accurate or reasonable calculation methodology based upon the above analysis.

In sum, because of the plain language of 19 USC § 1677b(b)(3)(A), the fact that there were no high inflationary or other dramatic price changes that would warrant a departure from standard practice, such as a high inflationary methodology, the fact that the classification of other costs on the record, such as fixed overhead costs and other costs associated with the packing line upgrade, appears to be correct, and the existence of a per-ton monthly variation in Hylsa's labor and materials costs, the Department's methodology in calculating packing costs during the POR is reasonable. The Panel's order to use only those material and labor costs for June and July of 1999 is contrary to 19 USC § 1677b(b)(3)(A), and is not consistent with the examples provided by the Panel when the Department has not used POR cost calculations. Therefore, the Department respectfully requests that the Panel reconsider its order with respect to the recalculation of packing costs.

Averaging of Costs by CONNUM

With respect to the issue of using average costs by CONNUM, the Panel found that the Department's use of CONNUM-specific average costs was "inaccurate." The Panel reaches this conclusion based on the apparent "absence" of information on the record indicating a difference in the cost of production of the two sizes of pipe. See Decision at 40. The Panel also notes that Hylsa's accounting methodology assigns the same cost to the two different products in the same month. The fact that the Department used these costs in its calculations indicates that the Department's decision "on its face fails to meet the requirement of substantial evidence based on the record." Id. at 42. The Panel accuses the Department of "finding differences (in cost) where there are none to establish a higher margin" and calls such an action "unacceptable." Id.

The Department respectfully submits that the Panel reconsider its decision on this issue for a number of reasons. First, the Department postulates that the facts may have become confused on this issue because the Panel misunderstood that Hylsa manufactured pipe of 2 3/8" diameter in June, and 2 7/8" diameter pipe in both June and July. See Decision at 38. The record shows, in fact, that Hylsa produced 2 7/8" pipe in both June and July, but 2 3/8" pipe only in July. The majority of the production of 2 7/8" pipe occurred in June. See Letter from Hylsa S.A. de C.V. to the Department of Commerce; Sections C & D Response to the Department's Antidumping Duty Questionnaire, November 24, 1999.

Second, it is important to understand that two CONNUMs may have identical costs calculated in a particular month or months, regardless of the fact that the CONNUMs contain different products. The costs are a secondary effect of the CONNUM creation, the primary purpose of which is for product matching purposes. See 19 USC § 1677(16). Averaging costs across CONNUMs would collapse different commercial products that possess different characteristics into a single product, and would distort the Department's matching methodology in a manner inconsistent with past practice and the statute. See 19 USC § 1677b(a)(6)(C)(ii) and 19 CFR § 351.411.[5] The Department creates CONNUMs based on certain physical, mechanical, and chemical characteristics that the Department uses for product matching purposes. A single

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[5] The regulations establish a hierarchy in the creation of CONNUMS, based on differences in the physical and chemical characteristics of a product. The differences in physical and chemical characteristics used to create CONNUMs reflect different commercial applications of the products. 19 CFR § 351.411(b) states in part that "{t}he Secretary will not consider differences in cost of production when compared merchandise has identical physical characteristics." The intent of the regulations is to establish the differences in physical characteristics of the subject merchandise for comparison purposes first, and then examine the costs of production on that basis. The Panel's remand instructions do not take this regulatory hierarchy into account.

CONNUM does not necessarily correspond directly to one particular product. Indeed, the Department has often requested that companies consolidate various products, with different costs of production, into a single CONNUM based on the fact that the consolidated products are essentially identical with respect to the characteristics that are commercially meaningful. The Department then requires the company to report a single averaged cost for each CONNUM. See 19 C.F.R § 351.414(d)(1) and (2) Stainless Steel Wire Rods From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 69 FR 29923, Issues and Decision Memorandum at Comment 2 (May 26, 2004).

Third, the evidence currently on the record demonstrates differences in COP by CONNUM. Hylsa stated that it produces OCTG using a stretch reducing mill. See Sales Verification Report at page 9. A picture of the mill is in the product brochure. Hylsa begins OCTG production by producing a mother pipe, which is a large pipe of standard size used to produce the various types of OCTG as well as other pipes and tubes. The mother pipe is fed through an induction furnace, which heats the tube. It is then drawn through a stretch-reducing mill into the necessary size and cut to length. See Sales Verification Report, Verification Exhibit 6 (Prop. R. 1247, Fiche 112, Frame 62 at 68) at page 7. Evidence on the record indicates that the number of lengths of OCTG produced from one ton of mother pipe varies significantly depending upon the diameter of OCTG being produced. For example, Hylsa produced 10.69 lengths of 2 7/8" OCTG from one ton of mother tube. See Sales Verification Report, Verification Exhibit 17 (Prop. R. 1247, Fiche 118, Frame 1 at 68) at page 4. However, Hylsa produced 14.85 lengths of 2 3/8" OCTG from the same ton of mother tube. This is 29 percent more length of pipe than of the 2 7/8" pipe. See Sales Verification Report, Verification Exhibit

18 (Prop. R. 1247, Fiche 119-120, Frame 1 at 5) at page 4. The pipe lengths of both products as sold are identical (i.e., 33.5 feet long). See Sales Verification Report, Verification Exhibit 6 (Prop. R. 1247, Fiche 112, Frame 62 at 78) at page 17. Therefore, it will take significantly longer to produce a ton of 2 3/8" OCTG than a ton of 2 7/8" OCTG. While there may be some differences in the velocity of the pipe passing through the reduction process, as the smaller diameter pipe will have thinner walls, it is not physically possible for the pipe to travel at speed differentials sufficient to make the processing times identical by product and for the products to have the same costs. Thus, the resulting time differential results in a higher cost for 2 3/8" pipe as labor costs, for example, will be higher on a per-ton basis.

Hylsa's standard cost methodology is to track costs by process. That is, any product passing through the same process will receive the same costs in Hylsa's accounting system. See Cost Verification Report at page 5. The Department's practice is to accept a respondent's cost accounting methodology that is used in the normal course of business and is in conformance with local generally accepted accounting principles provided that those costs reasonably reflect the costs of production and sales.[6] However, simply because Hylsa maintains its production costs by process does not mean that there are no differences in the production costs by product. Evidence on the record of the fourth administrative review indicates that Hylsa recognizes differences in costs by product in its normal course of business and maintains costs by product size (as opposed

[6] See 19 USC § 1677b(f)(1)(A): "Costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise."

to process) at least in some instances. See Cost Verification Report, Verification Exhibit A14 (Prop. R. 1249, Fiche 161, Frame 59) at page 9. In addition, Sales Verification Report Verification Exhibits 17 and 18 are production reports based on product, not process. Therefore, the costs reported by Hylsa based on process are the result of averaged costs of each product that passes through the process. The reason for the identical cost figures reported by Hylsa for the merchandise produced in July is not because the actual costs were identical, but because Hylsa averaged the costs of the production of all pipe products on that process by month. The Panel's order would therefore take figures construed from averages, and further average them, thus distorting the costs of the products. Taken to its logical conclusion, in a case where there is production over many months of many products, the Panel's order would result in a single like-product cost, regardless of the number of CONNUMs or months of production. The Department respectfully submits that this result violates the statute and the Department's normal practice.

In addition, the Department respectfully notes that there is not an "absence of information in the record reflecting cost difference factors other than months of production." See Decision at 40. Evidence on the record clearly indicates that more pipe is produced per ton for one size of OCTG than the other. As the products pass through the same process, it takes longer to produce one size of pipe than the other, and thus is more expensive to produce.

The Panel's Decisions Regarding Packing and CONNUM Costs are Contradictory

The Department believes that the logic employed by the Panel with respect to the recalculation of packing costs and CONNUMs is contradictory. With respect to the packing costs, the Department was consistent with the plain language of the statute in calculating a packing cost based on the costs in one cost center over the POR. The Panel has ordered the Department to calculate costs only in the months in which OCTG was actually packed, arguing that such a calculation is <u>more</u> specific to Hylsa's actual experience. However, with respect to CONNUMs, the Panel has ordered the Department to be <u>less</u> specific in its calculation of COP. By averaging costs of different products over different months of production, including months where there is no production of a particular product, rather than assigning specific costs to specific CONNUMs, the result is a less precise calculation. The cost of the 2 3/8" OCTG pipe, for example, is affected by the cost of a completely different product, which was produced in a month where 2 3/8" OCTG was not produced. The products have different physical characteristics, and the record shows that per-ton production is different. Averaging the two products is less precise.

The Department's methodology, however, is consistent and reasonable. For packing, the Department calculated a POR-average for the packing line in which the subject merchandise could be packed, based on the statute. For CONNUMs, the Department calculated a POR-average in the months in which Hylsa produced a particular CONNUM. Given the evidence presented by the Department in this redetermination, the Department requests that the Panel reverse its previous decisions with respect to the calculation of packing costs and COP.

<u>Results of Recalculation</u>

The Department believes that both the evidence on the record and the statute support the Department's original decisions with respect to Hylsa's packing costs and COP by CONNUM, and requests that the Panel examine this evidence and revisit its previous decision. Nevertheless, consistent with the Panel's order, we have recalculated Hylsa's packing expense and the COP in accordance with the methodology set forth by the Panel.

After performing the recalculations, the Department finds the weighted-average margin for Hylsa in the fourth administrative review to be zero. See Memorandum to the File from John K. Drury through Abdelali Elouaradia, Redetermination on Remand; analysis for Hylsa S.A. de C.V. ("Hylsa") for the final results of the fourth administrative review of oil country tubular goods from Mexico for the period August 1, 1998 through July 31, 1999 (March 31, 2006). Therefore, consistent with the Panel's order, the Department has considered Hylsa's request for revocation. The Department's findings are discussed below.

Revocation

The Department may revoke, in whole or in part, an antidumping duty order upon completion of a review under 19 USC § 1675(d)(1). While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR § 351.222. This regulation requires, inter alia, that a company requesting revocation must submit the following:

> (1) a certification that the company has sold the subject merchandise at not less than normal value in the current review period and that the company will not sell subject merchandise at less than normal value during the future;
>
> (2) a certification that the company sold the subject merchandise to the United States in commercial quantities in each of the three years forming the basis of the request; and
>
> (3) an agreement to reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than normal value.

See 19 CFR § 351.222(e)(1).

> Upon receipt of such a request, the Department will consider:
>
> (1) whether the company in question has sold subject merchandise at not less than normal value for a period of at least three consecutive years;
>
> (2) whether the company has agreed in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than normal value; and
>
> (3) whether the continued application of the antidumping order is otherwise necessary to offset dumping.

See 19 CFR § 351.222(b)(2)(i).

The regulations do not require a review to be conducted in each of the three years subject to the revocation request because 19 CFR § 351.222(d)(1) permits an "intervening year" between the first and final years under consideration. Nonetheless, this regulation echoes the requirements set forth above that the company must have sold the subject merchandise to the United States in commercial quantities during each of these years.

In determining whether the three years of no dumping are a sufficient basis to make a revocation determination, the Department must be able to determine that the company has participated meaningfully in the U.S. market during each of the three years at issue. See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part, 64 FR 2173, 2175 (January 13, 1999) ("Carbon Steel Plate from Canada"). This practice has been codified by 19 CFR § 351.222(d)(1), which states that

> before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, during each of the three (or five) years, there were exports to the United States in commercial quantities of the subject merchandise to which a revocation or termination will apply.

The preamble explains that the assumption underlying a revocation based on the absence of dumping is that a respondent has demonstrated that it will not resume dumping following the revocation of the order. But "{i}f the respondent is not selling in commercial quantities characteristic of that company or industry, this assumption becomes weaker." See Antidumping Duties; Countervailing Duties, Final Rule, 62 FR 27296, 27326 (May 19, 1997). Accordingly, for purposes of revocation, the Department seeks to determine whether past margins that are the basis for revocation are based on sales reflective of a company's normal commercial activity. In general, the Department has found that sales during a POR which, in the aggregate, are of an abnormally small quantity, either in absolute terms or in comparison to an appropriate benchmark period, do not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping. See Carbon Steel Plate from Canada, 64 FR at 2175.

Neither the Act nor the Department's regulations prescribes a specific standard for determining whether sales have been made in commercial quantities. See section 751(d) of the Act and 19 CFR § 351.222. See also Notice of Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Antidumping Duty Order: Brass Sheet and Strip from the Netherlands, 65 FR 742, 749 (January 6, 2000). The determination as to whether or not sales volumes are made in commercial quantities is made on a case-by-case basis, based on the unique facts of each proceeding. As the Panel stated,

> Under the Department's practice a significant drop in exports following the imposition of an order, absent 'unusual circumstances' that might otherwise

> account for the decline, indicates that the exporter should not be presumed to be able to participate in the market without engaging in unfair trade practice if the order were revoked under Part 351.222(b). The commercial quantities requirement also prevents an exporter from engaging in strategic behavior that might undermine the legitimacy of the presumption built into Part 351.222(b), for example by making token sales at a high price for a period of time simply to satisfy the test. The Department's practice in beginning its analysis in this manner reflects the not unreasonable assumption that the greater the post-order volumes/values are relative to pre-order levels, the less likely it is that the exporter is acting strategically.

See Decision at 19.

Where possible, the Department generally uses the original Period of Investigation ("POI") (i.e., pre-order shipment levels), and generally uses one year of sales, as a benchmark for a company's normal commercial behavior. The POI generally provides a valid benchmark for assessing whether sales reflect a company's normal commercial activity because it demonstrates a company's behavior absent the existence of an antidumping duty order. However, where POI shipment levels are inappropriate, the Department has resorted to a different analysis in order to make a determination whether a company made sales in commercial quantities. See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part, 68 FR 53127 (September 9, 2003) ("Rebar from Turkey"), Issues and Decision Memorandum at Comment 5.

The Department's Determination with Respect to Revocation of Hylsa

On August 31, 1999, Hylsa submitted a request, in accordance with 19 CFR § 351.222 (e)(1), that the Department revoke the order covering OCTG from Mexico with respect to its sales of this merchandise. In its revocation request, Hylsa submitted each of the requisite certifications, including a certification that it had not sold the subject merchandise at less than NV for a three-year period, including the POR from August of 1998 through July of 1999. Hylsa received a zero margin in the 1996-1997 administrative review. We did not conduct a review of the 1997-1998 POR because no parties requested an administrative review of Hylsa's sales of OCTG during that POR. However, Hylsa did have shipments during the POR in question. See Letter from Hylsa S.A. de C.V. to the Department of Commerce, Fourth Administrative Review on Oil Country Tubular Goods from Mexico (Prop. R. 1102, Fiche 103, Frame 89) (August 16, 2000) at Attachment 2 ("August 16, 2000, letter"). The Department has recalculated the margin for the 1998/1999 administrative review, in accordance with the Panel's instructions, and found a margin of zero. Thus, in the second and fourth administrative reviews, the Department has not found evidence of dumping by Hylsa. However, as noted by U.S. Steel in its case brief of April 7, 2006, the Department found evidence of dumping in a subsequent review, thereby necessitating the continuance of the order to offset dumping pursuant to 19 CFR § 351.222(b)(2)(i)(C).

Regarding the issue of commercial quantities, Hylsa reported information relating to its shipments of subject merchandise from January of 1994 until July 1998, with the exception of the first seven months of 1996, in a separate submission. Id. Hylsa stated that it did not produce OCTG from 1990 to February of 1994, and from 1984 to 1990 shipped only small quantities of OCTG on occasion. Id. at page 2.

Based on the fact pattern set forth above, the threshold issue which needs to be decided in order to properly evaluate Hylsa's revocation request is whether Hylsa sold the subject merchandise in commercial quantities in each of the three years under consideration. In making its revocation determination, the Department has analyzed the information on the record from the fourth administrative review. In addition, in order to undertake the analysis ordered by the Panel, the Department supplemented the record with information from the second administrative review and the sunset review on OCTG from Mexico. See Letter to Interested Parties, March 13, 2006.[7] In analyzing the normal commercial activities characteristic of Hylsa, we examined Hylsa's sales of merchandise to the United States during the period covered by the second, third and fourth administrative reviews. The Department notes that Hylsa made a single sale of subject merchandise in each of the 1996-1997 and 1998-1999 administrative reviews.

Normally, these sales volumes would be benchmarked against the quantity of merchandise sold during the LTFV Determination in order to determine whether they represented commercial quantities. The Department has made such an analysis, consistent with the Department's analysis in Final Results of Antidumping Duty Administrative Review: Silicon Metal From Brazil, 65 FR 7497 (February 15, 2000) ("Silicon Metal from Brazil"). However, in this revocation review, consistent with the Department's analysis of TAMSA's request for revocation, the Department has also analyzed Hylsa's sales volumes during the administrative reviews in comparison to the annualized quantity of merchandise sold during the less-than-fair-value investigation. See 98-99 Administrative Review, Issues and Decision Memorandum at page 10. Consistent with the Department's analysis in Pure Magnesium From Canada; Final

[7] The Department notes that the supplemental information contains information regarding Hylsa's production of merchandise. The information clearly indicates that the time to manufacture one ton of merchandise varies by product. See Letter to Interested Parties, March 13, 2006, Attachment G Appendix SD-14 at page 2.

Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order in Part, 64 FR 12977, 12978 (March 16, 1999) ("Magnesium from Canada"), the Department also analyzed Hylsa's sales volumes in the administrative reviews in comparison to the actual volume of sales during 1994. In addition, the Department has examined Hylsa's sales volumes during the administrative reviews relative to all imports of OCTG during the sunset review period. Finally, consistent with the methodology employed in Rebar from Turkey, the Department compared Hylsa's shipment in the first year under consideration to those made by the respondents in the LTFV Determination. Specifically, we compared Hylsa's shipment quantity to the average of the total quantities shipped by the respondents during the investigation.

Hylsa's actual sales volumes for the periods of review, on which the Department has based this decision, are proprietary,[8] as are the shipment levels during the POI. However, the percentages of shipments during the administrative reviews relative to the POI shipments are not.

Hylsa has provided all of the shipment levels for the periods listed above. See August 16, 2000, letter. The Department used this information, as well as information from the second administrative review, to calculate Hylsa's shipments to the United States after the imposition of the antidumping duty order to shipment levels during the POI and before. See Letter to Interested Parties, March 31, 2006. The Department finds that Hylsa's shipments during the second administrative review (i.e., the 1996/1997 review) are under 5 percent of the shipment volumes during the six months of the POI (i.e., January through June of 1994). Shipment volumes during the 1997/1998 administrative review were equal to approximately 10 percent of

[8] In all cases, Hylsa's total POR shipments of OCTG to the United States during the period under consideration for revocation, after the imposition of the antidumping duty order, never exceeded 400 metric tons (based on ranged public figures).

shipment volume during the POI, and in the 1998/1999 administrative review, the shipments were approximately 28 percent of the shipment volume during the POI.

As the POI lasted only six months, we performed the same analysis using Hylsa's shipment volume from the POI on an annualized basis, consistent with the methodology used in the 98-99 Administrative Review. Using this denominator, the percentages of Hylsa's administrative review shipments relative to annualized POI shipments were approximately 2.5 percent, 5.5 percent, and 14 percent, respectively.

Hylsa provided the Department with actual shipment figures for the year 1994. Using the actual shipment figures for 1994, consistent with the methodology used in Magnesium from Canada, the percentages of Hylsa's administrative review shipments relative to full-year 1994 shipments were approximately 0.9 percent, 2 percent, and 5.5 percent, respectively.

Hylsa stated that it had no production whatsoever of OCTG from 1990 to 1994, and had minimal production from 1984 to 1990. In that respect, it is somewhat analogous to the fact pattern in Rebar from Turkey, where the company requesting revocation had no shipment experience prior to the investigation. Given that Hylsa's pre-POI exporting patterns may be an "unusual occurrence,"[9] the Department believes the analysis methodology in Rebar from Turkey is useful. In Rebar from Turkey, the Department compared the shipments during the first relevant administrative review from the company requesting revocation to the shipments of merchandise made by the respondents in the less-than-fair-value investigation. The Department has used a similar comparison methodology in this instance, and finds that the percentage of

[9] See Notice of Proposed Rulemaking and Request for Public Comments, 61 FR 7308, 7320 (February 27, 1996) and Antidumping Duties; Countervailing Duties, Final Rule, 62 FR 27296 (May 19, 1997).

Hylsa's shipments in the second administrative review compared to the six-month POI shipments of the respondent in the LTFV Determination were approximately 0.55 percent. Annualizing the POI shipments of the respondent in the LTFV Determination, the percentage of Hylsa's shipments in the second administrative review period compared to the annualized POI shipments is approximately 0.27 percent.

Based on the Department's analysis, in no case do Hylsa's shipment volumes to the United States during the second administrative review period constitute shipments in commercial quantities. Using the comparison methodology in Silicon Metal from Brazil, with respect to the period of time used in the comparison, Hylsa's sales in the second, third, and fourth administrative reviews, compared to actual POI shipments, were between 4.7 percent and 28.5 percent, respectively, of pre-order shipments. Using the same comparison methodology that the Department used in the 98-99 Administrative Review with respect to TAMSA, Hylsa's sales volume in the second administrative review is approximately 2.5 percent of Hylsa's annualized POI shipments. Also, using the same comparison methodology that the Department used in Magnesium from Canada, Hylsa's sales volume in the second administrative review is approximately 0.9 percent of Hylsa's annualized POI shipments. Finally, using the same comparison methodology that the Department used in Rebar from Turkey, Hylsa's sales volume in the second administrative review is approximately 0.28 percent of the annualized sales volumes of the respondents in the LTFV Determination.

As the Panel noted, the Department has found that pre-order shipment values of 4.59 percent were insufficient to satisfy the commercial quantity requirement. See Decision at 21. In all instances but one, Hylsa's shipments to the United States during the second administrative review are well below this percentage. Even comparing full POR shipments to the six-month POI shipments, the shipment volume in the second administrative review is nearly the same as that cited by the Panel as a level previously determined to be insufficient to satisfy the commercial quantities requirement.[10] Id. Taking into consideration the possible "unusual circumstance" cited by Hylsa, and using a methodology applied in Rebar from Turkey, the Department finds Hylsa's shipment levels in comparison to shipments during the POI to be virtually the same as those of TAMSA. The Panel has already upheld the Department's determination that TAMSA did not make sales at commercial quantities. Id. at 23.

The Department notes that Hylsa's sales to the United States are a fraction of both total U.S. consumption of OCTG and of U.S. imports of OCTG.[11] Therefore, because the number of sales and total sales volume is so small in the U.S. market, both in absolute terms and in

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[10] Hylsa's reported shipment volumes of OCTG to the United States in 1996, for purposes of the sunset review, are slightly higher than those reported for the second administrative review. Similarly, Hylsa's reported shipment figures in 1998 for the sunset review are slightly higher than those reported for the third administrative review. See Letter to Interested Parties, March 13, 2006, Attachment D at page 6. However, as the Department has verified the actual shipments during the second and fourth administrative reviews, we believe that the figures reported by Hylsa in the context of the fourth administrative review are more accurate. See August 16, 2000, letter. Nevertheless, using the figures reported by Hylsa for the sunset review, Hylsa's shipments in 1996 and 1997, corresponding to the second and part of the third administrative review, were only 11 percent and zero of total shipments, respectively, of OCTG from Mexico to the United States for those years. See Letter to Interested Parties, March 13, 2006, Attachment E. Total shipments of OCTG from Mexico to the United States during these years are at substantially reduced rates from 1995, the year in which the order on Mexican OCTG went into effect. Id.

[11] Hylsa's shipments to the United States of OCTG manufactured in Mexico are a tiny fraction of total imports of OCTG into the United States and consumption of OCTG in the United States. The United States market for OCTG is one of the largest in the world, with annual consumption in the range of 1.4 to 2.5 million tons, and annual imports in the range of 170,000 to 720,000 tons, in the years 1996 to 2000. See Letter to Interested Parties, March 13, 2006, Attachment A.

comparison with the period of investigation as well as the year 1994, particularly for shipments in the second administrative review, we cannot reasonably conclude that the zero margins that Hylsa received are reflective of the normal commercial experience.

In making a determination with respect to revocation based on an absence of dumping, the Department must consider "whether the continued application of the antidumping order is otherwise necessary to offset dumping." See 19 CFR § 351.222(b)(1)(i)(B) and (b)(2)(i)(C). The ability to sell to the United States market during three sequential years without dumping is normally deemed to be probative as to a company's future pricing practices. However, this approach assumes that the company participates meaningfully in the U.S. market during that period. In this case, the three years in question are characterized by a negligible number and volume of sales by Hylsa to the U.S. market; therefore, the fact that Hylsa made these sales without dumping does not have the same probative value it would otherwise have. In light of this fact, we find that Hylsa did not meaningfully participate in the marketplace and thus, because it has not sold the subject merchandise for three years in commercial quantities within the meaning of section 351.222(e) of the Department's regulations, does not qualify for revocation.

Post-Draft Interested Party Comments

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

Case Briefs

U.S. Steel believes that the Department's draft redetermination complies fully with the Panel's decision and instructions to the Department. See Letter from Skadden, Arps, Slate, Meagher & Flom LLP to the Secretary of Commere, April 7, 2006, ("U.S. Steel's case brief") at page 2. U.S. Steel concurs with the Department's finding that Hylsa did not sell subject merchandise in commercial quantities in the United States during the three years that serve as the basis for Hylsa's revocation request. Id. at 3. In further support of the Department's position, U.S. Steel submits that even assuming, arguendo, that Hylsa did ship in commercial quantities, it still would not qualify for revocation under 19 CFR § 351.222(b)(2)(i) because the Department found Hylsa to be dumping OCTG during the ninth administrative review. Id. U.S. Steel notes that the Department found a dumping margin of 1.48 percent for Hylsa during the ninth administrative review,[12] and believes that the Department must consider this information in making its revocation determination. In support of its contention, U.S. Steel cites to Luoyang Bearing Corp. (Group) v. United States, 358 F. Supp. 2d 1296, 1301-02 (Court of International Trade ("CIT") 2005) ("Luoyang"). In Luoyang, the respondent was determined to have dumped the subject merchandise only in the last of three consecutive review periods. On remand, the Department determined that the margin for the last of the three review periods was zero, and thus respondent did not dump during the three consecutive review periods under consideration. However, as the Department found that respondent had dumped subject merchandise in a subsequent review period, the Department determined not to revoke the order as the order was

[12] See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Oil Country Tubular Goods from Mexico, 70 FR 60492 (October 18, 2005).

still necessary to offset dumping. The CIT upheld the Department's determination. U.S. Steel argues that the fact pattern in this case is substantially similar, and that the Department should make a similar determination. Id. at 4-5.

The fact that Hylsa has appealed the findings in the ninth administrative review is not of consequence, according to U.S. Steel. In Luoyang, respondent also argued that it had appealed the Department's finding of dumping in a subsequent review. The CIT rejected the argument, and U.S. Steel argues that the Department should similarly ignore Hylsa's appeal. Id. at 5.

In summary, U.S. Steel states that the Department properly determined that Hylsa was not eligible for revocation because Hylsa did not sell subject merchandise in the United States in commercial quantities. Furthermore, consistent with the decision in Luoyang, U.S. Steel argues that Hylsa should not qualify for revocation as the Department found Hylsa to be dumping in a subsequent review. For these reasons, U.S. Steel maintains that the Department should not revoke Hylsa from the order.

Hylsa, in its brief, argues that the Department's draft redetermination is incorrect for a number of reasons. First, Hylsa argues that the Department should accept the Panel's instructions with respect to the recalculation of packing costs and CONNUM costs, and not seek to re-litigate the issues before the Panel. Second, Hylsa believes that the Department's commercial quantities analysis is flawed for a number of reasons and should be reconsidered. See Letter from Preston Gates, Ellis & Rouvelas, Meeds LLP to the Secretary of Commerce, April 7, 2006 ("Hylsa's case brief").

With respect to the packing costs, Hylsa contends that the Department's redetermination fails to recognize what Hylsa characterizes as a fundamental overstatement in the Department's original packing calculation. Hylsa notes that it restructured the packing line during the POR and that the costs when the merchandise was actually packed were substantially lower than the costs at the beginning of the POR. Averaging the lower labor costs of the packing line when Hylsa packed the subject merchandise with the higher costs earlier in the POR, according to Hylsa, distorts the actual calculation. Id. at 4.

Hylsa further contends that the use of average packing labor costs for the POR is inconsistent with the treatment of packing overhead costs. Because these were reported as part of the cost of manufacture, and because the cost of manufacture only included costs for the two months in which the subject merchandise was produced, the calculation only includes packing overhead costs for those two months. Hylsa maintains that it makes no sense to include labor costs from earlier in the POR, while excluding overhead costs from the same period. Hylsa concludes its discussion of packing costs by reiterating its position that using the packing costs when the merchandise was packed is more appropriate than using POR-wide packing costs. Id. at 4-5.

With respect to the cost of manufacture and CONNUMs, Hylsa argues that the higher per-ton costs of merchandise produced in July of 1999 is not due to differences in the dimensions of the merchandise. Rather, Hylsa contends that the differences are a result of production in different months. Hylsa asserts "{t}hat it makes no sense to assign different costs to two products based solely on the month in which they happened to be produced, when the products were sold in the same transaction, and the timing of production of each product was simply an artifact of Hylsa's internal production scheduling decision." Id. at 6. Hylsa argues that it is irrelevant under these circumstances whether or not physical differences between products should result in different costs of manufacture, and that the figures used by the Department do not reflect such differences. Id. at 6-7. While Hylsa concedes that the Department may have legitimate reasons for using product-specific cost calculations in most cases, the unique circumstances of this case resulted in distortions when the Department used different costs in its initial determination. Id. at 7.

Concerning the Department's revocation analysis and determination, Hylsa argues that the Department's draft determination is incorrect for three reasons. First, Hylsa maintains that its exports during the three review periods under consideration were consistent with Hylsa's historical export experience to the United States. Second, Hylsa takes issue with the Department's definition of the term "commercial quantities" and believes that the term should not refer to aggregate volumes sold by an exporter during review periods. Instead, Hylsa argues that "commercial quantities" should mean the quantities sold in specific transactions. Finally, Hylsa states that the Department's standards for revocation should not apply to a company, such as Hylsa, that has never been found to have dumped and historically has participated in the United States market in a minor way.

With respect to Hylsa's historical export experience, Hylsa states that it produces only welded OCTG, which is used for less demanding applications and limits Hylsa's participation in the OCTG market. Id. at 9. Hylsa states that its OCTG production is on the same line used to produce other pipe products, and therefore the capacity to produce OCTG is limited. Id. Because of these constraints, according to Hylsa, it did not participate in the U.S. OCTG market at all for many years and had a limited participation in early 1994. Id.

Hylsa notes that under the current regulations, the Department would have conducted its original investigation using a different period of time. While the regulations in effect at the time allowed for a six-month period of investigation that included the month in which the original petition was filed, the current regulations would have mandated an investigation period in the four quarters prior to the filing of the investigation. Id. at 10-11. That period would have been April 1993 to March of 1994. Hylsa states that it only had shipments during March of that time period, at a volume nearly identical to that of the second administrative review and lower than the volumes in the third and fourth review periods. Id. Hylsa argues that the Department could have done its commercial quantities analysis using the time period of four quarters before the filing of a petition, and has done so before. Id. at 11. To use the actual six-month period of investigation as the benchmark in determining whether Hylsa sold merchandise in the United States in commercial quantities is, according to Hylsa, arbitrary. Id. Hylsa maintains that using the four quarters prior to the filing of the petition as the benchmark is more representative of Hylsa's historical commercial sales pattern and is consistent with its pattern of sales after the imposition of the order. Id. at 11-12. Finally, Hylsa believes that the Department's use of Rebar from Turkey in its analysis is misplaced, as Hylsa "{h}ad a longstanding experience of exporting OCTG to the United States." Id. at 12.

Hylsa contends that the Department's interpretation of "commercial quantities" under 19 CFR § 351.222 as referring to aggregate volume sold by an exporter is incorrect. Instead, Hylsa argues that the statute defines the term "commercial quantities" to mean quantities sold in specific transactions. Id. at 13. Hylsa cites to language in 19 USC § 1677(17), 19 USC § 1677(14), and 19 USC § 1677b(1)(B) in support of its contention that the term "commercial quantities" applies to specific transactions. Id. at 14. Hylsa asserts that the Department must interpret "commercial quantities" in the context of revocation also in terms of specific transactions, in order to maintain consistency. Id. at 15-16.

Finally, Hylsa argues that the "commercial quantities" requirement in the context of a revocation determination should only be applied to companies that have been found to have dumped subject merchandise in the past. Id. at 16. Hylsa argues that the Department's regulations recognize that revocation is based on a respondent engaging in fair trade for a period of time that demonstrates it will not resume unfair trade practices. Id. As Hylsa has never been found to have dumped under the order, Hylsa argues that the applicable revocation requirements are different in this instance. Given that Hylsa has not dumped in the past, and did not have meaningful exports during the 12-month period that the Department would consider in an investigation under the current regulations, Hylsa argues that the Department should consider any sales that are bona fide transactions to be sales made in "commercial quantities" and revoke the order with respect to Hylsa. Id. at 17-18.

Rebuttal Briefs

On April 11, 2006, Maverick submitted its rebuttal brief. See Letter from Schagrin Associates to the Secretary of Commerce, April 11, 2006 ("Maverick's rebuttal brief"). Maverick argued that the Department correctly determined that Hylsa's exports of subject merchandise after the imposition of the order were not made in commercial quantities. Maverick contends that Hylsa's assertions that its shipments were consistent with its historical shipments does not equate to shipments in commercial quantities. Id. at 2. Maverick states that Hylsa's shipments during the revocation period were minuscule in comparison both to the volume of trade in other pipe products from Hylsa to the United States as well as imports of OCTG from Mexico into the United States, and thus could not be considered to be shipments made in commercial quantities. Id. at 3. Maverick notes that the Department conducted a number of analyses of Hylsa's shipments during the revocation period, and specifically noted that Hylsa's shipments during the second administrative review never rose above 2.5 percent when compared to a 12-month benchmark period. Therefore, according to Maverick, the analyses clearly show that Hylsa did not ship subject merchandise in commercial quantities. Id. Finally, Maverick noted the Panel's statements with respect to exporters engaging in strategic behavior by making token sales at high prices for a period of time simply to avoid a finding of dumping. Id.

Hylsa also submitted a rebuttal brief on April 11, 2006. See Letter from Preston Gates Ellis & Rouvelas, Meeds LLP to the Secretary of Commerce, April 11, 2006 ("Hylsa's rebuttal brief"). Hylsa takes issue with U.S. Steel's case brief, stating that U.S. Steel's reliance on Luoyang is misplaced. Specifically, Hylsa argues that the antidumping duty administrative review on OCTG cited by U.S. Steel is not part of the record before the Department in this proceeding. Therefore, Hylsa argues, the Department should strike U.S. Steel's comments from the record and not otherwise consider them. Id. at 2. Hylsa states that the Department's analysis to date has properly been limited to the facts before the Department at the time it made the initial decision with respect to revocation in the fourth administrative review. Inclusion and consideration of the review in question in the Department's analysis would, according to Hylsa, be contrary to the statutory scheme for judicial and panel review, and would seriously infringe upon Hylsa's rights. Id. at 2-3. Hylsa also asserts that "{o}pening the record to include information concerning events after the time of the initial determination would render it impossible for the Department or the parties to achieve any sort of finality." Id. at 3. Hylsa contends that, were the Department to allow for the consideration of new information, each successive remand in a proceeding might potentially include new information and new analysis, resulting in endless litigation. Id. at 3-4. Hylsa concludes by stating that the information available at the time of the fourth administrative review demonstrates that the order should be revoked, and that the Department should revoke the order at this time.

U.S. Steel submitted a rebuttal brief on April 11, 2006. See Letter from Skadden, Arps, Slate, Meagher & Flom LLP to the Secretary of Commerce, April 11, 2006 ("U.S. Steel's rebuttal brief"). In its rebuttal brief, U.S. Steel addresses a number of issues raised by Hylsa in Hylsa's case brief. First, with respect to the Department's request that the Panel reconsider its decisions regarding packing costs and costs of manufacture, U.S. Steel argues that the Department's arguments should be retained. U.S. Steel contends that the Department's analysis of these two issues is supported by the statute and evidence on the record, and identifies what it considers to be certain errors in the Panel's initial decision. Second, with respect to the Department's revocation analysis, U.S. Steel addresses each of Hylsa's arguments and states that, contrary to Hylsa's assertions, the Department's analysis is consistent with the statute and past practices, and should be upheld.

With respect to the Department's request that the Panel reconsider its recalculation instructions, U.S. Steel believes that the Department's analysis of the packing and manufacturing costs is supported by the statute and record evidence, and identifies what it considers to be errors in the Panel's analysis that should be corrected. Id. at 2-3. U.S. Steel states that the statute, specifically 19 USC § 1677b(b)(3)(A) and § 1677b(e)(1) (2000), provides for costs and constructed value calculations to be based on a period which would ordinarily permit the production of subject merchandise in the ordinary course of business. Id. at 3. U.S. Steel notes that the Department's normal practice is to base a respondent's packing costs on weighted-average costs incurred by the respondent during the entire POR, as it did during the fourth administrative review of OCTG from Mexico for Hylsa. Id. at 4. While U.S. Steel acknowledges that there may be instances where the Department deviates from its normal practice, the circumstances in which the Department normally deviates from its normal practice are not present in the instant case. Additionally, U.S. Steel argues that Hylsa has provided no basis for deviating from the standard practice. Therefore, according to U.S. Steel, there is no reason for the Department to vary from its normal practice. Id.

With respect to the cost of manufacture and the averaging of costs by CONNUM, U.S. Steel agrees with the Department's findings in the draft redetermination. U.S. Steel notes that the Department found evidence on the record showing that it takes longer to manufacture one of the products that Hylsa sold during the POR, and that the costs to produce the two products sold by Hylsa in the United States are therefore different in spite of Hylsa's cost reporting methodology. Id. at 5. U.S. Steel takes exception with Hylsa's assertion that "everyone must agree that it makes no sense to assign different costs to two products based solely on the month in which they happened to be produced . . ." and Hylsa's assertion that it is "irrelevant" that physical differences between the two products would result in cost differences. Id. at 6, quoting Hylsa's case brief at 6. U.S. Steel states that if Hylsa's reported cost data do not reflect those cost differences, as Hylsa contends, then Hylsa failed to report product- or CONNUM-specific costs as required by the statute and that the Department should reject Hylsa's data. Id.

Regardless, U.S. Steel believes that the Department's draft redetermination shows that the Department's original determinations with respect to the calculation of packing costs and costs of manufacture by CONNUM were consistent with the statute and the evidence on the record. U.S. Steel concludes that the Department properly requested reconsideration by the Panel and that the Department should retain this portion of the draft in its final redetermination.

Next, U.S. Steel states that the Department properly determined that Hylsa failed to qualify for revocation of the order, and that Hylsa's three challenges with respect to the Department's analysis are incorrect. Id. at 7. With respect to the proper benchmark for comparison of sales during a revocation analysis, U.S. Steel states that the Department used three different modes of comparison and that all three approaches are similar to those taken in other revocation analyses of other cases. Id. at 8-15. In all three instances, according to U.S. Steel, the comparisons between Hylsa's shipments of merchandise during the three-year revocation period and the benchmark period showed that Hylsa had not sold subject merchandise in the United States at commercial quantities. Id. at 9. U.S. Steel rejects Hylsa's contention that the Department should have used the four quarters prior to the filing of the petition (i.e., April 1993 through March 1994) as the benchmark comparison period. U.S. Steel points out that while the current regulations may call for the investigation period to be the four quarters before the filing of a petition, the regulations in effect at the time of the antidumping investigation on Mexican OCTG established a six-month period. Id. at 9-10. U.S. Steel notes that the one period cited by Hylsa where the Department used the four quarters prior to the filing of the petition occurred when the current regulations were in effect. Id. at 10. Moreover, U.S. Steel states that the Department's standard practice, used in this analysis, is to use the investigation period, absent special circumstances such as the company requesting revocation not selling subject merchandise during the period of investigation or the data in question being too old. Id. at 11. Finally, U.S. Steel argues that the Department's use of the methodology in Rebar from Turkey is appropriate, as Hylsa did not ship OCTG to the United States for some years prior to the investigation, and shipped limited and/or small quantities prior to that. Id. at 12-14. Thus, according to U.S. Steel, the Department used the proper benchmark and proper methodology in all of its comparisons.

U.S. Steel next argues that the Hylsa's interpretation of the term "commercial quantities" is incorrect. Rather than examining the volume and value of individual sales, as Hylsa advocates, U.S. Steel states that the Department's practice of examining aggregate sales volumes throughout a period under analysis for revocation is correct. Id. at 15-20. U.S. Steel contends that the Panel has already determined that the Department has the authority to interpret and administer the law with respect to the revocation analysis, and that the Department's interpretation is entitled to substantial deference unless it is plainly erroneous or inconsistent with the regulation. Id. at 16-17. With respect to Hylsa's arguments, U.S. Steel notes that Hylsa's stated intention to re-argue the definition of commercial quantities before the Panel is inconsistent with Hylsa's insistence that the Department not revisit issues (specifically, packing costs and costs by CONNUM) decided by the Panel. Id. at 17-18. Nevertheless, with respect to Hylsa's arguments, U.S. Steel states that Hylsa's citations of the definition of "usual commercial quantities" in the statute applies to determining the viability of individual sales for comparison in the antidumping duty calculation. By its nature, according to U.S. Steel, this exercise must be done on a sale-by-sale basis. Id. at 18-19. Conversely, U.S. Steel notes, in order to determine whether the absence of a dumping margin is meaningful in the context of a revocation analysis, the Department must be satisfied that the calculations were performed on a meaningful aggregate quantity. Id. at 19. Regarding Hylsa's argument that where words are used that have a long-standing, "well-known meaning," such that they are subsequently presumed to maintain that meaning "unless the context compels to the contrary," U.S. Steel first argues that "'commercial quantities' can hardly be said to have a 'well-known meaning.'" Id. at 20. Specifically, U.S. Steel asserts that the term "commercial quantities" is not entrenched in U.S. law or derived over centuries of practice. Id. Second, as U.S. Steel articulated previously, the context of the term "commercial quantities" in a revocation analysis is different than a dumping analysis on a sale-by-sale basis. Id. For these reasons, according to U.S. Steel, Hylsa's argument is without merit.

Finally, U.S. Steel argues that Hylsa's statement that companies that have never been found to be dumping should be revoked from the order is without merit. U.S. Steel notes that Hylsa contends that a company seeking revocation must certify that it will not "resume" dumping. Id. However, U.S. Steel states that the Department is not attempting to determine if a company will resume dumping if an order were revoked, but is attempting to determine whether the discipline of the order is necessary to "offset" dumping. Id. at 21. U.S. Steel argues that the Department has, in the past, "{f}ound that sales of abnormally small quantities, either in absolute terms or in comparison to an appropriate benchmark period, do not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping." Thus, the commercial quantities requirement in the statute is necessary to make a revocation determination in instances where the normal sales activity is either non-existent or insignificant. Id.

In conclusion, U.S. Steel argues that the Department's draft remand fully complies with the Panel's instructions and decision. Therefore, U.S. Steel contends, Hylsa's arguments are without merit and should be rejected.

Department's Position

After a full examination of comments by all parties, and analysis of the information on the record, we continue respectfully to request that the Panel reconsider its decisions with regard to the recalculation of packing costs and costs of manufacture. However, if the Panel does not reconsider its instructions with respect to these costs, we continue to find that Hylsa does not qualify for revocation from the antidumping duty order.

With respect to the packing cost calculation, the statute is clear that the Department must calculate costs based on a period which would ordinarily permit the production of subject merchandise in the ordinary course of business. See 19 USC § 1677b(b)(3)(A) and § 1677b(e)(1). Hylsa did not, in either its case or rebuttal briefs, challenge the plain language of the statute. Neither did Hylsa provide any evidence to show that it was unable to produce subject merchandise during the POR, nor did Hylsa produce any evidence to indicate that there were rapid or dramatic fluctuations in prices or exchange rates. Therefore, Hylsa presented no evidence to suggest that the Department should deviate from the statutory requirements regarding the calculation of costs other than its discussion of the upgrade of the production line. While Hylsa may have argued during the administrative review, or before this Panel, that a more appropriate packing cost should be calculated based on costs incurred subsequent to the packing line upgrade, consistent with Erasable Programmable Memories from Japan, it did not do so.

Instead, Hylsa argued that the packing costs should only be counted in the months where OCTG was packed, which is plainly contrary to the statute. In contrast, the Department's use of POR-wide packing costs is consistent both with the statute and past practice. See, e.g., Final Determination of Sales at Less Than Fair Value, Welded Stainless Steel Pipe from Malaysia, 59 FR 4023, 4028 (January 28, 1994) at Comment 11.

Concerning Hylsa's argument that the Department's treatment of packing overhead costs is inconsistent with its treatment of packing labor costs, we disagree. The Department's treatment and use of packing overhead costs is consistent with the Department's practice of calculating a product-specific cost. The primary purpose behind the creation of CONNUMs is for product matching purposes. The costs are a secondary effect of the CONNUM creation. However, costs are calculated on a CONNUM-specific basis, consistent with the creation of unique CONNUMs. The reason that only two months of packing overhead were included is because the packing overhead costs were calculated based on the months in which merchandise was produced, as Hylsa stated. See Hylsa's rebuttal brief at 5. Thus, under the Department's product-specific methodology, the Department averaged POR production costs using the costs incurred in the months in which merchandise was produced, which happened to be only in June and July. Packing overhead costs were thus properly reported and captured in the cost of manufacture for the subject merchandise, and not as part of the overall packing cost calculation.

Hylsa's arguments with respect to costs of production and cost of manufacture are simply incorrect and contrary to both logic and facts on the record. For example, Hylsa states that "everyone must agree that it makes no sense to assign different costs to two products based solely on the month in which they happened to be produced . . ." See Hylsa's rebuttal brief at 6.

However, the premise of Hylsa's statement is incorrect. First, the costs to produce merchandise vary by month. Assuming that Hylsa produces the same product every month, it does not mean that the product will have the same cost in each month. Costs may and do vary for a variety of reasons. The cost of material inputs, for example, may vary. See, e.g., Letter from Hylsa S.A. de C.V. to the Department of Commerce, Fourth Administrative Review on Oil Country Tubular Goods from Mexico, Section D response to the Department's Antidumping Duty Questionnaire, November 23, 1999, ("Section D response") at Appendix D-5 (Prop. R. 980, Fiche 71, Frame 01) and Letter to Interested Parties, March 13, 2006, Attachment G, Response to Question D-31 at page 14, and Appendix SD-2.[13] In addition, because the cost of manufacture includes variables for fixed overhead costs, the cost of manufacture for a product could be dependent upon the total amount of the product produced in a particular month. Thus, depending upon the cost of the material inputs or the amount of production in a given month, the cost of a single product can vary month-to-month.

However, costs also vary by the product being produced. All other things being equal, two separate products produced within the same month can, and often do, have different costs of manufacture. In other words, two pipe products with different outside diameters will have different costs of production, even if the cost of the coil is the same. The difference is in processing times, as the Department has previously shown. The differences in processing times are a function of the diameter and wall thickness of the pipe. It simply takes more time to process pipe that has a smaller diameter and wall thickness, and thus is more costly. Hylsa's

[13] Hylsa's discussion of its treatment of the cost of coil and the cost of production are instructive. See Section D response (Prop. R. 980, Fiche 70, Frame 01 at 7) at page 32 and footnote 17.

statement that the higher cost of the 2 3/8" pipe produced in July, compared to the 2 7/8" pipe in June,[14] is therefore not solely a function of the month in which the merchandise was produced. Certainly the higher cost of 2 3/8" pipe produced in July could be a result of lower overall pipe production in that month, or due to differences in material costs, but it also is due in part to longer production times necessary to manufacture the smaller diameter pipe. Thus, calculations of costs of manufacture based on separate products (represented by separate CONNUMs), using production from each month in which a product was manufactured, is reasonable.[15]

However, if the Department's acceptance of Hylsa's monthly cost data at the final determination binds the Department to the use of such averaged data, as indicated in the Panel's decision,[16] then we should follow this decision to its logical conclusion. In its normal books and records, Hylsa calculates one average cost for all products traveling the same production route. Furthermore, we note that it is the Department's normal practice to calculate costs on a POR average basis.[17] Thus, if the Department is not to acknowledge any cost differences between the products that traveled the same production route, then the pool of costs that must be considered in arriving at the average cost of the reported products should include the entire POR costs for this production route, regardless of whether the reported subject merchandise was produced in every month. If the Department is to consider all products to have traveled the same production

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[14] See Hylsa's case brief at 6.

[15] Hylsa admits that OCTG is a product with significant differences in production processes and product ranges. See Hylsa's case brief at 12, footnote 21.

[16] See Decision at 38-42.

[17] Hylsa acknowledges this with respect to packing. See Hylsa's case brief at page 5.

route to have the same cost, then under the Department's normal methodology, the Department should calculate an average of the POR-wide costs to eliminate such month-to-month anomalies that are created in circumstances such as those raised by Hylsa (i.e., the differing monthly production quantities). However, Hylsa has not advocated such a methodology. Instead, Hylsa argues that the Department should average costs by process, but only for the subject merchandise. Not only is this contrary to the Department's normal practice, but it is simply illogical.

The Department's calculation of costs of packing over the entire POR is in conformance with 19 USC § 1677b(b)(3)(A). Additionally, the Department's calculation of the cost of manufacture for each CONNUM is consistent with 19 USC § 1677(16) and the Department's identification of identical or similar merchandise for product comparisons. The Department's methodology of averaging costs by CONNUM has been upheld by the CIT. See Koenig & Bauer-Albert AG v. United States, 90 F. Supp. 2d 1284 (CIT 2000) ("Koenig").[18] The fact that Hylsa did not report costs of manufacture by product, but instead by process, for the two months in which subject merchandise was produced, does not contradict the fact that the different products have different production costs regardless of the month in which they are produced.

With respect to the Department's revocation analysis, we note that the Panel quoted the Department's regulations (19 CFR § 351.222(d)) which state that "before revoking an order . . . the Secretary must be satisfied that, during each of the three . . . years, there were exports to the

[18] "{T}he Court finds that Commerce's cost-averaging practice as explained in the Second Redetermination {regarding computing a single, CONNUM-specific, weighted-average COP} is a reasonable interpretation of the statute, and is thus in accordance with the law." Koenig, 90 F. Supp. 2d at 1292.

United States in commercial quantities." See Decision at 14. The Department is not satisfied that Hylsa exported subject merchandise in commercial quantities during the three years under consideration for revocation. The Department has analyzed Hylsa's exports to the United States of subject merchandise during the revocation period, using four different methods of analysis used in previous revocation proceedings, and has not found Hylsa's export levels to be in commercial quantities.

Hylsa's objection to the Department's analysis is based on three arguments. First, Hylsa argues that exports during the revocation period are consistent with Hylsa's historical export experience, which is low due to production constraints. Hylsa suggests that the Department use a different period of time as the benchmark for comparison of export levels in order to reflect this historical behavior. Second, Hylsa argues that the Department's definition of "commercial quantities" as it pertains to a revocation analysis is inconsistent with the definition of the same term elsewhere in the statute. Hylsa contends that the definition should be applied to specific transactions rather than aggregate volumes. Third, Hylsa argues that the revocation standard should be different for Hylsa as it has never been found to have dumped subject merchandise either during the investigation or subsequent periods of review. We will address each argument in turn.

Hylsa argues that the Department should not use the POI, either alone or on an annualized basis, as the benchmark for comparing Hylsa's exports during the revocation period. Instead, Hylsa advocates the use of the last three quarters of 1993 and the first quarter of 1994. Hylsa advocates this position for two reasons. First, because there were no exports to the United States in 1993 and exports in the first quarter of 1994 are at a level similar to that of the second administrative review, Hylsa maintains that its proposed benchmark period is a better reflection of Hylsa's historical export experience. See Hylsa's case brief at 9-12. Second, while the original petition for the antidumping duty investigation on OCTG from Mexico was filed in June of 1994, Hylsa argues that the Department should not use the regulations in effect at the time. Instead, Hylsa contends that the Department should use the regulations in effect today and retroactively apply them to 1994 in order to create a hypothetical POI for purposes of the benchmark. Under the current regulations, the POI would be the four quarters previous to the filing of the petition instead of the quarter in which the petition was filed and the previous quarter, as under the regulations in effect in 1994. Id. at 10-11.

As previously discussed, it is the Department's general practice to use the POI as the benchmark for comparison of exports to the United States after the imposition of the order. However, if the use of the POI is not warranted, the Department may rely on a different benchmark. For example, if a respondent did not sell subject merchandise during the POI, or if the original investigation was conducted many years ago, the Department may find that the sales data is too old to be meaningful. See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and Singapore Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Review in Part, and Determination Not To Revoke Order in Part, 68 FR 35623 (June 16, 2003), Issues and Decision Memorandum at Comment 27. Another basis for relying on a different period of sales as the benchmark may be a substantial and unusual change in a company's business practices. See Magnesium from Canada.

The facts of this case do not indicate that the original POI is an inappropriate benchmark. Hylsa had sales and exports of subject merchandise during the POI, and throughout 1994. In addition, the data from the investigation are not "too old" to be meaningful and Hylsa has not indicated that there have been substantial and unusual changes in its business practices since the POI. Finally, the Department used the POI as the benchmark for comparison of TAMSA's exports to the United States in this same case, and the Panel has already upheld the Department's methodology. See Decision at 23. Therefore, the Department finds that there are no "unusual occurrences" in this case that would warrant the use of a different period of time as a benchmark for comparing Hylsa's post-order export levels.

Furthermore, Hylsa's claims that its export experiences from 1984 to 1994 reflect its normal commercial practices are unavailing. In 1984, the United States established Voluntary Restraint Agreements for five years under the Steel Import Stabilization Act (19 USC § 2253 note) with various countries who manufacture and export steel products to the United States. See Presidential Documents, Volume 20, September 18, 1984 at page 1307. Mexico was a signatory to the agreement, which covered OCTG. See Termination of Antidumping Duty Investigation; Oil Country Tubular Goods from Mexico, 50 FR 24276, 24277 (June 10, 1985).[19] In July of 1989 the United States extended the Voluntary Restraint Agreements for a further two and one-half years until March of 1992. See Presidential Documents, Volume 25, July 25, 1989, at page 1155. Hylsa stated that it had limited exports of OCTG to the United States from 1984 to 1990, and no exports to the United States of OCTG from 1990 to early 1994. See August 16, 2000, letter at page 2. However, exports of OCTG to the United States from July of 1984 to March of 1992 occurred either when the Department was investigating imports of Mexican OCTG for

[19] The Department initiated an antidumping duty investigation on OCTG from Mexico in July of 1984. See Oil Country Tubular Goods from Mexico: Initiation of Antidumping Duty Investigation, 49 FR 28086 (July 10, 1984).

dumping, or when export volumes of Mexican OCTG were restricted under the Voluntary Restraint Agreement concerning steel products between the United States and Mexico ("VRA"). Therefore, exports of OCTG from Mexico to the United States during this time cannot be considered "normal commercial practice" due to the existence of trade relief measures. Hylsa's only other possible export activity of OCTG to the United States consists of its statement that it had some exports of OCTG to the United States during the 1970s and early 1980s. Id. During the only time frame in which there were no trade relief measures in place, from April of 1992 to the filing of the petition in June of 1994 and the POI of the investigation for the current order, Hylsa had no shipments of OCTG to the United States. Id. at Attachment 2.

Therefore, Hylsa's export history of OCTG to the United States in the ten years before the POI consists of no shipments from 1990 to 1994, and shipments limited by the VRA trade relief measure. Prior to these years, Hylsa's export levels of OCTG to the United States are unknown. Given the evidence on the record, the Department believes that Hylsa's export experience of OCTG to the United States for the ten years prior to the POI is negligible or non-existent, and is most closely akin to the experience of a new shipper. Thus, not only is any time prior to the POI not an appropriate time to use as a benchmark for comparison with Hylsa's exports after the imposition of the order, but the Department also believes that the analysis of "commercial quantities" using the methodology in Rebar from Turkey is appropriate.

With respect to the methodology in Rebar from Turkey, Hylsa also argues that the OCTG it produces, namely welded OCTG, is different from the seamless OCTG merchandise produced by TAMSA. Therefore, according to Hylsa, comparing Hylsa's post-order shipments of welded OCTG to TAMSA's exports of seamless OCTG during the POI is not valid. See Hylsa's case brief at 12, footnote 21. However, as U.S. Steel notes, both the Department and the International Trade Commission have consistently determined in numerous proceedings that both seamless and welded OCTG constitute a single like-product based on their similarities. See U.S. Steel's rebuttal brief at 13, footnote 37. Therefore, we do not believe it to be inappropriate to compare Hylsa's post-order exports of OCTG to the United States to TAMSA's POI exports, using the methodology in Rebar from Turkey.

Regardless, the methodology in Rebar from Turkey is just one of four methodologies that the Department applied with respect to the revocation analysis. As the Department has demonstrated, the use of Hylsa's exports as a benchmark during either the POI, annualized for the entire POI, or for the total year 1994, is appropriate for comparison of Hylsa's shipments after the imposition of the order and is consistent with previous revocation analyses by the Department in other proceedings. Further, based on the Department's findings with respect to the VRA period, the Department does not believe that Hylsa's exports of OCTG to the United States prior to 1994 represent Hylsa's normal commercial practices and thus are not appropriate as a benchmark for comparison of Hylsa's exports during the revocation period.

Rather, the export levels in both 1994 and the first half of 1995 are far more likely to reflect Hylsa's normal commercial practices absent the discipline of any trade remedies. Exports of OCTG to the United States by Hylsa surged from zero in 1993 to a 1994 level that is over 100 times the level of exports in the second administrative review. Exports in the first half of 1995, on an annualized basis, were nearly 200 times the level of exports in the second administrative review. Not surprisingly, the U.S. domestic industry filed for relief from injurious imports in 1994, which is the behavior one would expect when foreign companies rapidly increase exports of dumped merchandise to the United States. Subsequent to the imposition of the order, Hylsa's exports of OCTG to the United States dropped to a negligible level, consistent with annualized shipments of OCTG during the VRA period.[20] Rather than reflecting Hylsa's normal commercial practices, Hylsa's export levels after the imposition of the order only reflect Hylsa's commercial practices during the imposition of trade remedies enacted to offset unfair trade practices, and do not provide a basis for believing that the order is unnecessary to offset dumping.

Finally, as the Department noted in a separate proceeding, "{t}he Department must be able to determine that the company has continued to participate meaningfully in the U.S. market during each of the three years at issue . . . Sales during the POR which, in the aggregate, are an abnormally small quantity do not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping." See Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-To-Length Carbon Steel Plate from Canada, 64 FR 2173, 2175 (January 13, 1999). Comparing Hylsa's exports of OCTG to the United States in the second administrative review period to imports of OCTG into the United States from all sources in 1996, Hylsa's share of the total export market of OCTG to the United States accounted for approximately 0.025 percent of all OCTG imports into the United States,[21] and approximately

[20] See August 16, 2000, letter at 2, footnote 1 for Hylsa's export levels during the VRA.

[21] Import levels into the United States were lower due to the existence of other antidumping and countervailing duty orders on OCTG. See, e.g., Antidumping Duty Order, Oil Country Tubular Goods from Argentina, 60 FR 41055 (August 11, 1995), Amended Antidumping Duty Order; Oil Country Tubular Goods from Israel, 53 FR 29370 (August 4, 1988), Countervailing Duty Order; Oil Country Tubular Goods from Israel, 52 FR 6999 (March 6, 1987), Antidumping Duty Order: Oil Country Tubular Goods (OCTG) from Canada, 51 FR 21782 (June 16, 1986), Antidumping Duty Order; Oil Country Tubular Goods from Japan, 60 FR

0.0035 percent of total OCTG consumption in the United States in the same year.[22] Given the paucity of Hylsa's exports with respect to total consumption and total imports into the United States of OCTG, the Department cannot conclude that Hylsa participated meaningfully in the U.S. OCTG market during the revocation period and cannot conclude that Hylsa's sales activity provides a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping.

As to Hylsa's contention that the Department's definition of "commercial quantities" with respect to revocation is incorrect, the Department disagrees. To begin, the Panel has already addressed this issue in detail. See Decision at 16-23. The Panel stated that

> "{w}hat constitutes 'commercial quantities' for the purpose of a revocation request is not defined in either the Tariff Act or in the regulations themselves, nor has the term been the subject of litigation before the Court of Appeals or the Court of International Trade. This then is precisely the kind of term that the Commerce Department is charged with interpreting and applying in its administration of the law."

Id. at 16-17. The Panel noted that the Department begins its commercial quantities analysis by comparting pre-order volumes/values to post-order volumes/values, absent "unusual circumstances." Id. at 17 and 19. The Panel further noted that

> "{t}he commercial quantities requirement also prevents an exporter from engaging in strategic behavior that might undermine the legitimacy of the presumption built into Part 351.222(b), for example by making token sales at a

41058 (August 11, 1995), Antidumping Duty Order; Oil Country Tubular Goods from Italy, 60 FR 41057 (August 11, 1995), and Antidumping Duty Order; Oil Country Tubular Goods from Korea, 60 FR 41057 (August 11, 1995). Absent these trade remedies it is reasonable to expect that imports of OCTG would have been higher, and Hylsa's resulting percentage of imports lower.

[22] See Letter to Interested Parties, March 13, 2006, at Attachment A, U.S. consumption of OCTG.

> high price for a period of time simply to satisfy the test. The Department's practice in beginning its analysis in this manner reflects the not unreasonable assumption that the greater the post-order volumes/values are relative to pre-order levels, the less likely it is that the exporter is acting strategically."

Id. at 19. The Panel also stated that

> "{t}he Department has interpreted and consistently applied the commercial quantities threshold requirement for a revocation request to be a flexible, case-by-case assessment not of the legitimacy of the individual transactions but rather as a tool to examine whether the proffered three year absence of dumping is a sufficiently reliable indicator of future activity as to entitle the Petitioner to the presumption in favor of revocation afforded by Part 351.222(b)."

Id. at 21. Thus, the Panel upheld the Department's definition of "commercial quantities" as reasonable.

Hylsa's arguments that the Department's definition of "commercial quantities" is inconsistent with the statute is incorrect. We agree with U.S. Steel's statement that, "{t}he Department has repeatedly and consistently interpreted the term 'commercial quantities' in its revocation regulation to mean the quantity of the respondent's U.S. sales in the aggregate, not the quantity or magnitude of each individual sale or the bona fide nature of an individual sale." See U.S. Steel's rebuttal brief at 16. In addition, the provisions of the statute cited by Hylsa that are purported to be inconsistent with the treatment of the term "commercial quantities" are inapposite. The meaning of term "usual commercial quantities" as found in 19 USC § 1677b(1)(B) or section 1677(17), for example, applies only to the determination of whether sales in either the home or U.S. markets are reliable and appropriate for use in making dumping determinations. By its very nature, such analysis must be done on a sale-by-sale basis. In contrast, the Department must be satisfied in a revocation proceeding that margins were calculated on a meaningful aggregate quantity. The difference in context is consistent with the

Panel's finding that the Department's application of the "commercial quantities" assessment is done "{n}ot on the legitimacy of the individual transactions but rather as a tool to examine whether the proffered three year absence of dumping is a sufficiently reliable indicator of future activity . . ." See Decision at 21. The Department also concurs with U.S. Steel's contention that Lorillard v. Pons, 434 U.S. 575, 583 (1978) does not apply in this case, contrary to Hylsa's assertions, as the term "commercial quantities" can hardly be said to have a "well-known meaning." See U.S. Steel's rebuttal brief at 9-20. Therefore, the Department has not applied the term "commercial quantities" inconsistently across the statute, and the Department's application of the term has already been upheld by the Panel. The Panel should continue to uphold the Department's definition and practice, as it is not plainly erroneous or inconsistent with the statute or regulation.

In addition, we do not agree with Hylsa's contention that the revocation requirements should not apply to Hylsa as it has not been found to have dumped subject merchandise. As U.S. Steel notes, the Department's revocation analysis seeks to determine whether the continued discipline of the order is necessary to "offset" dumping, and not whether dumping would "resume" absent the discipline of the order. Id. at 21, citing footnote 56. The Department has previously applied the commercial quantities requirements to companies that had not been found to have dumping merchandise in the past, specifically in Rebar from Turkey. The Department's actions are consistent with the statute and past practices, and should be upheld.

Finally, the Department disagrees with Hylsa's argument that U.S. Steel's April 7, 2006, comments regarding the results of the ninth administrative review should be stricken from the record. The final results of a subsequent segment of this proceeding are relevant to determining whether the antidumping duty order on OCTG from Mexico is otherwise necessary to offset dumping, pursuant to 19 CFR 351.222(b)(2)(i)(C). As the CIT noted in Luoyang, Commerce may not ignore evidence of continued dumping in its revocation analysis, "even if such evidence is uncovered in a subsequent review." Luoyang, 358 F. Supp. 2d at 1302. As Hylsa was found to have sold subject merchandise at less than normal value in the ninth administrative review, the Department determines that sufficient positive evidence exists showing that the discipline of the order continues to be necessary to offset dumping by Hylsa. Based on this evidence, Hylsa does not satisfy the criteria for revocation.

Conclusion

The Department does not believe that the Panel's order with respect to the recalculation of COP and packing costs is proper, and indeed believes that the Panel's decision is contrary to the statute. However, the Department has performed the recalculations consistent with the Panel's direction and has, as a result, performed the requested revocation analysis. Based on this analysis, the Department determines that Hylsa does not qualify for revocation from the antidumping duty order on OCTG from Mexico under 19 CFR 351.222(e)(1)(ii) and 19 CFR 351.222(d)(1).

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

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David M. Spooner
Assistant Secretary
for Import Administration

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(Date)