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Dongkuk S&C Co., LTD., v. United States
Court No. 20-03686, Slip. Op. 21-167 (CIT December 13, 2021)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

I. SUMMARY

The Department of Commerce (Commerce) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (CIT or the Court) in *Dongkuk S&C Co., LTD., v. United States*, Consol. Court No. 20-03686, Slip. Op. 21-167 (December 13, 2021) (*Remand Order*). This action arises out of the final determination in the less-than-fair-value (LTFV) investigation of utility scale wind towers (wind towers) from the Republic of Korea (Korea).[1] The mandatory respondent in the underlying LTFV investigation is Dongkuk S&C Co. Ltd. (DKSC).

The sole issue remanded here by the Court for further explanation, and reconsideration if appropriate, is whether Commerce's adjustment to DKSC's steel plate costs, where Commerce weight averaged the steel plate costs for all control numbers (CONNUMs) to address distortions where cost differences occurred that were not attributable to the physical characteristics of the products, is reasonable. In light of the Court's remand order, on remand, Commerce provides further explanation that its analysis of the dimensions (*i.e.*, thickness, width, and height/length) of the steel plate input is an appropriate and reasonable basis to use in the analysis to determine if

[1] *See Utility Scale Wind Towers from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 85 FR 40243 (July 6, 2020) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM).

an adjustment is warranted because the steel plate input directly impacts the weight and height physical characteristics of the differing finished wind towers produced. Accordingly, Commerce's analysis in the *Final Determination* shows that, after neutralizing the impact of timing associated with steel plate purchases, steel plate input cost differences are virtually non-existent, regardless of the grade or dimension of the steel plate used to produce the wind towers. As such, the analysis performed in the final determination reasonably supports Commerce's conclusion that the significant cost differences reported for the steel plate inputs for wind towers of differing dimensions are not associated with the differences in the identified physical characteristics (*i.e.*, height and weight) of the wind towers produced. Therefore, upon reconsideration of the record evidence herein, Commerce provides further explanation that DKSC's reported steel plate costs did not reasonably reflect the cost to produce subject merchandise; as a result, Commerce's adjustment to DKSC's steel plate cost in the *Final Determination* was warranted. Commerce notes that the Court held in abeyance the issue regarding Commerce's selection of surrogate data for the calculation of constructed value profit and selling expenses, pending reconsideration of the cost adjustment issue. As a result of our analysis, we made no changes to DKSC's weighted-average dumping margin, which remains 5.41 percent.

II. BACKGROUND

In the LTFV investigation, as discussed in the *Final Determination*, Commerce determined that the reported differences in steel plate costs between CONNUMs did not appear to be related to differences in the physical characteristics of the products. Therefore, to mitigate the significant cost differences unrelated to the products' physical characteristics, we weight

averaged the reported steel plate costs for all reported CONNUMs (also referred to as "smoothing") in our calculations for the *Final Determination*.

In its December 13, 2021 opinion, the Court remanded this issue for further explanation or reconsideration because Commerce did not provide a sufficient explanation for the Court to determine if Commerce's adjustment to the reported steel plate cost was reasonable.[2]

III. ANALYSIS

Commerce Reasonably Weight Averaged DKSC's Reported Steel Plate Costs Across CONNUMs

As summarized above, the Court remanded Commerce's *Final Determination* to provide further explanation of how Commerce's analysis of the cost of the steel plate input, which is not a physical characteristic, could lead to a reasonable conclusion that DKSC's reported costs do not reflect the cost to produce and sell subject merchandise. Specifically, at issue here is whether Commerce's adjustment to DKSC's steel plate costs (*i.e.*, smoothing), which weight averaged the steel plate costs to address distortions where cost differences occurred that were not attributable to the physical characteristics of the products produced, is reasonable. In this regard, DKSC argued that: (1) Commerce failed to demonstrate that its analysis reflects the steel plate costs by grouping CONNUMs by the related height and weight physical characteristics; (2) Commerce did not appear to have compared DKSC's CONNUM costs using the physical characteristics as its guidepost; and (3) Commerce did not identify steel plate as one of the CONNUM physical characteristics and any analysis by Commerce of steel plate material input prices was not relevant to determine whether costs reasonably reflected differences in the physical characteristics of the completed wind tower.[3]

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[2] *See Remand Order* at 9-10.
[3] *See* Dongkuk's Letter, "Case Brief," dated April 29, 2020 (DKSC Brief) at 5-19; *see also Final Determination* IDM at 19-22.

As an initial matter, Commerce relies on a company's normal books and records to calculate the cost of production (and constructed value) if they satisfy two conditions: (1) the books and records are kept in accordance with the company's home country's generally accepted accounting principles; and (2) the books and records reasonably reflect the cost to produce and sell the merchandise in question.[4] Accordingly, as is the case herein, when the costs reported in a company's books are not reasonable — for example, if cost differences among products do not represent differences in their physical characteristics — it is, thus, reasonable for Commerce to adjust costs to address distortions when it encounters cost differences that are attributable to factors beyond differences in the products' physical characteristics.[5]

DKSC's arguments here seem to imply that the steel plate input does not directly relate to the weight and height physical characteristics of the completed wind tower. We disagree with DKSC. The weight and height physical characteristics of the completed tower are directly impacted by the dimensions (*i.e.*, thickness, width, and length) of the steel plate input. In fact, DKSC acknowledged on the record that "a *direct* correlation exists between the dimensions of a tower and the steel plates used to produce that tower."[6]

In the Final Cost Calculation Memorandum,[7] Commerce explained the relevance of the steel plate purchase analysis as it relates to its determination: that the steel plate cost differences were unrelated to the physical characteristics of the steel plate and the merchandise made from it (*i.e.*, wind towers). Specifically, Commerce identified all purchases of steel plate of varying

[4] *See* section 773(f)(1)(A) of the Act.
[5] *See, e.g.*, *Thai Plastic Bags Indus. Co. v. United States*, 746 F.3d 1358, 1366-67 (Fed. Cir. 2014); and *NEXTEEL Co. v. United States*, 355 F. Supp. 3d 1336, 1361-62 (CIT 2019) (*NEXTEEL*).
[6] *See* DKSC's Letter, "Response to the Department's February 5 Supplemental Section D Questionnaire," dated February 12, 2020 (2nd Supp DQR) at 3 (emphasis added).
[7] *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Dongkuk S&C Co., Ltd.," dated June 29, 2020 (Final Cost Calculation Memorandum) at 1-2 and Attachment 1.

dimensions (*i.e.*, thickness, width, and length of the input steel plate) that occurred within an isolated period of time (*i.e.*, September 2018), that was used to produce two different CONNUMs reported in DKSC's cost database.[8] These CONNUMs reflected different physical characteristic ranges for both the height and weight physical characteristics.[9] Commerce's analysis was performed within the same month to reflect a 'like for like' comparison that mitigated any distortions related to the timing of the steel plate purchases or any other factors that could distort such comparisons. In this steel plate analysis, Commerce compared the same month purchases of the many different dimensions and grades of steel plate that were used to produce the two different CONNUMs (*i.e.*, wind towers that differed in Commerce's defined weight and height physical characteristics) and found virtually no cost differences on a per-unit weight basis for the different grades and dimensions of steel plate used.[10]

Commerce specifically analyzed the steel plate input costs for the different CONNUMs because it is the primary input that affects the weight and height physical characteristics of the wind tower. We neutralized the effect of the timing of steel plate purchases to better analyze the cost differences associated with steel plate purchases of differing dimensions and grades. In other words, in the 'like for like' comparison, if the cost of the steel plate varied significantly, it would have been due to grade and dimensional differences in the steel plate used to produce the different types of wind towers, which would have explained the significant steel plate cost differences between CONNUMs of differing weights and heights. However, what we found is that, after neutralizing the effect of timing, there was virtually no difference in the cost associated with the different dimensions and grades of steel plate purchases used to produce the

[8] *Id.*
[9] *Id.*
[10] *Id.*

CONNUMs analyzed. Specifically, the analysis showed that the purchase price for input steel plate in the selected month was very consistent, despite the fact that the steel plate was incorporated into finished wind towers with different physical characteristics (*i.e.*, weight and height),[11] while DKSC's reported per-unit costs for the two selected CONNUMs reflected significant cost differences for the steel plate input.[12] Accordingly, DKSC's reported cost differences on a per-unit weight basis did not reflect production differences associated with the physical characteristics (*i.e.*, the weight and height) of the wind tower. Based on this analysis, Commerce determined that the record evidence demonstrated that the timing of the purchases was the significant factor driving the resulting steel plate cost differences between products, rather than the finished wind tower's weight and/or height.[13] As such, Commerce concluded that the material cost differences DKSC reported in its cost database were not attributable to the physical characteristics defining the CONNUMs.

In this vein, Commerce explicitly used the physical characteristics (*i.e.*, weight and height) as a "guidepost" to compare DKSC's reported CONNUM-specific steel plate costs with steel plate costs for other CONNUMs.[14] Consequently, when Commerce computed the CONNUM-specific reported steel plate costs on a per-unit weight basis, for which there should have been little difference among products of different physical characteristics, it nonetheless found differences from the average reported steel plate costs ranging from [ ] percent to [ ] percent.[15] The record demonstrated that the significant steel plate cost differences among the

[11] *Id*. at Attachment 1.
[12] *Id.*
[13] *See Final Determination* IDM at 21-22.
[14] *Id.*
[15] *See Utility Scale Wind Towers from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances*, 84 FR 8560 (February 14, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM) at 18; *see also* Memorandum "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary

CONNUMs resulted primarily from factors unrelated to differences in the physical characteristics of the products associated with various CONNUMs.[16] Thus, Commerce weight averaged or smoothed DKSC's reported steel plate costs for all CONNUMs to mitigate the unreasonable differences in material costs that were unrelated to the wind tower's physical characteristics.[17] Contrary to DKSC's claims, Commerce's determination to weight average DKSC's reported steel plate costs is supported by substantial record evidence and is lawful, as explained further below.

Moreover, DKSC has repeatedly acknowledged that the cost of steel plate fluctuated due to the timing of the steel plate purchases before and during the period of investigation (POI). In the 2nd Supp DQR, Commerce explicitly asked DKSC to explain the reported differences in the steel plate costs.

> Commerce's Question: It appears that all CONNUMs sold in the third country have [ ] steel plate cost than CONNUMs sold in the US. Please explain what caused such cost differences.
>
> DKSC Response: For DKSC's sales of wind towers to Japan, the raw material orders were placed in July 2017—*i.e.*, one year prior to the start of the POI—for these specific projects sold during the POI. Raw material prices are not fixed, and they fluctuate frequently due to external factors such as changes in iron ore prices. At the time the orders were placed, raw material prices were generally low. For DKSC's sales of wind towers to the United States during the POI, raw material orders were placed in September 2018 (during the POI) when raw materials prices were high. **Due to the fluctuating raw material prices during the POI**, DKSC's reported CONNUMs sold in the third country show differing plate costs from CONNUMs sold in the U.S. market.[18]

At verification, DKSC further stated that the prices of steel plate, used as an input for wind towers sold during the POI, fluctuated depending on the time of purchase.[19]

Determination – Dongkuk S&C Co., Ltd.," dated February 4, 2020 (Preliminary Cost Calculation Memorandum) at 2 and Attachment 3, Column f.

[16] *See Preliminary Determination* PDM at 18; *see also Final Determination* IDM at 21-22.

[17] *See Final Determination* IDM at 22.

[18] *See* 2nd Supp DQR at 2 (emphasis added).

[19] *See* Memorandum, "Verification of Cost Response of Dongkuk S&C CO., Ltd. in the Antidumping Duty Investigation of Utility Wind Towers from Republic of Korea," dated April 17, 2020 at 18-19.

Contrary to DKSC's argument, Commerce applies its practice of adjusting unreasonable cost reporting both to finished products (*i.e.*, CONNUMs) and to individual inputs for such products.[20] When there is an absence of meaningful physical differences in the input, Commerce will smooth costs for that input.[21] In *Pasta from Italy*, Commerce found that respondents reported significantly different costs for the semolina input, resulting in variations in direct material costs between CONNUMs.[22] Although Commerce explained that the CONNUMs had similarities in the end products, the crux of the issue was that there were disparities in the reported semolina costs for the different products, despite the fact that they used essentially the same semolina.[23] As Commerce described, "{a}ssigning the significantly different semolina costs only to specific products produced by each company results in cost variation by CONNUM that are not related to the physical differences of the products, leading to costs ... that do not reasonably reflect the cost of the subject merchandise."[24] As Commerce described, "the differences in semolina costs between nearly identical CONNUMs were due to reasons not related to the product's physical characteristics."[25] Accordingly, Commerce adjusted (by weight averaging) the respondent's submitted input costs to "smooth" the cost differences unrelated to the physical characteristics of pasta and avoid distortions in the final calculations.[26]

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[20] *See, e.g., Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 82 FR 49179 (October 24, 2017) (*Pipe and Tube from Turkey*), and accompanying IDM at Comment 2 (reallocating costs for zinc input); *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 63627 (December 11, 2018) (*Pasta from Italy*), and accompanying IDM at 3-11 (smoothing costs for semolina, an input for pasta); and *Utility Scale Wind Towers from Canada: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 85 FR 40239 (July 6, 2020) (*Wind Towers from Canada*), and accompanying IDM at Comment 1 (smoothing costs for steel plate).
[21] *See Pasta from Italy* IDM at 3-11.
[22] *Id.* at 8-9.
[23] *Id.*
[24] *Id.* at 9.
[25] *Id.*
[26] *Id.* at 9-11.

Further, in *Wind Towers from Canada*,[27] the record evidence supported Commerce's finding that there should be minimal, if any, cost differences for the steel plate input. Specifically, Commerce found that, on a per-unit weight basis, there should be little difference in steel plate costs for the different dimensions and grades used to produce the wind towers under investigation.[28] Accordingly, Commerce reasonably concluded that the reported differences in costs were based on factors other than differences in the physical characteristics of the products — *i.e.*, timing of production.[29]

Similarly, Commerce determined here that the steel plate input caused cost differences amongst CONNUMs which were unrelated to differences in the product's physical characteristics.[30] Accordingly, Commerce concluded that the reported differences in costs were based on the timing of the raw material purchases, and not the "costs associated with the production and sale of the merchandise."[31] In keeping with its practice of making an adjustment when cost differences in products are attributable to factors other than differences in physical characteristics, Commerce applied cost smoothing to the steel plate input.[32]

Thus, DKSC's argument that Commerce's analysis of steel plate prices was "not relevant" to whether DKSC's normal books and records reasonably reflected differences in the physical characteristics of wind towers lacks merit. Moreover, Commerce's decision to analyze and weight average the reported steel plate costs to address the distortion in DSKC's reported steel plate input prices was a reasonable analysis and conclusion.[33]

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[27] *See Wind Towers from Canada* IDM at Comment 1 (smoothing costs for steel plate).
[28] *Id.*
[29] *Id.*
[30] *See Final Determination* IDM at 21-22; *see also* Final Cost Calculation Memorandum at 1-2 and Attachment 1.
[31] *Id.*
[32] *See NEXTEEL*, 355 F. Supp. 3d at 1336, 1361 (explaining that steel input costs in that case also varied by time).
[33] *See Wind Towers from Canada* IDM at Comment 1 (smoothing costs for steel plate).

In sum, DKSC's arguments amount to "mere disagreement" with Commerce's weighing of the record evidence.[34] Notwithstanding Commerce's reliance on record evidence in its analysis, DKSC claims that Commerce simply assumed that timing explained the differences in DKSC's plate costs without applying its own identification of the most significant physical characteristics differentiating costs between products.[35] Contrary to these claims, Commerce considered the effect of physical characteristics in explaining the significant cost differences across CONNUMs, and rooted its analysis in record evidence indicating that the physical characteristics did not explain the cost differences.[36] Further, DKSC provides no compelling record evidence demonstrating that differences in physical characteristics account for the differing production costs between products. Record evidence thus supports Commerce's determination that the significant cost differences it observed are not explained by the products' physical characteristics, but by the timing of steel plate purchases.

IV. INTERESTED PARTY COMMENTS

On February 25, 2022, Commerce released the Draft Remand Results to all interested parties and invited parties to comment.[37] On March 7, 2022, we received timely-filed comments from the Wind Tower Trade Coalition (the petitioner) and DKSC.[38] These comments are summarized below.

[34] *See Haixing Jingmei Chem. Prods. Sales Co. v. United States*, 335 F. Supp. 3d 1330, 1346 (finding "mere disagreement with Commerce's weighing of the evidence" insufficient).
[35] *See* DKSC Brief at 15-16.
[36] *See Final Determination* IDM at 21-22; and Final Cost Calculation Memorandum at 1-2 and Attachment 1.
[37] *See* "Draft Results of Redetermination Pursuant To Court Remand, *Dongkuk S&C Co., LTD. v. United States* Consol. Court No. 20-03686, (CIT December 13, 2021)," issued February 25, 2022 (Draft Remand Results).
[38] *See* Petitioner's Letter, "Comments on Draft Results of Redetermination," dated March 7, 2022 (Petitioner Draft Remand Comments); and DKSC's Letter, "Comments on Draft Remand Redetermination (Slip Op. 21-167)," dated March 7, 2022 (DKSC Draft Remand Comments).

DKSC's Comments[39]

- Commerce has not explained why CONNUM cost differences were not attributable to the physical characteristics of the finished wind towers. Commerce's Draft Remand Results, instead, focus on the dimensions (*i.e.*, thickness, width, and height/length) of the steel plate inputs and how an analysis of the cost of these inputs (which is not a physical characteristic) demonstrates that DKSC's reported costs do not reflect the costs of producing subject merchandise.
- The Draft Remand Results do not include any analysis or discussion of the fact that it could have been the physical characteristics of the finished wind towers that resulted in the reported cost differences among differing wind towers.
- Commerce first claims that "the steel plate input directly impacts the weight and height physical characteristics of the differing finished wind towers produced," but, immediately thereafter, Commerce contradicts itself claiming that "the steel plate inputs for wind towers of differing dimensions are not associated with the differences in the identified physical characteristics (*i.e.*, height and weight) of the wind towers produced."
- Commerce misunderstands DKSC's position that "a direct correlation exists between the dimensions of a tower and the steel plate used to produce that tower," which is that there is a relationship between the physical characteristics of a finished wind tower and the plate consumption needed to produce that tower.
- Commerce does not acknowledge that, while the purchase price of the steel plate is relevant to DKSC's reported costs, it is the consumption of the plate in the production of

[39] *See* DKSC Draft Remand Comments at 1-12 and Attachment 1.

wind towers with different height, weights, and tower sections that ultimately determines the different steel costs reported.

- Commerce's analysis addresses only the initial plate purchase costs, but does not consider that DKSC's reported costs are a function of both price and the physical characteristics of the finished merchandise.
- Commerce continues to focus on the timing of plate purchases as a cost driver, without considering whether the physical characteristics of the finished merchandise also impact costs.
- In the *Final Determination*, Commerce did not compare costs for substantially different steel plate types. Rather, it compared steel plate types that were generally equivalent. Therefore, it is natural that the Draft Remand Results confirm that there were "virtually no costs differences" on a per-unit weight basis for the same month purchases of the steel plate used to produce these products.
- Commerce acknowledges that CONNUMs reflect different physical characteristic ranges for both height and weight, but instead of considering whether it was the [

] of these two CONNUMs that resulted in their having different reported costs, Commerce focused on the fact that the purchase prices for the steel plate used to produce these two CONNUMs in the same month were substantially the same.
- Similar plate purchased in the same month having similar costs, regardless of the thickness, width, and length of the plate, does not establish that the differences in DKSC's reported costs were unrelated to the physical characteristics of the finished wind towers.

- Commerce references the Preliminary Cost Calculation Memorandum[40] to show that there were differences from the average reported steel plate cost, ranging from [ ] percent to [ ] percent, for products where there should have been little difference among products of different physical characteristics. This assertion is incorrect. Commerce used these percentages as a factor to adjust DKSC's reported steel costs, but the actual difference is lower than that which was provided.
- Commerce's statement that there should be little difference in costs among certain CONNUMs is speculation entirely unsupported by any analysis or empirical evidence.
- Commerce's reference for the lowest steel plate cost, compared to the average, is CONNUM [ ] with the [ ]. The other CONNUM [ ], which Commerce references as having the highest steel plate cost compared to the average, is the CONNUM with the [ ].
- Commerce does not provide any analysis demonstrating that DKSC's reported steel plate costs do not reasonably reflect the costs to produce subject merchandise. Contrary to Commerce's unsupported assertion, only a minor variance exists from the average steel plate cost in DKSC's reported steel plate costs when steel plate costs are averaged by CONNUM weight, height, and number of sections.[41]
- The statue does not permit Commerce to smooth costs without reasonable justification. In *Hot-Rolled Steel from Korea*,[42] Commerce analyzed the direct material costs based on

[40] *See* DKSC Draft Remand Comments at 7 (citing Draft Remand Results at 6; and Preliminary Cost Calculation Memorandum at 2 and Attachment 3, Column f).
[41] *Id*. at Attachment 1.
[42] *Id.* at 10 (citing *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2019-2020*, 87 FR 12660 (March 7, 2022) (*Hot-Rolled Steel from Korea*), and accompanying IDM at Comment 2).

the relevant CONNUM characteristics and examined the production quantity of any outliers in determining whether the respondents' reported direct material costs were reasonable. In contrast, Commerce did not provide any similar analysis or justification that smoothing steel plate costs is reasonable in the Draft Remand Results.

- Commerce's practice does not support cost smoothing here. In *Pasta from Italy*, Commerce found that the respondent had reported significantly different semolina costs for CONNUMs that were identical for all physical characteristics except for vitamin enrichment, and the differences in semolina costs between nearly identical CONNUMs were due to reasons not related to the CONNUM physical characteristics. Because semolina type was part of the CONNUM (*i.e.*, it was one of the physical characteristics that comprised the CONNUM), *Pasta from Italy* establishes that the relevant physical characteristics that Commerce must examine, to determine whether cost differences among CONNUMs are related to the physical characteristics, are the CONNUM physical characteristics and the physical characteristics of material inputs used to produce the CONNUMs.
- *Wind Towers from Canada* also does not establish Commerce's practice or have any precedential authority in this case. Commerce needs to explain in its final remand redetermination why a decision taken in a different proceeding with a different set of facts that are not on this administrative record is in any way relevant to Commerce's decision to smooth costs here.

Petitioner's Comments[43]

- Commerce's Draft Remand Results are fully explained, supported by substantial record evidence, and in accordance with law. In particular, Commerce further explained: (1) why it was appropriate to smooth DKSC's steel plate costs; (2) that the dimensions of the steel plate directly impact the weight and height of the complete tower; (3) how Commerce used the weight and height CONNUM characteristics as the guideposts for its analysis; (4) the significance of controlling for timing in its final calculation memorandum; and (5) Commerce's practice of adjusting costs related to CONNUM characteristics and individual inputs of such products. By doing so, Commerce has fully complied with the Court's remand order.
- When a respondent's books and records do not reasonably reflect the costs to produce and sell the subject merchandise, Commerce has the authority to adjust costs to address distortions in the respondent's data. Normally, when cost differences among products are not due to differences in their physical characteristics, Commerce will make adjustments, such as weight averaging such costs.
- Commerce explained that the steel plate input directly relates to the weight and height physical characteristics of the completed tower.
- As confirmed by DKSC in its 2nd Supp DQR, "a correlation exists between the dimensions of a tower and the steel plate used to produce that tower. The dimensions of the steel plate (*i.e.*, thickness, width, and length), directly impact the weight and height of the tower given that steel plate accounts for the vast majority of the completed wind

[43] *See* Petitioner Draft Remand Comments at 1-9.

tower's weight and the number of discrete plates which are bent and welded together to form cylindrical cones that have a direct impact on the height of the tower."

- As explained in the Draft Remand Results, because the steel plate consumed directly impacts the weight and height of the complete tower, Commerce's analysis of the steel plate incorporates the weight and height CONNUM characteristics as a guidepost.
- Commerce also explained that it analyzed the weight and height characteristics of different CONNUMs, as well as similar CONNUMs, to guide its analysis.
- Commerce in the Final Cost Calculation Memorandum analyzed CONNUMs with different height and weight physical characteristics but controlled for the timing of purchases because the steel for both projects was purchased in the same month (*i.e.*, September 2018).
- Although the weight and height characteristics of the CONNUMs Commerce analyzed in the Final Cost Calculation Memorandum were different, this would suggest that the cost for the steel plate should likewise be different if the steel plate costs were, in fact, related to the physical characteristics of the CONNUM. But Commerce's final calculation memorandum analysis showed that the per-unit steel plate costs remained the same for different dimensions and grades of steel plate used to produce two completely different CONNUMs.
- Commerce reasoned that DKSC's per-unit steel plate costs were similar for two towers that differ significantly based on the weight and height CONNUM characteristics due to the timing of the steel plate purchases.
- Commerce also compared towers with similar weight and height CONNUM characteristics as guideposts for its analysis. As explained in the Draft Remand Results,

when it computed the CONNUM-specific reported steel plate costs on a per-unit weight basis, for which there should have been little difference among products of different physical characteristics, it nonetheless found differences from the average reported steel plate costs ranging from [ ] percent to [ ] percent.

- Because the record demonstrates that the significant steel plate costs differences among the CONNUMs resulted primarily from factors unrelated to differences in the physical characteristics of the CONNUMs, Commerce smoothed DKSC's reported steel plate costs for all CONNUMs to mitigate the unreasonable differences in the material costs that were unrelated to the wind tower's physical characteristics.
- Commerce has addressed the Court's concerns by fully explaining how it "explicitly used the physical characteristics (*i.e.*, weight and height) as a 'guidepost' to compare DKSC's reported CONNUM specific steel plate costs with steel plate costs for other CONNUMs."
- In the Draft Remand Results, Commerce fully explained its practice of adjusting unreasonable cost reporting to both the CONNUMs of finished products and to individual inputs for such products.
- In its opinion, the Court found that Commerce made no reference to its practice of adjusting costs based solely on an analysis of individual inputs, nor did Commerce rely on *Pasta from Italy* in reaching its determination on the issue. However, in its Draft Remand Results, Commerce explained that it has a "practice of adjusting unreasonable cost reporting for both finished products (*i.e.*, CONNUMs) and to individual inputs for such products," citing *Pipe and Tube from Turkey*, *Pasta from Italy*, and *Wind Towers from Canada* (a case concurrent with this investigation).

- Commerce's decision to smooth costs in *Wind Towers from Canada* has now been upheld by the Court. As the facts in both the Canada and South Korea investigations are essentially the same, the Court should reach the same conclusion as in *Wind Towers from Canada*.
- Commerce is correct in its reference to *Certain Pasta from Italy*, that DKSC's arguments amount to mere disagreement with Commerce's weighing of the record evidence. DKSC has provided no evidence to support its claims, including any potential calculations that would demonstrate that timing was not a significant factor in the cost of steel plate.

Commerce's Position: We agree with the petitioner that, in the Draft Remand Results, Commerce fully explained: (1) why it was appropriate to smooth DKSC's steel plate costs; (2) that the dimensions of the material input steel plate directly impacts the weight and height physical characteristics of the complete tower; (3) how Commerce used the weight and height CONNUM characteristics as the "guideposts" for its analysis; (4) the significance of controlling for timing in its final calculation memorandum; and (5) Commerce's practice of adjusting costs related to the CONNUM characteristics of finished products and individual inputs of such products.

As an initial matter, DKSC contends that Commerce contradicted itself by claiming that "the steel plate input directly impacts the weight and height physical characteristics of the differing finished wind towers produced," but then immediately thereafter "claimed that the steel plate inputs for wind towers of differing dimensions are not associated with the differences in the identified physical characteristics (*i.e.*, height and weight) of the wind towers produced."[44] However, DKSC misrepresents Commerce's statements by taking them out of context and

[44] *See* DKSC Draft Remand Comments at 3.

omitting part of the sentence. In our analysis of the steel plate input that affects the height and weight of the wind tower, DKSC fails to mention that Commerce concluded the significant cost differences reported for "the steel plate inputs for wind towers of differing dimensions are not associated with the differences in the identified physical characteristics (*i.e.*, height and weight) of the wind towers produced."[45] While we agree that the dimensions of the steel plate used are not specific physical characteristics that define the CONNUM, the weight and height physical characteristics of the completed tower are directly impacted by the dimensions (*i.e.*, thickness, width, and length) of the steel plate input, as DKSC has acknowledged on the record.[46] Clearly, as demonstrated in Commerce's analysis above, the fact remains that the height and weight of the wind towers produced dictates the dimensions of the input steel plate used. DKSC attempts to complicate or discredit Commerce's conclusions that are rooted in record evidence by arguing that Commerce misunderstood DKSC's stated position that " a direct correlation exists between the dimensions of a tower and the steel plate used to produce that tower."[47] However, it is clear that there is a relationship between the physical characteristics of a finished wind tower and the plate consumed to produce that finished wind tower.[48] Moreover, the differences in the steel plate costs for varying dimensions and grades of the consumed plate are the only raw material cost difference between CONNUMs. As a result, the cost of the steel plate consumed is the *only* factor that ultimately determines the raw material cost of the wind tower. Thus, the question before the Court is whether: (1) the different dimensions and grades of plate consumed to produce finished wind towers with different height and weight physical characteristics (*i.e.*, CONNUMs) command different purchase prices for the ranges of steel plate grades and

[45] *See* Draft Remand Results at 2.
[46] *See* 2nd Supp DQR at 3.
[47] *See* DKSC Draft Remand Comments at 3.
[48] *Id.* at 3-4.

dimensions used; or (2) the differences in the steel plate costs among CONNUMs are merely a result of the timing of the steel plate purchases. Commerce concludes that record evidence supports the latter scenario, *i.e.*, that the significant differences in the reported steel plate cost between CONNUMs is based on the timing of when the steel plate was purchased, rather than cost differences related to the different grades and dimensions of the steel plate used to manufacture the wind tower.

The Court instructed Commerce to provide further explanation and support demonstrating how we relied on the identified physical characteristics of the finished wind towers as a "guidepost" in our decision to smooth the reported steel plate cost for all CONNUMs.[49] As explained above, the weight and height product characteristics of the completed wind tower dictate the dimensions and grades of the steel plate consumed, and the cost of the differing grades and dimensions of steel plate consumed directly impacts the reported steel plate costs in the cost database. Thus, Commerce's analysis of whether there are cost differences associated with the different grades and dimensions of steel plate consumed does, in fact, incorporate the weight and height CONNUM characteristics as a "guidepost."[50] Commerce further explained that it analyzed the weight and height product characteristics of different CONNUMs, as well as similar CONNUMs, to guide its analysis.[51]

Our analysis of the prices paid for differing dimensions of steel plate in the Final Cost Calculation Memorandum incorporated plate purchases for CONNUMs with different height and weight physical characteristics, but also ensured the comparisons of the steel plate purchases associated with both projects occurred in the same month (*i.e.*, September 2018) in order to

[49] *See Remand Order* at 9-10.
[50] *See* Draft Remand Results at 3-4.
[51] *Id.* at 4-7.

neutralize the effect of timing.[52] In our analysis, for the month of September 2018, we compared scores of steel plate purchase transactions that encompassed different grades and a wide range of dimensions, which were used to produce two different CONNUMs (*i.e.*, wind tower projects) with different height and weight physical characteristics: (1) one sold in the comparison market (*i.e.*, CONNUM [ ]); and (2) one sold the U.S. market (*i.e.*, CONNUM [ ]).[53]

Specifically, for the wind tower project sold to the comparison market, the weight and height physical characteristics were [ ] MT and [ ] m, and this project consumed steel plate covering a wide range of dimensions: thicknesses ranging between [ ] to [ ] cm; widths ranging from [ ] to [ ] cm; and heights ranging from [ ] to [ ] cm. However, we found that the per-unit cost of the steel plate purchases for all dimensions and grades was [ ] Korean won (KRW) per kilogram (kg) in September 2018.[54] Likewise, for the wind tower project sold to the United States, the weight and height physical characteristics were [ ] MT and [ ] m, and this project also consumed steel plate covering a wide range of dimensions: thicknesses ranging from [ ] to [ ] cm; widths ranging from [ ] to [ ] cm; and heights ranging from [ ] to [ ] cm; however, the per-unit cost of the steel plate purchases for all dimensions and grades was [ ] KRW/kg in September 2018.[55] Clearly, the record evidence shows that, when timing is neutralized, regardless of the wide range of dimensional plate used (thickness ranging from [ ] to [ ] cm, widths ranging from [ ] to [ ] cm, and heights ranging from [ ] to [ ] cm), DKSC incurred virtually the same per-unit cost for the steel

[52] *Id.* at 4-5; *see also* Final Cost Calculation Memorandum at 1-2 and Attachment 1.
[53] *Id*.
[54] *Id*.
[55] *Id.*

plate input to produce two completely different CONNUMs.[56] As such, this analysis not only supports our conclusion that, when timing is neutralized, there is virtually no cost difference associated with the differing dimensions and grades of steel plate consumed, but it also rebuts DKSC's argument that our analysis compared steel plate that was generally equivalent.[57] To the contrary, our analysis in the *Final Determination* and in the Draft Remand Results compared steel plate with different grades and a wide range of dimensions.

Moreover, regarding DKSC's argument that our analysis compares steel plate that is generally equivalent, we point to the example of four different wind tower projects that were sold in the United States (*i.e.*, CONNUMs [ ], [ ], [ ], and [ ]), that have significantly different physical characteristics. Similar to the analysis described above, the steel plate consumed for all of these projects includes a wide range of dimensions; however, the per-unit cost for this steel plate varies little when comparing purchases made within the same month (*i.e.*, ranging from [ ] to [ ] KRW/kg) in May 2018.[58] The steel plate dimensional differences for these projects range from thicknesses of [ ] to [ ] cm, widths ranging from [ ] to [ ] cm, and heights ranging from [ ] to [ ] cm, but the per-unit cost differences for the steel plate purchased in the same month (*i.e.*, May 2018) are negligible.[59] This analysis again shows that the per-unit costs of steel plate did not fluctuate, despite the wide range of dimensions for the steel plate purchased during this period.

[56] *Id.*
[57] *See* DKSC Draft Remand Comments at 5.
[58] *See* Attachments 1 and 2.
[59] *Id.*

With respect to the analysis performed on steel grade, we examined whether steel plate purchase prices fluctuated based on the grade of steel plate purchased.[60] DKSC stated that the wind towers sold in the third country market used both low and high grades of steel plate, whereas wind towers sold in the United States only used the higher steel grade plate.[61] While DKSC stated that the steel plate cost differences were not only due to timing, which it acknowledged was a reason for the cost differences between CONNUMs, the differences were also due to the differing grades of plate used for the wind towers sold in the third country and U.S. markets.[62] However, according to our analysis, DKSC incurred the *same* per-unit steel plate cost (*i.e.*, [ ] KRW/kg) in the month of September 2018 for both the "low" steel grades (*i.e.*, [ ] and [ ]) and the "high" steel grades (*i.e.*, [ ] and [ ]) used to produce the project sold in the third country market (*i.e.*, CONNUM [ ]).[63] As noted above, during the same month, DKSC's per-unit steel plate cost for the "higher" grade steel plate used to produce the wind towers sold to the United States was [ ] KRW/kg. Thus, our analysis demonstrates that DKSC's claim that the use of a mix of lower and higher steel grades results in lower steel plate costs for the wind tower is without merit.

DKSC further argues that Commerce's analysis in the *Preliminary Determination* that showed "differences from the average reported steel plate costs ranging from [ ] percent to [ ] percent" is incorrect.[64] We disagree. Commerce calculated the range of cost differences in the Preliminary Cost Calculation Memorandum based on the percentage necessary to adjust the reported per-unit cost to reflect the weighted average steel plate cost. Thus, the numerator in the

[60] *Id.*
[61] *See* 2nd Supp DQR at 2-3 and Exhibit S6-2.
[62] *Id.*
[63] *See* Attachments 1 and 2.
[64] *See* DKSC Draft Remand Comments at 7-8 and Attachment I (citing Preliminary Cost Calculation Memorandum at 2 and Attachment 3, Column f).

calculation represents the difference between the reported per-unit steel plate cost and the weighted average cost; the denominator is the reported per-unit cost.[65] In DKSC's calculation, the numerator, reflecting the range of cost differences, is the same as in Commerce's calculation, but the denominator represents the weighted-average steel plate cost.[66] Even under DKSC's methodology, the steel plate costs vary from [ ] percent to [ ] percent.[67] Thus, both Commerce's and DKSC's methodologies demonstrate that there are significant differences in the per-unit steel plate costs that are not related to the physical characteristics of the products.

Next, DKSC contends that Commerce's analysis in the *Preliminary Determination* reveals that Commerce incorrectly concluded that cost differences are unrelated to physical characteristics of the wind towers.[68] Specifically, DKSC states that CONNUM [ ] in Commerce's analysis, which has the lowest steel plate costs compared to the average, is actually the CONNUM with the [ ].[69] In addition, CONNUM [ ] in Commerce's analysis, which has the highest steel plate cost compared to the average, is actually the CONNUM with the [ ].[70] DKSC's contentions are misplaced. With regard to CONNUM [ ], while it is true that this CONNUM represents the [ ] among all reported CONNUMs, the steel plate for this CONNUM was purchased in 2017, during a period when steel plate costs were low.[71] Accordingly, it is logical based on the timing of the steel plate purchase costs for this CONNUM that the per-unit cost

[65] *See* Preliminary Cost Calculation Memorandum at 2 and Attachment 3, Column f.
[66] *See* DKSC Draft Remand Comments at Attachment I.
[67] *Id.*
[68] *Id.* at 8 (citing Preliminary Cost Calculation Memorandum at 2 and Attachment 3, Column f).
[69] *Id.*
[70] *Id*.
[71] *See* 2nd Supp DQR at 2-3.

would be low, not because of the physical characteristics of the wind tower, but because of the timing of the purchases of steel plate.

DKSC also contends that CONNUM [ ], which has the highest steel plate costs compared to the average steel plate cost, is the CONNUM with the [ ] among all reported CONNUMs,[72] However, contrary to DKSC's contention, we did not find that this CONNUM, the [ ] wind tower among all reported CONNUMs, resulted in the highest steel plate costs. Rather we found that CONNUM [ ], which is the [ ] in height and [ ] in weight among all reported CONNUMs, has the *highest* net steel plate costs.[73] Consequently, we disagree that DKSC's claim here supports the conclusion that Commerce should not have smoothed its reported steel plate cost for finished wind towers.

Finally, DKSC argues that Commerce continues to focus on the timing of plate purchases as a cost driver without considering whether the physical characteristics of the finished merchandise also impact costs.[74] We disagree. As explained above, Commerce considered the effect of physical characteristics in accounting for the significant cost differences across CONNUMs. Commerce based its determination on the record evidence that the physical characteristics of the finished wind tower (which, in turn, determined the dimensions and grades of the steel plate consumed in its manufacture), did not explain the significant cost differences observed.[75] DKSC provides no compelling record evidence to support its argument that the differences in the physical characteristics, rather than timing of the purchase, were the significant

[72] *See* DKSC Draft Remand Comments at 8.
[73] Specifically, the larger CONNUM [ ] has a reported extended plate costs of [ ] KRW, while the smaller CONNUM [ ] has a [ ] reported extended steel plate cost of [ ] KRW. *See* Preliminary Cost Calculation Memorandum at 2 and Attachment 3, Column f.
[74] *See* DKSC Draft Remand Comments at 5.
[75] *See* Preliminary Cost Calculation Memorandum at 2 and Attachment 3, Column f; *see also Final Determination* IDM at 21-22; and Final Cost Calculation Memorandum at 1-2 and Attachment 1.

factor for the differences of the steel plate costs. As noted above, DKSC repeatedly acknowledged that the cost of steel plate fluctuated due to the timing of the steel plate purchases before and during the POI.[76] At verification, DKSC stated that the prices of the steel plate input fluctuated depending on the time of purchase.[77] According to our analysis, the per-unit steel plate purchases fluctuated from [ ] to [ ] KRW/kg in September 2018, and from [ ] to [ ] KRW/kg in May 2018.[78] This analysis is consistent with DKSC's statement that the cost of steel plate fluctuated due to the timing of the steel plate purchases before and during the POI.[79]

Additional record evidence supports that timing is the main factor affecting the significant cost differences for the wind tower. In September 2018, DKSC reported three different wind tower projects with the physical characteristics of weight ranging from [ ] to [ ] MT and height ranging from [ ] to [ ] m, that have per-unit steel plate costs ranging from [ ] to [ ] KRW/kg.[80] Similarly, in May 2018, DKSC reported four different wind tower projects with the physical characteristics of weight ranging from [ ] to [ ] MT and height ranging from [ ] to [ ] m, that have per-unit steel plate costs ranging from [ ] to [ ] KRW/kg.[81]

Furthermore, for CONNUM [ ], the record showed that the per-unit costs of steel plate purchased to build this wind tower increased from [ ] KRW/kg in May 2018 to [ ] KRW/kg in September 2018.[82] Neither the physical characteristics of the wind tower, nor the type of steel plate purchased for its construction changed during this period; thus, the remaining factor to affect the steel plate price was the timing of the purchase.

[76] *See* 2nd Supp DQR at 2.
[77] *See* Cost Verification Report at 18-19.
[78] *See* Attachments 1 and 2.
[79] *See* 2nd Supp DQR at 2.
[80] *Id*.
[81] *Id.*
[82] *Id*.

In summary, Commerce considered the possible effects that the physical characteristics would have on the reported costs for the differing CONNUMs and thoroughly examined the record to determine if the significant cost differences across CONNUMs were related to grade and dimensional differences in the steel plate purchases, or due to differences in the timing of these purchases. Commerce concluded that the significant cost differences observed were due to the timing of the plate purchases based on an analysis of record evidence indicating that the physical characteristics did not explain the cost differences.[83] Therefore, Commerce weight averaged (*i.e.*, smoothed) DKSC's reported steel plate costs for all CONNUMs to mitigate the unreasonable difference in material costs that were unrelated to the wind tower's physical characteristics.[84] As a result, Commerce has addressed the Court's concerns by fully explaining how it explicitly used the physical characteristics (*i.e.*, weight and height) as a "guidepost" to compare DKSC's reported CONNUM-specific steel plate costs with steel plate costs for other CONNUMs.

V. FINAL RESULTS OF REDETERMINATION

We provided further explanation, set forth above, that DKSC's reported steel plate costs did not reasonably reflect the cost to produce subject merchandise. As a result, Commerce's adjustment to DKSC's steel plate cost in the *Final Determination* was warranted. As a result of our analysis, we made no changes to DKSC's weighted-average dumping margin, which remains 5.41 percent. Because we made no changes to DKSC's estimated weighted-average dumping margin in these final results of redetermination, we do not intend to issue a Timken Notice.

[83] *See Final Determination* IDM at 19-22; *see also* Draft Remand Results at 1-10.
[84] *See* Draft Remand Results at 6.

4/13/2022

X 

Signed by: LISA WANG

Lisa W. Wang
Assistant Secretary
for Enforcement and Compliance

Attachment 1

~~BUSINESS PROPRIETARY~~

PUBLIC VERSION

Summary Table from Attachment 2										
SEQ	Country	CONNUM	Purchase Month Year	Project Name	Steel Plate Grade	Steel Plate Thick Range	Steel Plate Width Range	Steel Plate Height Range	Average Unit Costs (KG/KRW)	Comments
1	[									For 3 different CONNUMs (see SEQs 1-3), steel plate purchase costs in the same month, the average unit costs of steel plates are vertually the same. In addition, there is no price difference between higher steel grade ([ ]) and lower steel grade ([ ]) purchase in the same month (see SEQ 1).
2	[									]
3	[									]
4	[									For 4 different CONNUMs (see SEQs 4-7), steel plate purchase costs in the same month, the average unit costs of steel plates are vertually the same.
5	[									]
6	[									]
7	[									]

Reference: *Attachment 2*

Steel plate purchase unit costs increase from May 2018 to September 2018. Howerver, the steel plate prices remain virtually the same within the same month depite various dimentions of steel plate.

SEQ 2&6 are used for the same CONNUM, Steel plate unit costs increased from May 2018 to September 2018.

DKSC claimed lower steel grade ([ ]) generally results in lower costs, however, it shows that the steel plate costs is the same between higher and lower steel grade ([ ]), see SEQ 1.

SEQ 1&2 are projects were analyzed in 6/29/2020 Final Cost Calculation Memorandum at 1-2 and Attachment 1

DKSC claimed that SEQ 5 wind tower is the [ ] wind tower, and it will result the highest steel plate costs. Yet the record showed that the SEQ 5 wind tower steel plate purchase costs is [ ] than the other " [ ]" wind towers (SEQs 6 and 7).

Attachment 2

~~**BUSINESS PROPRIETARY**~~

PUBLIC VERSION

Steel Plate Purchase Costs in Stepmber 2018 and May 2018

Country	CONNUM	Purchase Monthy Year	Project Name	Steel Plate Grade	Steel Thick x Width x Height	Steel Plate Purchase Quantity (KG)	Steel Plate Purchase Amount (KRW)	Unit Costs
[ ]								

References *6/29/2020 final cost calculation memorandum at 1-2 and Attachment 1*
4/17/20 Cost Verification Exhibit (CVE 9) at 18-21
4/17/20 CVE 11 at 21-24