

**FINAL RESULTS OF REDETERMINATION  
PURSUANT TO REMAND**

*Union Steel v. United States*

Court No. 09-00130

Slip Op. 11-18 (Ct. Int'l Trade Feb. 15, 2011)

**SUMMARY**

This remand redetermination, issued in accordance with the February 15, 2011, opinion of the U.S. Court of International Trade (“Court” or “CIT”) in Union Steel v. United States, Court No. 09-00130, Slip Op. 11-18 (Ct. Int'l Trade February 15, 2011) (“Remand Order”), concerns the determination of the Department of Commerce (“the Department”) for Union Steel (“Union”) in the 14<sup>th</sup> administrative review of the antidumping duty order on certain corrosion resistant steel flat products (“CORE”) from Korea covering the period August 1, 2006, through July 31, 2007. See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fourteenth Administrative Review and Partial Rescission, 74 FR 11082 (March 16, 2009) (“Final Results”) (amended at 74 FR 19199).

Pursuant to the Court’s Remand Order, the Department has reviewed and reconsidered Union’s request for a revision of the Department’s classification of physical characteristics, and the subsequent model match results, to include a separate category for laminated CORE products. For the reasons set forth below, the Department finds that record evidence supports revising its physical characteristics classifications to create a separate category for laminated CORE products. Pursuant to the Court’s Remand Order, the Department has examined the record evidence to determine whether additional record evidence is necessary to determine whether physical differences between laminated CORE products and non-laminated, painted CORE products are minor and commercially insignificant. The Department concludes the record evidence on this issue is complete, and is sufficient to support a determination, on remand, that

the physical differences between laminated CORE products and non-laminated, painted CORE products are not minor and commercially insignificant. Accordingly, pursuant to the Court's Remand Order, the Department has altered its classification of physical characteristics that was applied in the Final Results so that laminated CORE products and non-laminated, painted CORE products are not compared pursuant to 19 U.S.C. § 1677(16)(A). Consequently, the Department has recalculated Union's margin consistent with the above findings. In addition, we have adjusted the cost of production to account for purchases of steel substrate from affiliated parties in Union's margin calculation, pursuant to the Court's February 15, 2011, opinion and order in United States Steel Corp. v. United States, Consol. Court No. 09-00156, Slip Op. 11-19 (Ct. Int'l Trade February 15, 2011) ("U.S. Steel"). See Remand Order at 17, n.6.

## **BACKGROUND**

On August 19, 1993, the Department published the antidumping duty order on CORE from Korea. See Antidumping Duty Orders on Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea, 58 FR 44159 (August 19, 1993). As part of its classification of physical characteristics developed in the early segments of this proceeding, the Department determined that CORE products should be separated into four "CTYPE" categories: clad, unpainted, painted, and painted with polyvinylidene fluoride ("PVDF"). During the development of these categories, certain parties requested that the Department create an additional category for laminated CORE products. The Department did not do so, and determined that laminated CORE products be included in the category of painted CORE products. Consequently, for the purpose of defining identical merchandise in prior segments of the proceeding, the Department considered laminated CORE products to be within the painted category, determining that this category's physical differences

and cost differences were insignificant and did not render the products non-identical. See, e.g., Notice of Final Results of the Twelfth Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 72 FR 13086 (March 20, 2007), and accompanying Issues and Decision Memorandum at Comment 1(c), and also see Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea; Notice of Amended Final Results of the Twelfth Administrative Review, 72 FR 20815 (April 26, 2007).

On March 16, 2009, the Department published the final results of the 14<sup>th</sup> administrative review of the antidumping duty order on CORE from Korea covering the 2006-2007 period of review. See Final Results, and accompanying Issues and Decision Memorandum (“Decision Memo”). As it had in prior administrative reviews of the CORE order, including the 13<sup>th</sup> administrative review,<sup>1</sup> the Department modified Union’s reported data to the preexisting physical characteristic classifications by considering laminated CORE products as part of the painted category. See Decision Memo at 7-8. The Department stated that Union had “not provided substantial evidence that 1) the model-match criteria are not reflective of the subject merchandise in question, 2) there have been industry-wide changes to the product that merit a modification, or 3) there is some other compelling reason.” Id. at 7. Moreover, the Department stated that “there is no new factual information that is relevant to this analysis” in its decision to deny Union’s request to create a separate category for laminated CORE products.” Id. at 7.

Union challenged certain aspects of the Department’s Final Results to the CIT, including the Department’s refusal to revise its classification of laminated CORE products within the painted category. Acknowledging that its reasoning in the Final Results relied upon that from

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<sup>1</sup> See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Thirteenth Administrative Review, 73 FR 14220 (March 17, 2008), and accompanying Issues and Decision Memorandum (“CORE 13”) at Comment 2.

the 13<sup>th</sup> administrative review, which the Court had already remanded once,<sup>2</sup> the Department sought a voluntary remand.

The Court granted the Department's voluntary remand request, but, citing its recent decision in Union Steel v. United States, 35 CIT \_\_\_, Slip Op. 11-3 (Jan. 11, 2011) ("Union Steel II"), which further remanded the Department's findings in the 13<sup>th</sup> administrative review of the CORE order,<sup>3</sup> the Court provided specific remand instructions to the Department. The Court ordered that "that the Department may reopen the record to investigate whether only minor and commercially insignificant physical differences distinguish Union's laminated products from the non-laminated products to which the Department compared Union's laminated products."

Remand Order at 21. The Court further directed that, "if substantial record evidence does not support a finding that only minor and commercially insignificant physical differences distinguish Union's laminated products from the non-laminated products to which the Department compared Union's laminated products, then the Department must alter the model match methodology that was applied in the Final Results so that laminated and non-laminated CORE products are not compared according to 19 U.S.C. § 1677(16)(A) and recalculate any affected dumping margins."

Id.

Pursuant to the Court's order, we have reconsidered the product classification of laminates and other painted products in the 14<sup>th</sup> administrative review. On June 14, 2011, we issued our Draft Results Of Redetermination Pursuant To Court Remand ("Draft Results"). On June 21, 2011, we received comments concerning the draft results from United States Steel Corporation ("U.S. Steel"), Nucor Corporation ("Nucor"), and Union.

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<sup>2</sup> See Union Steel v. United States, 645 F. Supp. 2d 1298 (Ct. Int'l Trade 2009).

<sup>3</sup> On April 11, 2011, the Department completed and filed its remand results in the 13<sup>th</sup> administrative review of the CORE order, in which the Department reconsidered the product classification of laminates and other painted products. See Union Steel v. United States, Final Results of Redetermination Pursuant to Remand, Ct. Int'l Trade No. 08-00101 (April 11, 2011).

## ANALYSIS

In reconsidering its determination, the Department has carefully reevaluated the record evidence in light of the specific instructions of the Court. As an initial matter, the Department determines that it is not necessary to reopen the record in this remand proceeding because sufficient factual information already exists on the record for the Department to determine whether the physical differences distinguishing laminated CORE products and non-laminated, painted CORE products are minor and not commercially significant. As discussed in greater detail below, the record contains evidence concerning the physical characteristics of laminated CORE products and non-laminated, painted CORE products, the process to manufacture laminated CORE products and non-laminated, painted CORE products, cost and price data for laminated CORE products and non-laminated, painted CORE products, and marketing materials for laminated CORE products and non-laminated, painted CORE products. Based upon this information, the Department is able to make a determination upon remand concerning the proper physical characteristic classifications for laminated CORE products that is supported by substantial evidence already on the record and that is otherwise in accordance with law.

Having determined not to reopen the record, the Department acts in accordance with this Court's Remand Order and no longer considers laminated CORE products and non-laminated, painted CORE products to be identical in physical characteristics under 19 U.S.C. § 1677(16)(A) in the 14<sup>th</sup> administrative review. In this remand, the Department has reconsidered and changed its classification of physical characteristics, and the subsequent model-match results, for laminated CORE products based upon the following evaluation of the evidence, consistent with the Court's opinion in Union Steel II as cited approvingly in the Remand Order. See Remand Order at 17. In Union Steel II, the Court upheld the Department's statutory construction as

consistent with the Court of Appeals decision in Pesquera Mares Australes Ltda. v. United States, 266 F.3d 1372 (Fed. Cir. 2001) (“Pesquera”):

In upholding the Department’s statutory construction, the opinion in Pesquera provides guidance on the meaning of the statutory term “identical in physical characteristics.” Concluding that dictionary definitions of the word “identical” established two distinct common usages, the Court of Appeals saw the choice as between construing the term to mean having the exact same identity or, alternatively, construing the term to mean having such a near similarity or resemblance as to be essentially equal or interchangeable or having such close resemblance and such minor differences as to be essentially the same. Id. at 1382-83. Concluding that a construction of “identical” according to the latter category of definitions was reasonable, the Court of Appeals upheld Commerce’s construction of the statutory term “identical in physical characteristics” to mean “that merchandise should be considered to be identical despite the existence of minor differences in physical characteristics, if those minor differences are not commercially significant.” Id. at 1384.

The Remand Redetermination appears to rely on the same statutory construction of the term “identical in physical characteristics” that the Court of Appeals affirmed in Pesquera. See {First Remand Results at} 4. To the extent that the {First Remand Results do} so, the court defers to the Department’s construction. The court proceeds to consider the question of whether the {First Remand Results} lawfully compared laminated and non-laminated, painted CORE products as “identical in physical characteristics” within the meaning of that term as used in 19 U.S.C. § 1677(16)(A) and expounded in Pesquera. Such comparisons are lawful only if substantial evidence on the record in this case can support a factual determination that the physical characteristics distinguishing laminated CORE products from the “other painted,” *i.e.*, non-laminated, CORE products to which Commerce compared laminated CORE products are minor and not commercially significant. For the reasons discussed below, the court concludes that substantial evidence does not exist on the record to support such a determination.

See Union Steel II, 35 CIT at \_\_\_, Slip Op. 11-3 at 9-10.

Accordingly, in reviewing and reconsidering Union’s request for a revision of the Department’s classification of physical characteristics to include a separate category for laminated CORE products, the Department considered the record evidence in relation to the following factors:

***Whether the Record Evidence Supports a Finding that Physical Differences Between Laminated CORE Products and Non-Laminated, Painted CORE Products Are Not Minor and Are Commercially Significant***

As part of the Remand Order, the Court specifically directed the Department to reconsider “whether substantial record evidence does not support a finding that only minor and commercially insignificant physical differences distinguish Union’s laminated products from the non-laminated products to which the Department compared Union’s laminated products.”

Remand Order at 21. After additional reconsideration pursuant to remand, the Department finds that the physical differences between laminated CORE products are commercially significant when compared to non-laminated, painted CORE products.

First, the Department recognizes that laminated CORE products by their very nature are not painted products. Laminated CORE products are coated by attaching a plastic film to a CORE substrate, and lamination is done in lieu of painting. Union produces and sells two types of laminated CORE products where either: (1) a coating of PET film is thermally-sealed onto a heated, primer-coated CORE substrate after it passes through a drying oven, or (2) colored PVC film is attached to the CORE substrate using adhesive. See Union’s Questionnaire Response (dated February 4, 2008) at 5 and 6. This is in contrast to non-laminated, painted CORE products, where the CORE substrate is run through color painting lines instead of the lamination line. See Union’s Supplemental Questionnaire Response (dated July 16, 2008) at 29 and Exhibit B-21.

Second, the cost of production for laminated CORE products is higher than other non-laminated, painted CORE products. PET film and PVC film are more expensive than the various paints used to produce non-laminated, painted CORE products. Id. at 30. Evidence that laminated CORE products have a higher cost is probative to the question of whether the physical

differences between laminated CORE products and non-laminated, painted CORE products are commercially significant because higher costs of production may be indicative of commercially significant physical differences between the two products. In addition, “[l]aminating the steel increases . . . the sales price by” a significant percentage over non-laminated, painted CORE products. See Union’s Questionnaire Response (dated February 4, 2008) at 6. Thus, the unit price for laminated CORE products is considerably higher than the unit price of non-laminated, painted CORE products. See Union’s Supplemental Questionnaire Response (dated July 16, 2008) at 30. The Department concludes that the considerable differences in cost and price between laminated CORE products and non-laminated, painted CORE products provide additional evidentiary support that the physical differences between the two products are commercially significant.

Third, record evidence demonstrates that Union and Unico (Union’s affiliate) both differentiate between laminated CORE products and non-laminated, painted CORE products in their brochures. See Union’s Questionnaire Response (dated January 22, 2008) at Exhibit A-28 and Union’s Supplemental Questionnaire Response (dated July 16, 2008) at Exhibit B-21. For example, the record describes three lines of PET-film laminated CORE products marketed by Union, “Unipet,” “Unilux,” and “White Board,” each of which is listed on the page of Union’s brochure labeled “High-tech Steel” and not on the page labeled “Pre-painted Steel.” See Union’s Questionnaire Response (dated January 22, 2008) at Exhibit A-28. The record also contains a separate brochure for one of Union’s brand name laminated CORE products, such as UNIPET. See Union’s Supplemental Questionnaire Response (dated July 16, 2008) at 29 and Exhibit B-21. The Department finds that it is meaningful that the product brochures contain information, as noted above, which differentiates the physical differences between laminated CORE products

and non-laminated, painted CORE products. Therefore, the Department finds that, in fact, Union's marketing materials also support the conclusion that there are commercially significant physical differences between laminated CORE products and non-laminated, painted CORE products.

Upon reexamination, the record as a whole, consisting of the brochures, Union's questionnaire responses, and Union's price and cost data, demonstrates that physical differences between laminated CORE products and non-laminated, painted CORE products are neither minor nor commercially insignificant. For these reasons, the Department determines that, in accordance with the Court's Remand Order, upon remand it will not consider laminated CORE products and non-laminated, painted CORE products to be identical in physical characteristics under 19 U.S.C. § 1677(16)(A) in the 14<sup>th</sup> administrative review.

***Whether There Is Compelling Reason For the Department To Alter Its Classification of the Physical Characteristics of the Subject Merchandise***

In light of the above considerations and record evidence, the Department finds that, upon remand, there are compelling reasons to alter its classification of the physical characteristics of the subject merchandise, and subsequently the results of its matching of U.S. sale prices with normal values based upon home market sale prices. See Fagersta Stainless AB v. United States, 577 F. Supp. 2d 1270, 1277 (Ct. Int'l Trade 2008) ("Commerce's stated position that it will not modify an existing model-match methodology absent 'compelling reasons' has been recognized as a reasonable means of interpreting the statute."). As discussed above, the Department concludes that record evidence demonstrates significant differences in the physical characteristics between laminated CORE products and non-laminated, painted CORE products. As the Court has previously observed, despite the Department's preference to maintain consistency in its method for classifying the physical characteristics of the subject merchandise

across segments of a proceeding, the Department's primary obligation in that task is to comply with the statutory requirements of 19 U.S.C. § 1677(16)(A). See Union Steel II, 35 CIT at \_\_\_, Slip Op. 11-3 at 26. Record evidence establishes significant differences in the physical characteristics between laminated CORE products and non-laminated, painted CORE products. Additionally, the Court found the Department's previous methodology with respect to laminated CORE products to be "unlawful absent a finding of fact, supported by record evidence, that laminated CORE and painted, non-laminated CORE are 'identical in physical characteristics' within the meaning of that statutory provision." Remand Order at 17 (citing Union Steel II, 35 CIT at \_\_\_, Slip Op. 11-3 at 28-29). Therefore, compelling reasons exist for the Department to alter its classification of the physical characteristics in this remand proceeding.

Comments:

1. Whether Commercial Significance is Based on Industry Standards

U.S. Steel argues that prior to the Draft Results and to its second remand redetermination in the 13<sup>th</sup> administrative review, the Department's practice had been to analyze the issue of commercial significance on whether or not the differences in physical characteristics are recognized by the relevant industry. U.S. Steel points to Pesquera, where the Department rejected a request from the respondent to create a special model match category. U.S. Steel contends that the Department's decision not to create a separate model match category was because the industry as a whole did not recognize the distinction. U.S. Steel cites Pesquera, 222 F. 3d at 1385, where the court states that by limiting its analysis to a particular exporter, the Department might risk manipulation. U.S. Steel argues that this case is similar because there is no evidence of industry-wide acceptance of the difference between laminated CORE products and painted CORE products. Moreover, U.S. Steel cites to a recent CIT decision noting that the

Department must provide a “reasoned analysis” if it changes prior policies and standards. See United States v. Pressman Gutman Co., Inc., 721 F. Supp. 2d 1333, 1346 (Ct. Int’l Trade 2010) (“Pressman”).

Nucor argues that there is no evidence that the model match hierarchy proposed by Union is representative of the Korean CORE industry or the CORE industry as a whole. Nucor contends that the Department’s decision to treat laminated CORE products and painted CORE products separately has the potential to encourage future manipulation.

Department’s Position:

The Department disagrees with U.S. Steel’s and Nucor’s contention that the Department must find relevant industry standards which support its finding that significant commercial differences exists. In granting the Department’s request for a voluntary remand, the Court referenced its recent decision in Union Steel II. As noted by the Court in that decision, “the opinion in Pesquera provides guidance on the meaning of the term ‘identical in physical characteristics.’” See Union Steel II, 35 CIT at \_\_, Slip Op. 11-3 at 9 and 14. The Court makes it clear that the important consideration is whether, in a commercial sense, the two groups of products are essentially equal or interchangeable. The Court states:

First, language in the Pesquera opinion suggests that physical differences are minor and commercially insignificant if the two products under consideration can be described as “essentially equal or interchangeable.” Pesquera, 266 F.3d at 1382 (quoting The American Heritage Dictionary 639 (2d ed. 1991)). Second, as a matter of logic, it is difficult to imagine how the physical differences separating the two groups of products at issue in this case could be considered to be minor and commercially insignificant unless the two groups of products are viewed by customers as generally equal or interchangeable in the marketplace. The court is unable to find on the record substantial evidence to support a finding that the two product groups are viewed in this way, and what evidence exists is inconsistent with such a finding. Cf. Pesquera, 266 F.3d at 1378.

Id. at 19.

Therefore, the emphasis as noted by the Court is on whether the evidence on the record supports a finding that physical differences between the products are minor and commercially insignificant. In this case, evidence supports the Department's findings that physical differences are commercially significant. Laminated CORE products, for instance, are identified separately in Union and UNICO's product brochures, which support a finding that laminated CORE products are not viewed by customers as generally equal or interchangeable in the marketplace. See Union's Questionnaire Response (dated January 22, 2008) at Exhibit A-28 and Union's Supplemental Questionnaire Response (dated July 16, 2008) at Exhibit B-21. Moreover, while the Department may consider industry standards as a factor in its classification of physical characteristics, the statute is silent as to whether it is necessary for the Department to review industry standards in determining if a product type is identical. See Pesquera at 1384 (observing that "Commerce has considerable discretion in defining 'identical in physical characteristics'"); SKF Inc. v. United States, 537 F. 3d 1373, 1379 (Fed. Cir. 2008) (quoting Koyo Seiko Co., Ltd. v. United States, 66 F.3d 1204, 1209 (Fed. Cir. 1995)) (noting that the statute is "silent with respect to the methodology Commerce must use to match a U.S. product with a suitable home market product"). Furthermore, in complying with the Remand Order, which emphasizes the physical differences between the products and whether those differences are minor and commercially insignificant, the Department provides the type of reasoned analysis envisioned by Pressman for why, unlike in other cases, it is not necessary to examine industry standards based upon the record in this administrative review.

In regards to Nucor's comment that the Department's remand determination has the potential to encourage future manipulation of the model-match results by respondents, the Court also addresses this concern in Union Steel II. The Court explained that the Department must

“comply with the definition of “foreign like product” in § 1677(16)(A),” regardless of any practice to resist modifications to its classification of the physical characteristics of the subject merchandise and the subsequent model match results. Union Steel II, 35 CIT at \_\_\_, Slip Op. 11-3 at 26. In this particular case, record evidence supports the Department’s decision to treat laminated CORE products as a separate type in its margin analysis.

2. Whether the Department’s Decision is Arbitrary or Supported by the Record

U.S. Steel asserts that the Department failed to engage in a meaningful exercise of its discretion by making conclusory statements that are completely inconsistent with the Department’s analysis in the 13<sup>th</sup> administrative review regarding the same or similar facts. Moreover, U.S. Steel contends that the Department did not provide any analysis of why evidence previously considered insufficient is now sufficient to form the basis for a revised model match decision. For instance, U.S. Steel argues that the Department originally stated that Union’s claim of a significant physical difference were not significant or “anything more than minor” U.S. Steel claims that the Department had determined that : (i) “laminated CORE products by their very nature are not painted products,” (ii) {l}aminated products . . . are coated by attaching a plastic film to a CORE substrate,” and painted ones are not, and (iii) “lamination is done in lieu of painting.” See the Department’s Results of Redetermination Pursuant to Court Remand, Union Steel v. United States, Court No. 08-00101 (December 28, 2009) (“CORE 13 First Remand Results”) at 5-6 (Public Version). In addition, U.S. Steel claims that the new information in the draft remand regarding different production lines is not a proper basis for distinguishing between products for model match purposes. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Sheet and Strip in Coils from France, 64 FR 30820, 30828 (June 8, 1999), and accompanying Issues and Decision Memorandum at

Comment 4; Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany, 64 FR 43146, 43147 (August 9, 1999), and accompanying Issues and Decision Memorandum at Comment 1. Furthermore, U.S. Steel notes that the Department previously recognized that data related to the cost of production did not show that laminates were more costly to produce than painted products. However, in the Draft Results, U.S. Steel argues that the Department accepted Union's self-serving statement that the cost of the laminates is higher than that of "the various paints." See Draft Results at 7. In summary, U.S. Steel argues that the Department recited facts that it previously rejected and decided to rely on them without any analysis.

Nucor argues that the Department acted arbitrarily through its failure to explain why record evidence that the Department previously found unconvincing or inconclusive now provides a sufficient basis to make a model match change. Nucor contends that the Department should reopen the record for further submissions before finalizing its remand results. Nucor claims that Union's cost and price data support a determination to group laminated CORE products with all other coated products. Adopting and incorporating its previously raised arguments, Nucor contends that Department now considers differences in physical characteristics, production processes, and marketing commercially significant, whereas, the same factors were once considered minor. See Decision Memo at Comment 1. In the same manner, Nucor argues that the Department no longer considers differences in cost and price data minor.

Union argues that the Department's remand determination needed to be consistent with the Court's recent decision in Union Steel II. See Remand Order at 17. Union notes that the Court gave the Department the option of reopening the record to reinvestigate the issue, or, if the Department elected not to reopen the record, then the Court directed the Department to "alter the model match methodology that was applied in the Final Results so that laminated and non-

laminated CORE products are not compared according to 19 U.S.C. § 1677(16)(A) and recalculate any affected dumping margins . . . .” Remand Order at 21. Moreover, Union argues that the Department properly elected not to reopen the administrative record. Union maintains that the record fully supports the conclusion that the physical differences between laminated and other painted CORE products are commercially significant. Union states that laminated CORE products are coated with a plastic film, whereas other painted CORE is coated with paint. Further, Union maintains that the obvious physical difference is commercially significant, as reflected by the higher cost of production and sales prices for laminated CORE products. Finally, Union contends that laminated CORE products are also marketed differently than other painted CORE products as shown in Union’s brochures. Therefore, Union fully supports the approach taken by the Department in the Draft Results.

Department’s Position:

We disagree with U.S. Steel’s and Nucor’s argument that the Department acted in an arbitrary manner in the Draft Results. Instead, on remand the Department has reexamined the issue within the framework of the Court’s Remand Order. With respect to the 13th administrative review, the Department explained its rationale and reasoning in the CORE 13 First Remand Results as to its finding of no commercially significant differences between laminated CORE products and painted CORE products, and the Court ruled that determination to be “contrary to law.” See Union Steel II, 35 CIT at \_\_\_, Slip Op. 11-3 at 28. For the reasons discussed herein, the Department is complying with the specific instructions of the Court’s Remand Order, which invoke Union Steel II, by revising its physical characteristics classifications to create a separate category for laminated CORE products. See Remand Order at 17, 21.

Furthermore, the record supports the Department's decision on remand to treat laminated CORE products as a separate type in its margin analysis. In its Remand Order, the Court gave the Department the option to reopen "the record to investigate whether only minor and commercially insignificant physical differences distinguish Union's laminated products from the non-laminated products to which the Department compared Union's laminated products." Remand Order at 21. However, as explained above, the Department determines that sufficient evidence exists on the record, which supports the finding that there are commercially significant differences between laminated CORE products and other CORE products.

Contrary to U.S. Steel's and Nucor's assertions, Union's questionnaire responses, price and cost data, and product brochures all indicate that the physical differences between laminated CORE products and non-laminated, painted CORE products are neither minor nor commercially insignificant. Specifically, record evidence supports the Department's finding that laminated CORE products by their very nature are not painted products. See Union's Questionnaire Response (dated February 4, 2008) at 5 and 6; Union's Supplemental Questionnaire Response (dated July 16, 2008) at 29 and Exhibit B-21. The Department has also concluded that the considerable differences in cost and price between laminated CORE products and non-laminated, painted CORE products are indicative of commercially significant differences in physical characteristics between the two products. See Union's Supplemental Questionnaire Response (dated July 16, 2008) at 30; Union's Questionnaire Response (dated February 4, 2008) at 6. Union's product brochures provide additional evidence to support the Department's decision to treat laminated CORE products separately. See Union's Questionnaire Response (dated

January 22, 2008) at Exhibit A-28; Union's Supplemental Questionnaire Response (dated July 16, 2008) at Exhibit B-21. Based upon the foregoing factual information, the Department considers that substantial evidence exists on the record for the Department to support a decision on remand to revise its physical characteristics classification to create a separate category for laminated CORE.

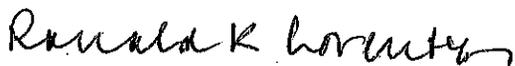
In regard to the importance of production process, the Court has previously noted that Union and UNICO have invested in production equipment and other resources necessary to produce and market laminated CORE products while concurrently producing and marketing non-laminated, painted CORE products. See Union Steel II, 35 CIT at \_\_, Slip Op. 11-3 at 21. Specifically, the brochures and questionnaire responses provide probative evidence that laminated CORE products and non-laminated, painted CORE products result from different coating processes and are comprised of different material. See Union's Questionnaire Response (dated February 4, 2008) at 5 and 6. Record information about the production process further supports a finding that the physical differences between laminated and non-laminated, painted CORE products are commercially significant and not minor.

With regard to the review of the cost data, the Department, consistent with the Court's remand instructions, has reconsidered its analysis. The Court has previously ruled on the Department's prior efforts to analyze Union's cost data and observed that "evidence based on broad ranges has little or no probativity on the issue of whether the two groups of products are distinguished only by minor and commercially insignificant physical differences." Union Steel II, 35 CIT at \_\_, Slip Op. 11-3 at 12. Therefore, we have reviewed the record and identified evidence that is more probative to the relevant inquiry of whether the cost of laminating is equivalent to the cost of painting. See Union's Questionnaire Response (dated February 4, 2008)

at 6; Union's Supplemental Questionnaire Response (dated July 16, 2008) at 29. As explained above, a review of this cost information provides additional support to the Department's finding on remand that there are commercially significant differences between laminated CORE products and painted CORE products.

## CONCLUSION

Based on the forgoing analysis and discussion, the Department has decided, pursuant to the remand order of the Court, to alter its classification of physical characteristics that was applied in the Final Results so that laminated CORE products and non-laminated, painted CORE products are not considered to be identical in physical characteristics under 19 U.S. C. § 1677(16)(A) in the 14<sup>th</sup> administrative review of the antidumping duty order on CORE from Korea. Consistent with the Court's remand instructions, the Department has also made adjustments to the cost of production based on the final results of redetermination pursuant to the remand order in U.S. Steel. See Remand Order at 17, n.6. Accordingly, the Department has recalculated Union's margin from 7.56 percent in the Final Results to 7.45 percent.



Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

July 15, 2011  
Date