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Investigation
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DATE: March 29, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination and Final Negative Critical Circumstances
Determination in the Less-Than-Fair-Value Investigation of
Certain Carbon and Alloy Steel Cut-To-Length Plate from the
Republic of Korea

I. Summary

We analyzed the comments of the interested parties in the less-than-fair-value (LTFV) investigation of certain carbon and alloy steel cut-to-length plate (CTL plate) from the Republic of Korea. As a result of our analysis, and based on our findings at verification, we made changes to the margin calculations for POSCO and POSCO Daewoo International Corp. (collectively POSCO), the mandatory respondent in this investigation. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

- Comment 1: Differential Pricing Methodology
- Comment 2: Whether POSCO’s Cost Reporting Merits Use of Adverse Facts Available (AFA)
- Comment 3: Expenses Related to Greenhouse Gas Emissions Program
- Comment 4: Investment Activities
- Comment 5: Litigation Expenses
- Comment 6: POSCO’s Sales of CONNUM Used in Line Pipe Applications
- Comment 7: Collapsing
- Comment 8: Calculation of POSCO Freight Cap
- Comment 9: Whether to Grant POSCO a CEP Offset



II. Background

On November 14, 2016, the Department of Commerce (the Department) published the *Preliminary Determination* of sales of CTL plate from the Republic of Korea at LTFV.¹ The period of investigation (POI) is April 1, 2015, through March 31, 2016.

In October 2016 and November 2016, we received scope case briefs and scope rebuttal briefs. On November 29, 2016, we issued a final memorandum in response to these scope comments in which we did not change the scope of this investigation.²

In December 2016 and February 2017, we conducted verification of the sales and cost of production (COP) data reported by POSCO in accordance with section 782(i) the Tariff Act of 1930, as amended (the Act).³

We invited parties to comment on the *Preliminary Determination*. In February 2017, AMUSA⁴ and POSCO submitted case and rebuttal briefs.

Based on our analysis of the comments received, as well as our verification findings, we revised the weighted-average dumping margins for POSCO from that calculated in the *Preliminary Determination*.

¹ See *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 79441 (November 14, 2016) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled “Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea” (Preliminary Decision Memorandum).

² See Memorandum from Scot Fullerton, Director of Antidumping and Countervailing Duty Operations, Office VI, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled “Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Final Scope Comments Decision Memorandum,” dated November 29, 2016 (Final Scope Memorandum).

³ For discussion of our verification findings, see the following memoranda: Memorandum to the File from Kalsang Dorjee, Staff Accountant, Through Ernest Z. Gziryan, Lead Accountant to Neal Halper Director, Office of Accounting, Office II, entitled “Verification of the Cost Response of POSCO and Daewoo International Corporation in the Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-To-Length Plate from Korea,” dated January 12, 2016 (Cost Verification Report); Memorandum to the File from Michael J. Heaney, and Moses Song, Analysts, AD/CVD Operations, Office VI, entitled “Verification of the Sales Response of POSCO/Daewoo International Corporation in the Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate (CTL Plate) from the Republic of Korea,” (Sales Verification Report) dated February 14, 2017; Memorandum from Michael J. Heaney to the File entitled “Verification of the Sales Response of Daewoo Corporation America (DWA) in the Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate (CTL Plate) from the Republic of Korea,” (CEP Verification Report) dated February 14, 2017.

⁴ The petitioners in this investigation are ArcelorMittal USA LLC (AMUSA), Nucor Corporation, and SSAB Enterprises, LLC. Case and Rebuttal briefs in this investigation for the domestic industry were filed on behalf of AMUSA.

II. Scope of the Investigation

The products covered by this investigation are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances (cut-to-length plate). Subject merchandise includes plate that is produced by being cut-to-length from coils or from other discrete length plate and plate that is rolled or forged into a discrete length. The products covered include (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a thickness of not less than 4 mm, which are not in coils and without patterns in relief), and (2) hot-rolled or forged flat steel products of a thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are not in coils, whether or not with patterns in relief. The covered products described above may be rectangular, square, circular or other shapes and include products of either rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges).

For purposes of the width and thickness requirements referenced above, the following rules apply:

(1) except where otherwise stated where the nominal and actual thickness or width measurements vary, a product from a given subject country is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the product is already covered by an order existing on that specific country (*i.e.*, *Certain Hot Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determination for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders*, 81 FR 67962 (October 3, 2016), and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

Subject merchandise includes cut-to-length plate that has been further processed in the subject country or a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, beveling, and/or slitting, or any other processing that

would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the cut-to-length plate.

All products that meet the written physical description, are within the scope of this investigation unless specifically excluded or covered by the scope of an existing order. The following products are outside of, and/or specifically excluded from, the scope of this investigation:

- (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances;
- (2) military grade armor plate certified to one of the following specifications or to a specification that references and incorporates one of the following specifications:
 - MIL-A-12560,
 - MIL-DTL-12560H,
 - MIL-DTL-12560J,
 - MIL-DTL-12560K,
 - MIL-DTL-32332,
 - MIL-A-46100D,
 - MIL-DTL-46100-E,
 - MIL-46177C,
 - MIL-S-16216K Grade HY80,
 - MIL-S-16216K Grade HY100,
 - MIL-S-24645A HSLA-80;
 - MIL-S-24645A HSLA-100,
 - T9074-BD-GIB-010/0300 Grade HY80,
 - T9074-BD-GIB-010/0300 Grade HY100,
 - T9074-BD-GIB-010/0300 Grade HSLA80,
 - T9074-BD-GIB-010/0300 Grade HSLA100, and
 - T9074-BD-GIB-010/0300 Mod. Grade HSLA115,

except that any cut-to-length plate certified to one of the above specifications, or to a military grade armor specification that references and incorporates one of the above specifications, will not be excluded from the scope if it is also dual- or multiple-certified to any other non-armor specification that otherwise would fall within the scope of this investigation;

- (3) stainless steel plate, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;
- (4) CTL plate meeting the requirements of ASTM A-829, Grade E 4340 that are over 305 mm in actual thickness;

(5) Alloy forged and rolled CTL plate greater than or equal to 152.4 mm in actual thickness meeting each of the following requirements:

(a) Electric furnace melted, ladle refined & vacuum degassed and having a chemical composition (expressed in weight percentages):

- Carbon 0.23-0.28,
- Silicon 0.05-0.20,
- Manganese 1.20-1.60,
- Nickel not greater than 1.0,
- Sulfur not greater than 0.007,
- Phosphorus not greater than 0.020,
- Chromium 1.0-2.5,
- Molybdenum 0.35-0.80,
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) With a Brinell hardness measured in all parts of the product including mid thickness falling within one of the following ranges:

- (i) 270-300 HBW,
- (ii) 290-320 HBW, or
- (iii) 320-350HBW;

(c) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.0, C not exceeding 0.5, D not exceeding 1.5; and

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 2 mm flat bottom hole;

(6) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, Ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.23-0.28,
- Silicon 0.05-0.15,
- Manganese 1.20-1.50,
- Nickel not greater than 0.4,

- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.20-1.50,
- Molybdenum 0.35-0.55,
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.5, C not exceeding 1.0, D not exceeding 1.5;

(c) Having the following mechanical properties:

(i) With a Brinell hardness not more than 237 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 75ksi min and UTS 95ksi or more, Elongation of 18% or more and Reduction of area 35% or more; having charpy V at -75 degrees F in the longitudinal direction equal or greater than 15 ft. lbs (single value) and equal or greater than 20 ft. lbs (average of 3 specimens) and conforming to the requirements of NACE MR01-75; or

(ii) With a Brinell hardness not less than 240 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 90 ksi min and UTS 110 ksi or more, Elongation of 15% or more and Reduction of area 30% or more; having charpy V at -40 degrees F in the longitudinal direction equal or greater than 21 ft. lbs (single value) and equal or greater than 31 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301;

(7) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.25-0.30,
- Silicon not greater than 0.25,
- Manganese not greater than 0.50,
- Nickel 3.0-3.5,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.0-1.5,
- Molybdenum 0.6-0.9,
- Vanadium 0.08 to 0.12
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm.

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.0(t) and 0.5(h), B not exceeding 1.5(t) and 1.0(h), C not exceeding 1.0(t) and 0.5(h), and D not exceeding 1.5(t) and 1.0(h);

(c) Having the following mechanical properties: A Brinell hardness not less than 350 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 145ksi or more and UTS 160ksi or more, Elongation of 15% or more and Reduction of area 35% or more; having charpy V at -40 degrees F in the transverse direction equal or greater than 20 ft. lbs (single value) and equal or greater than 25 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301.

At the time of the filing of the petition, there was an existing antidumping duty order on certain cut-to-length carbon-quality steel plate products from Korea. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Korea*, 64 Fed. Reg. 73,196 (Dep't Commerce Dec. 29, 1999), as amended, 65 Fed. Reg. 6,585 (Dep't Commerce Feb 10, 2000) (1999 Korea AD Order). The scope of the antidumping duty investigation with regard to cut-to-length plate from Korea covers only (1) subject cut-to-length plate not within the physical description of cut-to-length carbon quality steel plate in the 1999 Korea AD Order, regardless of producer or exporter; and (2) cut-to-length plate produced and/or exported by those companies that were excluded or revoked from the 1999 Korea AD Order as of April 8, 2016. The only revoked or excluded company is Pohang Iron and Steel Company, also known as POSCO.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.0000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7226.11.1000, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

IV. Scope Comments

During the course of this investigation, the Department received numerous scope comments from interested parties. Prior to the *Preliminary Determination*, the Department modified the language of the scope to clarify the exclusion for stainless steel plate, correct two misidentified HTSUS item numbers, and modify language pertaining to existing steel plate and hot-rolled flat-rolled steel orders.⁵

In October and November 2016, we received scope case and rebuttal briefs and scope rebuttal briefs. On November 29, 2016, we issued a final scope memorandum in response to these comments in which we did not change the scope of this investigation.⁶

⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations," dated September 6, 2016, and Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Additional Scope Comments Preliminary Decision Memorandum and Extension of Deadlines for Scope Case Briefs and Scope Rebuttal Briefs," dated October 13, 2016.

⁶ See Final Scope Memorandum.

III. Margin Calculations

We calculated export price (EP), constructed export price (CEP), and normal value (NV) using the same methodology as stated in the *Preliminary Determination*,⁷ except as follows:⁸

1. We revised the respondent's margin calculations to take into account our findings from the sales and cost verifications. See Comments 2, 3, 4 and 7.

IV. Discussion of Issues

Comment 1: Differential Pricing Methodology

POSCO Comments:

- POSCO notes that in the *Preliminary Determination*, the Department found that 48.79 percent of POSCO's U.S. sales passed the Cohen's *d* test, and that the average-to-average (A-A) method cannot account for the differences in the margin between the A-A method and the average-to-transaction (A-T) method. POSCO disagrees with the Department's application of the A-T method.⁹ POSCO further asserts that zeroing is a violation of law.¹⁰
- POSCO cites to a World Trade Organization (WTO) dispute settlement panel ruling, *US-Washers (Korea)*, wherein the WTO determined that the Department's differential pricing test was not in accordance with the Antidumping Agreement because it was based on "random and unrelated price variations."¹¹
- POSCO asserts that rather than uncovering a "pattern" of price variations the Cohen's *d* test merely measures price variations against "arbitrary statistical benchmarks."¹² Additionally, POSCO asserts that *US-Washers (Korea)* establishes that zeroing is unlawful under Article 2.4.2 of the Antidumping Agreement.¹³

⁷ See *Preliminary Determination*, and accompanying Preliminary Decision Memorandum, at 8 and 9.

⁸ See Memorandum to the File from Michael J. Heaney, Analyst, AD/CVD Operations, Office VI, entitled "Final Determination Calculations for POSCO," dated March 29, 2017 (POSCO Final Calculation Memo), and Memorandum to Neal M. Halper, Director, Office of Accounting, from Ernest Gziryan, Senior Accountant, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – POSCO," dated March 29, 2017 (POSCO Cost Calculation Memorandum); see also "Verification of Cost Response of POSCO and Daewoo International Corporation in the Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from Korea: from Kalsang Dorjee Staff Accountant to Neal M. Halper Director Office of Accounting" dated January 12, 2017; Memorandum to the File from Michael J. Heaney and Moses Song, Analysts, AD/CVD Operations, Office VI, entitled "Verification of the Sales Response of POSCO/Daewoo International Corporation," dated February 14, 2017 (Sales Verification Report); Memorandum to the File from Michael J. Heaney, AD/CVD Operations, Office VI, entitled "Verification of Sales Response of Daewoo Corporation America (DWA)," (CEP Verification Report), dated February 14, 2017.

⁹ See POSCO Case Brief, at 28.

¹⁰ *Id.*

¹¹ *Id.*, citing *United States-Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea* WT/DS464/R (March 11, 2016) at paragraph 7.147 (*US Washers (Korea)*).

¹² *Id.*, at 29.

¹³ *Id.*, at 30-34.

AMUSA Rebuttal:

- AMUSA argues that the Department has properly applied its differential pricing methodology in this investigation and that this methodology is consistent with the statute.¹⁴
- AMUSA asserts that in determining whether to apply the A-T methodology, the statute directs the Department to consider two criteria: 1) whether there is a pattern for comparable merchandise that significantly differs among purchasers, and 2) an explanation from the Department explaining why such differences cannot be taken into account using the A-A methodology.¹⁵ AMUSA asserts that the Department considered both criteria in its Preliminary Determination.¹⁶
- AMUSA also argues that, as a matter of law, the A-T methodology has been confirmed by both the Department and the Court of International Trade. AMUSA argues that WTO decisions do not impact the application of the A-T methodology, because the Department has not adopted *US-Washers (Korea)*.¹⁷

Department's Position:

We disagree with POSCO. In the *Preliminary Determination*, we adhered to our standard differential pricing analysis.¹⁸ As the petitioners have noted, 777A(d)(1)(B)(i) and (ii) of the Act permit the Department to compare weighted averaged normal values (NV) to individual U.S. transactions where (1) “there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time,”¹⁹ and where the “administering authority explains why such differences cannot be taken into account” using the A-A method.²⁰ As we noted in the Preliminary Decision Memorandum, pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B)(i) of the Act, the Department’s practice is to apply a “differential pricing” analysis which determines whether a pattern of price differences exist.²¹ The differential pricing analysis (including application of the Cohen’s *d* test) that we employed in this review has been consistently applied by the Department in recent investigations.²² Moreover, as we noted in the Preliminary Decision Memorandum, because 48.79 percent of POSCO’s U.S. sales passed the Cohen’s *d* test, our use of the A-T method for POSCO is consistent with our standard practice.

¹⁴ See AMUSA Rebuttal Brief, at 42.

¹⁵ *Id.*, at 43.

¹⁶ *Id.*, at 44.

¹⁷ *Id.*, at 47.

¹⁸ See Preliminary Decision Memorandum, at 8-11.

¹⁹ See Section 777A(d)(1)(B)(i) of the Act.

²⁰ See Section 777A(d)(1)(B)(ii) of the Act.

²¹ See Preliminary Decision Memorandum, at 9.

²² See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

Additionally, we find POSCO's reliance on *US-Washers (Korea)* is misplaced. The Court of Appeals for the Federal Circuit (CAFC) has held that WTO reports are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements Act (URAA).²³ In fact, Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of URAA reports.²⁴ As is clear from the discretionary nature of the scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute.²⁵

Moreover, to date, the United States has fully complied with all adverse panel and Appellate Body reports adopted by the Dispute Settlement Body with regards to Article 2.4.2 of the Antidumping Agreement. With regards to the A-T method, specifically, and an alternative comparison method and the use of zeroing under the second sentence of Article 2.4.2 of the WTO Agreement, the Department has issued no new determination and the United States has adopted no change to its practice pursuant to the statutory requirements of sections 123 or 129 of the URAA. Based upon the foregoing, we have continued to apply the A-T method to POSCO's sales in this review.

Comment 2: Whether POSCO's Cost Reporting Merits Use of Adverse Facts Available (AFA)

AMUSA Comments:

- Application of total AFA is warranted by the entirety of POSCO's cost and sales responses. With regard to POSCO's cost response, POSCO has failed to submit reliable and useable cost data. POSCO's cost data are not attributable to physical characteristics, fail to represent POI costs, include an illogical adjustment to the cost of manufacturing (COM), wrongly reduce manufacturing cost with an income offset, and understates general and administrative expenses.²⁶
- POSCO's reported costs fail to capture accurately the physical characteristics of the merchandise. For select product matching control numbers (CONNUMs) having identical physical characteristics for all materials except nickel, POSCO incorrectly reported a higher COM for the CONNUM with the lower nickel content.²⁷ Likewise, for select CONNUMs having identical reported characteristics for all materials except chromium, POSCO reported a higher COM for the CONNUM with the lower chromium content.²⁸ Other such unexplained variances exist with respect to POSCO's reporting of its conversion costs.²⁹
- POSCO's reported costs fail to represent weighted-average costs for the POI. Rather than representing POI costs, POSCO reported its costs based on when the merchandise was produced.³⁰

²³ See *Corus Staal BV v. United States* (502 F.3d 1370 (Fed.Cir. 2007)).

²⁴ See, e.g., 19 USC Section 3533, 3538 (sections 123 and 129 of the URAA).

²⁵ See, e.g., 19 USC Section 3538(b)(4) (implementation of WTO reports is discretionary).

²⁶ See The petitioners' Case Brief, at 8.

²⁷ *Id.*, at 11-12

²⁸ *Id.*, at 12-13.

²⁹ *Id.*, at Attachments 1 and 2.

³⁰ *Id.*, at 17-23.

- POSCO made undisclosed adjustments with regards to inventory write-off by movement of finished goods to scrap.³¹ This adjustment improperly lowers POSCO's reported cost of production (COP).³² The Department should adjust the cost of all CONNUMs by the adjustment calculated for one CONNUM reviewed at verification.
- POSCO understated its reported COM by improperly omitting the costs associated with its greenhouse gas emission program.³³
- POSCO excluded from the general and administrative (G&A) expenses certain expenses relating to litigation with Nippon Steel and Sumitomo Metal Corporation, and improperly claimed a gain on the disposition of assets.³⁴

POSCO's Rebuttal:

- POSCO provided accurate and reliable cost data that "are consistent with the Department's reporting requirements and POSCO's normal books and records."³⁵
- POSCO submitted costs are attributable to the CONNUM's physical characteristics and reflect the actual costs as maintained within POSCO's accounting system. Beyond the carbon, nickel, and chrome content specifically considered by the Department in defining CONNUM, other materials (e.g., manganese, titanium, silicon, niobium) can affect the COP.³⁶
- The CONNUM cost differences to which the petitioners allude can be traced to POSCO's accounting records.³⁷ If necessary, the Department can remedy the reported costs with adjustments, rather than applying AFA, which is unwarranted.³⁸
- POSCO reported average POI costs, because POSCO used its product costs as reflected in POSCO's normal accounting records and then weight-averaged costs for the POI.³⁹
- Regarding the inventory write-off, POSCO properly accounted for this adjustment by including the cost of "rework" associated with this processing. The Department in its verification report noted that the write-off affected only the cost of one CONNUM, thus, a possible adjustment should only be made to the cost of that CONNUM, rather than to all CONNUMs, as suggested by the petitioners.⁴⁰
- POSCO properly accounted for expenses related to greenhouse gas emission program. The costs at issue recorded on the books are not an expense for which the Department should adjust, but represent a conservative accounting entry mandated by Korean GAAP.⁴¹

³¹ *Id.*, at 23.

³² *Id.*, at 25.

³³ *Id.*, at 26.

³⁴ *Id.*, at 27.

³⁵ *See* POSCO's Rebuttal Brief, at 2.

³⁶ *Id.*, at 9-12.

³⁷ *Id.*, at 7-8.

³⁸ *Id.*, at 8.

³⁹ *Id.*, at 11-12.

⁴⁰ *Id.*, at 15.

⁴¹ *Id.*, at 16.

- POSCO properly excluded litigation expenses from the calculation of the G&A expense as they relate to non-subject merchandise, and it properly included in G&A expenses gains and losses on disposition of assets.⁴²

Department's Position:

Based on our examination of the record of this investigation, we find that the application of either total or partial AFA is not warranted with respect to POSCO's reported costs or sales.⁴³ Section 776(a) of the Act provides, in general, that the Department may resort to facts available if necessary information is not available on the record or if an interested party withholds information that has been requested, fails to provide such information by the established deadlines or in the form and manner requested, significantly impedes a proceeding, or if such information cannot be verified. Further, section 776(b) states that adverse inferences may be applied if an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. In this case, we find that POSCO cooperated to the best of its ability with the Department's multiple requests for information by timely responding to the Department's questionnaires and participating in the verification of the submitted information.

AMUSA suggests that the Department should apply AFA because POSCO's costs are unusable, as it asserts POSCO failed to calculate CONNUM-specific costs by not calculating product-specific cost differences associated only with the CONNUM's physical characteristics according to the model match. When the Department evaluates a respondent's submitted costs, section 773(f)(1)(A) of the Act advises that "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise." Accordingly, the Department will normally rely on a company's normal books and records if two conditions are met: 1) the books are kept in accordance with the home country's generally accepted accounting principles (GAAP); and 2) the books and records reasonably reflect the cost to produce and sell the merchandise. Here, the record is clear and AMUSA does not dispute the fact that the reported costs are derived from POSCO's normal books and records, and that those books and records are kept in accordance with Korean GAAP.⁴⁴ Hence, the question facing the Department is whether the per-unit costs from POSCO's normal books and records reasonably reflect the cost to produce and sell the merchandise under consideration. Despite AMUSA's assertions, we find that the per-unit costs for the POI from POSCO's normal books and records do reasonably reflect the cost to produce and sell the merchandise under consideration.

At the outset of this investigation, the Department identified the physical characteristics deemed most significant in differentiating between products. The Department's procedures allow the

⁴² *Id.*, at 17-18.

⁴³ See Comment 3 with regard to POSCO's reporting of Green House Gas Emissions. See Comment 4 with regard to POSCO's reporting of Investment Activities. See Comment 5 concerning POSCO's Litigation Expenses. Finally, see Comment 6 for discussion of whether POSCO's reporting of sales information merit application of AFA.

⁴⁴ See POSCO's Section D Response at D-10, D-27; see also Memorandum to the File "Verification of the Cost Response of POSCO and Daewoo International Corporation" (Jan. 12, 2017) at 4 ("Cost Verification Report").

parties to comment on the physical characteristics of products subject to the investigation and, by extension, model matching for the proceeding. The choice of physical characteristics is important for model matching purposes and focuses primarily on differences that impact a product's market price.⁴⁵ These are the physical characteristics that define unique products which are assigned a CONNUM, for sales comparison purposes, and reflect the importance the Department places on comparing the most similar products in a price-to-price comparison. The cost of individual products that fall within a CONNUM are weight averaged for purposes of the cost test, constructed value and the difference-in-merchandise (difmer) adjustment. The resulting weighted-average CONNUM cost of those individual products best represents the cost of the products within the CONNUM. Thus, it is reasonable to expect that, because of the variety of individual products with similar physical characteristics that are included within each CONNUM, the weighed-average costs of such CONNUMs may differ. Even when considering merchandise within the same CONNUM, the Court of Appeals for the Federal Circuit has held that the Department has "considerable discretion in defining 'identical physical characteristics,'" and has previously affirmed the Department's practice of considering merchandise "identical" despite the existence of minor differences in physical characteristics when those minor differences are not commercially significant."⁴⁶

AMUSA refers to the pairs of similar CONNUMs examined by the Department at verification, where the physical characteristics that represent chemistry and mechanical properties of the products are identical but the cost of materials reported for these CONNUMs differ. AMUSA similarly points out that for CONNUMs with identical characteristics that impact conversion costs, differences exist in reported conversion costs. AMUSA claims that, for the costs to reflect physical characteristics, these CONNUMs sharing certain identical characteristics should have nearly identical material or conversion costs, and because this is not the case, the Department should find that POSCO failed to submit CONNUM-specific costs.

We disagree with AMUSA. The record shows, and the Department confirmed at verification, that POSCO correctly assigned its internal product codes to CONNUMs. We find that the cost differences among CONNUMs are attributable to the minor physical differences among products included in the CONNUMs and that the actual costs for the products are recorded in POSCO's books.⁴⁷ Moreover, as POSCO noted in its supplemental section D response,

Under the Department's CONNUM reporting requirements, only carbon, nickel and chrome are considered. However, there are many other materials such as manganese, titanium, silicon, niobium, and so on, that may have a significant impact on the material costs.⁴⁸

This assertion was confirmed by the Department at verification, when we reviewed the cost of similar CONNUMs mentioned by the petitioners in their brief, and noted that the differences in

⁴⁵ See, e.g., *Fagersta Stainless AB v. United States*, 577 F. Supp. 2d 1270, 1275-76 (CIT 2008), and *SKF USA, Inc. v. United States*, 537 F.3d 1373, 1379 (Fed. Cir. 2008).

⁴⁶ See *Pesquera Mares Australes Ltda. v. United States*, 266 F.3d 1372, 1384 (Fed. Cir. 2001), and *SKF USA, Inc. v. United States*, 537 F.3d 1373, 1381 (Fed. Cir. 2008).

⁴⁷ See Cost Verification Report, at 13.

⁴⁸ See Supplemental Section D Response (Aug. 31, 2016), at 16.

material costs are mostly due to the cost of certain alloys used and the fact that the alloys are not included in the Department's CONNUM characteristic. AMUSA argues that such differences in alloys would be reflected in the "Quality" CONNUM characteristic, and for products with the same quality characteristic there should not be any differences in alloy values. However, the record shows that products included within the same quality code may still have differences in alloys used.⁴⁹ The same is true for conversion costs where, as noted by POSCO, differences in processing costs for CONNUMs with identical characteristics affect conversion costs. Reasons for this difference in processing costs include the requirements for more expensive processing for high alloy content products, as well as variations in carbon and nickel content by thickness.⁵⁰ This demonstrates that CONNUMs which are similar per the Department's physical characteristics, or even products within the same CONNUM, may occasionally reflect products with varying costs due to additional materials used or special processing not captured by our characteristics.

We further note that the mix of products within each CONNUM for which costs were reported matches the mix of products for which POSCO reported sales within the same CONNUMs. Thus, the product-specific costs used for the sales-below-cost test, constructed value, and the difference-in-merchandise adjustment would reflect the physical characteristics of the products whose sales prices are used in the Department's dumping calculations.

We disagree with the argument that POSCO's costs are not based on POI weighted-average input values. POSCO reported its costs as recorded in its normal books and records. POSCO's accounting system calculates standard costs and variances each month, and for reporting purposes such costs were weight averaged for the entire POI. AMUSA claims that this results in costs specific to the timing of production rather than the POI average costs. We note that, as discussed above, the differences in costs of similar CONNUMs are mostly due to differences in materials (*e.g.*, alloys) used and the corresponding processing. Thus, while cost differences due to the timing of production may exist, their impact on the reported costs in this case is inconsequential. For example, the differences in monthly costs of major raw materials compared to the POI average costs and the percentage of these inputs in the reported COM are not significant.⁵¹ AMUSA further suggests that, instead, POSCO should have calculated the average POI material and conversion costs, and then built product-specific costs using the calculated POI-average amounts. We note, however, that the Department's questionnaire does not instruct respondents to calculate POI average cost of materials and processing, while disregarding how such costs are normally calculated and recorded by the company. By using the costs as recorded on the company's books and averaging them for the POI, POSCO followed the Department's instructions, as well as the statute, which states that "costs shall normally be calculated based on the records of the exporter or producer of the merchandise...."⁵²

AMUSA maintains that if the Department decides not to use total AFA, it should, in the alternative, apply partial AFA by: (1) increasing the cost of all products to account for the inventory write-offs discovered at verification, (2) increasing the cost of merchandise under

⁴⁹ See Cost Verification Report, at Exhibit 7.

⁵⁰ See Cost Verification Report, at 16-17; *see also* POSCO's Rebuttal Brief, at 10-11.

⁵¹ See July 28, 2016 Section D response, at Exhibit D-6.

⁵² See section 773(f)(1)(A) of the Act.

consideration by the total amount related to greenhouse gas emission, (3) adjusting G&A expenses by including litigation expenses and excluding investment-related gains, and (4) using the single highest revised cost for the dumping margin analysis. As discussed above, we find that neither total nor partial AFA is warranted for POSCO, therefore, we are not using the single highest cost to value all CONNUMs.

However, we agree with AMUSA that certain adjustments should be made to POSCO's reported costs. Regarding the adjustment for inventory write-offs, at verification we discovered that the cost of one CONNUM was offset by inventory write-offs. While such treatment is consistent with POSCO's normal accounting, we find that it would be more appropriate to exclude such write-offs (*i.e.*, finished products reclassified as scrap) from weight-averaging of products within the CONNUM because such write offs represent the cost of scrap rather than the cost of finished products. Therefore, for the final determination we excluded the write-offs from the cost build-up of that CONNUM, thus increasing its cost accordingly.⁵³ We did not, however, increase the costs of other CONNUMs for the same percentage as suggested by AMUSA, because at verification we confirmed that the costs of the remaining CONNUMs were not affected by such inventory write-offs.⁵⁴ For the discussion of other adjustments proposed by the petitioners, *i.e.*, the adjustments related to greenhouse gas emissions program and G&A expenses, *see* Comments 3, 4, and 5, below.

Comment 3: Expenses Related to Greenhouse Gas Emissions Program

POSCO Comments:

- The Department should not include the costs related to the greenhouse gas emissions program recorded as expenses on POSCO's financial statements, because these are not expenses but simply a conservative accounting entry to account for the gains associated with the greenhouse gas emissions program. These gains create a debit balance in a corresponding liability account, which more appropriately should be considered as asset and thus not included as cost. However, Korean GAAP does not allow for a liability account to have a debit balance and it does not provide for it to be transferred to an asset account. Therefore, POSCO transfers such debit balance in the liability account to an expense account which represents nothing more than a conservative accounting entry, rather than an expense.⁵⁵
- If the Department determines that the corresponding adjustment is necessary, it has all the relevant information to make an adjustment as identified in the verification report, and there is no basis to apply AFA as suggested by the petitioners.⁵⁶

⁵³ See Memorandum to the File, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination-POSCO and Daewoo International Co., Ltd. (Final Cost Calc Memo).

⁵⁴ See Cost Verification Report, at 16.

⁵⁵ *Id.*, at 9-10.

⁵⁶ See POSCO's Rebuttal, at 16-17.

AMUSA Rebuttal:

- POSCO wrongly offset the reported costs by certain income related to the greenhouse gas emissions program, while omitting corresponding expenses.⁵⁷
- The Department should reject POSCO's argument and rely on POSCO's normal books and records to find that these expenses were wrongly omitted from the cost of manufacturing (COM).⁵⁸
- The corresponding adjustment suggested by the Department in its verification report is based on the amounts allocated over total COM for subject and non-subject products. Because the amounts at issue are specific to the individual production process, more refined analysis is needed to properly adjust the costs. However, POSCO failed to submit any such information.⁵⁹
- POSCO's failure to include the above expenses renders its submitted costs unreliable and unusable, warranting the application of AFA. Alternatively, the Department should apply partial AFA and increase the cost of subject products for the total amounts related to greenhouse gas emissions, rather than the amounts related only to subject products.⁶⁰

Department's Position:

We disagree with POSCO that the expenses at issue should be excluded from the reported costs at issue because they are more appropriately classified as an asset. We note that, on POSCO's audited financial statements prepared according to Korean GAAP, these costs were not classified as an asset, but were recorded as expenses.⁶¹ According to section 773(f)(1)(A) of the Act, "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise." Accordingly, we find that, because these expenses were recorded on POSCO's financial statements according to Korean GAAP, they represent costs to the company. At verification we found that these costs were excluded from POSCO's reporting to the Department, even though a portion of these expenses was related to the merchandise under consideration.⁶² Therefore, for the final determination, we adjusted POSCO's reported COM to include a portion of these costs related to the merchandise under consideration.⁶³

We further note that POSCO's failure to include these expenses does not warrant the application of AFA. As discussed in Comment 2, we find that POSCO cooperated to the best of its ability with the Department's multiple requests for information by timely responding to the Department's questionnaires and participating in the verification of the submitted information, and that POSCO's submitted costs are usable. Thus, the application of AFA is not warranted for

⁵⁷ See AMUSA's Rebuttal, at 38.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ See the petitioners' Case Brief, at 31.

⁶¹ See POSCO's Section A Response, Appendix I (July 7, 2016).

⁶² See Cost Verification Report, at 9-10.

⁶³ See Final Cost Calc Memo.

POSCO. While we agree with AMUSA that the record does not contain detailed information for the CONNUM-specific adjustment related to greenhouse gas emission program, we believe the record and our analysis at verification provide sufficient information to allow for a reasonable adjustment for greenhouse gas emission costs specific to the merchandise under consideration.⁶⁴

Comment 4: Investment Activities

POSCO Comments:

- The Department should include in the calculation of the G&A expenses gains and losses recorded in accounts “Gain on Disposition – Expected Assets” and Loss on Expected Asset Disposition” because they relate to the company’s general operations.⁶⁵
- If the Department decides to exclude these amounts as related to investment activity, the Department should also exclude losses under “Impairment Loss on Expected Asset Disposition” account as they also relate to the company’s investment activity.⁶⁶

AMUSA Rebuttal:

- At verification, the Department found that amounts recorded in “Gain on Disposition – Expected Assets” and Loss on Expected Asset Disposition” accounts relate to POSCO’s investment activity; thus, these amounts should have been excluded from the G&A expenses per the Department’s normal practice of excluding investment gains and losses.⁶⁷
- The Department should not exclude “Impairment Loss on Expected Asset Disposition” as the record contains no information regarding the nature of this account.⁶⁸

Department’s Position:

We agree with AMUSA. At verification, we reviewed the details of the accounts “Gain on Disposition - Expected Assets” and “Loss on Expected Asset Disposition” and noted that they relate to the disposition of POSCO’s shareholdings and merger-related activities which represent the company’s investment activity.⁶⁹ It is the Department’s normal practice to exclude gains and losses related to investment activities from the calculation of the G&A expenses, therefore, for the final determination we excluded these amounts from the G&A expense calculation.⁷⁰ We also agree with AMUSA that the record does not contain any details of the “Impairment Loss on Expected Asset Disposition” account that support POSCO’s assertion that these losses relate to the company’s investment activity. Therefore, we did not exclude these losses from the G&A expenses.

⁶⁴ See Cost Verification Report, at 9-10 and CVE 4 at 9, *see also* Final Cost Calc Memo.

⁶⁵ See POSCO’s Case Brief, at 26-27.

⁶⁶ *Id.*

⁶⁷ See AMUSA Rebuttal Brief, at 41(citing *Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods Other Than Drill Pipe from Korea*, 72 FR 9924 (February 27, 2007) (*OCTG from Korea Final*), and accompanying Issues and Decision Memorandum at Comment 1.

⁶⁸ See the petitioners’ Rebuttal Brief, at 41-42.

⁶⁹ See Cost Verification Report, at 21-22.

⁷⁰ See, e.g., *OCTG from Korea Final*; *see also* Final Cost Calc Memo.

Comment 5: Litigation Expenses

POSCO Comments:

- The Department should not include certain litigation expenses in the G&A expense calculation, as these expenses are associated with the settlement that is not related to the subject merchandise. Rather, the expenses are directly related to non-subject merchandise and are not related to POSCO's normal business operations.⁷¹

AMUSA Rebuttal:

- The Department has consistently considered litigation expenses to be related to general operations, rather than to a specific product and, thus, properly included such expenses in G&A expenses.⁷²
- The litigation expenses at issue were reported in POSCO's 2015 unconsolidated financial statements as other non-operating expenses (general expenses), and not part of product-specific cost of manufacturing, which confirms that these expenses are general in nature.⁷³

Department's Position:

We agree with AMUSA that the Department normally considers litigation expenses as related to the general operations of a company and, hence, part of the G&A expenses.⁷⁴ POSCO's 2015 audited financial statements these expenses were recorded as general non-operating expenses of the company. Regardless of whether these costs relate to subject or non-subject product, they are ultimately a cost of doing business for the company, therefore, the Department normally allocates business charges of this nature over all products because they do not relate to a production activity, but to the company as a whole.⁷⁵ Accordingly, for the final determination we included the litigation expenses at issue in the calculation of the G&A expenses.⁷⁶

Comment 6: POSCO's Sales of CONNUM containing plate Used in Line Pipe Applications

AMUSA Comments:

- AMUSA contends that POSCO failed to report "critical features relating to sales of a CONNUM used in line pipe applications."⁷⁷ Specifically, AMUSA asserts that POSCO neglected to disclose the "completely different sales and marketing, end-use and pricing" conditions for home market sales of this CONNUM, along with the "completely different

⁷¹ See POSCO's Case Brief, at 27.

⁷² See the petitioners' Rebuttal Brief, at 39 (citing *Issues and Decision Memorandum for the 2011-2012 Administrative Review of Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, 79 FR 37284 (June 24, 2014) (*Steel Pipe from Korea Final*), and accompanying *Issues and Decision Memorandum* at Comment 4.

⁷³ See the petitioners' Rebuttal Brief at 39-40.

⁷⁴ See, e.g., *Steel Pipe from Korea Final*.

⁷⁵ See *Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539, 15542 (April 2, 2002).

⁷⁶ See Final Calc Memo.

⁷⁷ See AMUSA Case Brief, at 8.

sales, marketing, end-use, processing costs, testing expenses and sales expenses applicable to U.S. sales” of this same CONNUM to another U.S. customer.⁷⁸

- AMUSA asserts that the largest U.S. purchaser of the CONNUM at issue paid a much higher price than did either the other U.S. purchaser of this CONNUM or the purchasers of this CONNUM in the home market.⁷⁹ AMUSA also notes the extensive testing and product support that the largest U.S. customer of this CONNUM received relative to either the smaller U.S. purchaser of this CONNUM or the home market purchasers of this CONNUM.⁸⁰
- AMUSA contends that the difference in pricing between the sales to the largest U.S. purchaser of this CONNUM, and to both the other U.S. purchaser of this CONNUM and the home market purchaser of this same CONNUM, reflects significantly different expense and selling conditions which POSCO failed to report.⁸¹ AMUSA asserts that if the Department declines to apply AFA to POSCO’s entire response, the Department should use the highest sale price of this CONNUM in the home market and compare that home market sale to the lowest U.S. selling price reported by POSCO for this CONNUM in the home market for non-overrun material.⁸²
- AMUSA argues that if the Department declines to apply AFA to U.S. sales of this CONNUM, it should classify overrun sales of the non-prime merchandise as outside the ordinary course of trade.⁸³

POSCO Rebuttal:

- POSCO asserts that every U.S. sale of the CONNUM at issue, along with all home market non-overrun sales of this CONNUM, underwent the same testing requirements.⁸⁴
- POSCO further argues that there are no price discrepancies or misclassified expenses associated with either U.S. or home market sales of this CONNUM.⁸⁵ POSCO asserts that the Department “collected numerous verification material concerning its U.S. and home market sales of this CONNUM.”⁸⁶
- POSCO asserts that the Department has no basis to reclassify overruns of this CONNUM as outside the ordinary course of trade.⁸⁷ Citing to *Carbon Steel Flat Products XV*, POSCO asserts that there is nothing on the record suggesting that the merchandise was produced “according to unusual product specifications” within “unusual product specifications” at “aberrational prices” or at “unusual terms of sale.”⁸⁸ Here, POSCO asserts that the Department has made no previous indication that its overrun sales are

⁷⁸ *Id.*, at 2.

⁷⁹ *Id.*, at 34-40.

⁸⁰ *Id.*

⁸¹ *Id.*, at 41-43.

⁸² *Id.*, at 42.

⁸³ *Id.*, at 43.

⁸⁴ See POSCO Rebuttal Brief, at 20.

⁸⁵ *Id.*, at 25-26.

⁸⁶ *Id.*, citing Home Market Sales Verification Report at 10-12 and CEP Verification Report at 6.

⁸⁷ *Id.*, at 27.

⁸⁸ *Id.*, citing *Certain Corrosion Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fifteenth Administrative Review* (75 FR 13490) (March 22, 2010) (*Carbon Steel Flat Products XV*), and accompanying Issues and Decision Memorandum at Comment 15.

outside the ordinary course of trade.⁸⁹ POSCO asserts that if the Department were to determine that POSCO's sales are outside the ordinary course of trade, it should have done so prior to issuing its Preliminary Determination.⁹⁰

- POSCO concludes that no adverse assumption is warranted with regards to its sales of this CONNUM. POSCO argues that the Department verified both the sales and costs associated with this particular CONNUM.⁹¹

Department's Position:

We find that the application of AFA is not warranted with respect to POSCO's reported sales of the CONNUM at issue used in line pipe applications. As we noted in our response to Comment 2, section 776(a) of the Act provides, in general, that the Department may apply facts available if necessary information is not available on the record or if an interested party withholds information that has been requested, fails to provide such information by the established deadlines or in the form and manner requested, significantly impedes a proceeding, or if such information cannot be verified. Further, section 776(b) states that adverse inferences may be applied if an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. In this case, we find that POSCO cooperated to the best of its ability with the Department's multiple requests for information by timely responding to the Department's questionnaires and participating in the verification of the submitted information.

AMUSA suggests that the Department should apply AFA because POSCO has failed to report "critical features" relating to the sales and expenses that POSCO incurred with respect to sales of this CONNUM.⁹² However, during the sales, cost and CEP verifications, we examined the physical characteristics, along with complete home market and U.S. sales and cost data which POSCO reported with respect to this CONNUM, and we successfully traced these sales and cost data to POSCO's accounting records.⁹³ We further found from examination of these data that POSCO reported the physical characteristics of this CONNUM consistent with the instructions that we set forth in the Department's June 9, 2016, and June 10, 2016, Antidumping Questionnaire.⁹⁴ Because we were able to trace POSCO's sales and cost differences to POSCO's accounting records, we have determined that no adverse inference is warranted for POSCO pursuant to Section 776(a)(2)(A) of the Act. Accordingly, we have continued to use the sales and cost data provided by POSCO in our margin calculations for this CONNUM.

Moreover, during our verification of this matter, we examined the testing procedures associated with POSCO's sales of this CONNUM in both the U.S. and home market. We find that all of POSCO's U.S. sales of this CONNUM underwent similar levels of testing, and that this level of testing is similar to the level of testing that was undergone by POSCO's non-overrun sales of this

⁸⁹ See POSCO Rebuttal Brief, at 28.

⁹⁰ *Id.*

⁹¹ *Id.*, at 30.

⁹² See AMUSA Case Brief, at 8.

⁹³ See, generally, Cost Verification Report, at Exhibits 6A-6C; see also Sales Verification Report, at Exhibit 47 (US sales of this CONNUM) and Exhibit 48 (HM sales of this CONNUM); see also CEP Verification Report, at Section VI and Exhibit 14.

⁹⁴ See Letter from Robert James to POSCO, dated June 9, 2016 at (collectively Antidumping Questionnaire).

CONNUM in the home market.⁹⁵ Additionally, during our verification of POSCO's sales of this CONNUM, we found no evidence suggesting that POSCO had inaccurately reported the physical characteristics and product chemistry with respect to this CONNUM in either the home market or the United States.⁹⁶

AMUSA has argued that pricing differences between the merchandise sold by POSCO to its smaller U.S. customer and to customers in the home market, and its largest U.S. purchaser of this CONNUM, is the result of different levels of product support that POSCO failed to report to the Department. However, during our sales and CEP verifications of POSCO, we found no instances of unreported U.S. or home market sales of this CONNUM, nor did we find any evidence to suggest that POSCO incurred unreported expenses in either the home market or the U.S. with respect to this CONNUM.⁹⁷ Therefore, because record evidence indicates that POSCO has accurately reported the sales and expense data associated with sales of merchandise with this CONNUM, we find no basis in which to either reject the home market or U.S. selling prices for this CONNUM reported by POSCO, or to assign additional selling U.S. selling expenses to POSCO's U.S. sales of this CONNUM.

We agree, however, with AMUSA that overrun sales of this CONNUM should be excluded from the product comparisons because such overrun sales are outside the ordinary course of trade. We have analyzed whether POSCO's overruns are outside the ordinary course of trade. In determining whether sales are outside the ordinary course of trade, the Department has the discretion to how to best analyze the "many factors" that determine whether sales are outside the ordinary course of trade.⁹⁸ These factors may include: (1) whether the merchandise is "off quality" or produced according to unusual specifications; (2) the comparative volume of sales and the number of buyers in the home market; (3) the average quantity of an overrun sale compared to the average quantity of a commercial sale, and (4) the price and profit differentials in the home market.⁹⁹ Here, we find that POSCO sold overruns in the home market in lower quantities, at a lower selling price and at a lower profit analysis than it sold non-overrun materials.¹⁰⁰ Accordingly, we have not used POSCO's home market overrun sales in our final calculations.¹⁰¹

⁹⁵ See Sales Verification Report, at 10-12 and Exhibits VE-47 and VE-48; *see also* CEP Verification Report, at Section VI and Exhibit US-14.

⁹⁶ *Id.*

⁹⁷ See Sales Verification Report, at Exhibit 47 (US sales of this CONNUM) and Exhibit 48 (HM sales of this CONNUM); *see also* CEP Verification Report, at Section VI and at exhibit 14.

⁹⁸ See *Laclede Steel Co. v. United States*, 19 CIT 1076, 1078 (1995) (*Laclede Steel*).

⁹⁹ See, e.g., *Certain Cut-to-Length Carbon-Quality Steel Flat Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*; 2011-2012, 78 FR 4385 (January 22, 2013, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2011-2012, 78 FR 29113, 29114 (May 17, 2016).

¹⁰⁰ See Final Analysis Memorandum for additional detail.

¹⁰¹ *Id.*; *see also* Memorandum from Michael J. Heaney to the File Re: POSCO Overrun Analysis dated March 29, 2017.

Comment 7: Collapsing

POSCO Comments:

- POSCO protests the Department's preliminary determination to collapse POSCO with affiliated customers that do not produce or resell CTL plate products, and with affiliated service center customers who shear or cut coils into subject merchandise. POSCO asserts that the Department's preliminary collapsing analysis was overly broad and asserts that the nature of the entities operations, along with the level of affiliation between POSCO and the parties in question do not warrant collapsing of these entities with POSCO.¹⁰²
- Regarding affiliated parties who did not process or resell CTL plate during the POI, POSCO asserts that these companies do not have the production facilities to produce the subject merchandise. Were these entities to produce the subject merchandise, POSCO argues that these parties would require "substantial retooling."¹⁰³ POSCO further argues that the equity interest in which POSCO holds in five of these entities is "small" and does not indicate the prospect of "significant potential for manipulation" of either prices or costs among the parties.¹⁰⁴ POSCO further argues that none of these entities share employees or managers, or have intertwined operations with each other.¹⁰⁵
- Regarding collapsing POSCO with affiliated service center customers, POSCO asserts that these entities are not producers within the meaning of section 351.401(f) of the Department's regulations. POSCO asserts that the only role these entities fulfill is the slitting or shearing of hot rolled coils from merchandise produced by POSCO.¹⁰⁶ POSCO further argues that it has a small equity interest in the entities at issue.¹⁰⁷ POSCO asserts that the one shared manager that the Department identified between one POSCO affiliate and another POSCO affiliate fails to support the Department's collapsing determination or establish that the operations of these entities are intertwined with those of POSCO.¹⁰⁸
- POSCO asserts that "at a maximum" the Department should only collapse POSCO with POSCO P&S and SPFC since these are the only two companies who are both processors of steel products and are majority owned by POSCO.¹⁰⁹
- POSCO further asserts that the Department should not include and apply weighted average CONNUM costs as an element of its service center processing costs in its COP calculation. POSCO argues that the Department erroneously included these costs in a cost test that included sales by POSCO to affiliated customers.¹¹⁰ POSCO argues that to the extent that the Department continues to collapse POSCO with its affiliated customers, the Department should disregard POSCO's sales to these collapsed companies, and should instead treat only POSCO as a single entity.¹¹¹

¹⁰² See POSCO Case Brief, at 4.

¹⁰³ *Id.*, at 6.

¹⁰⁴ *Id.*, at 7.

¹⁰⁵ *Id.*, at 8-9.

¹⁰⁶ *Id.*, at 11.

¹⁰⁷ *Id.*, at 13.

¹⁰⁸ *Id.*, at 14-15.

¹⁰⁹ *Id.*, at 16.

¹¹⁰ *Id.*, at 17.

¹¹¹ *Id.*, at 18.

AMUSA Rebuttal:

- AMUSA asserts that the Department should continue to include in its margin calculations all sales of affiliated parties who either resold or processed CTL plate.¹¹²
- Concerning affiliated parties who did not process or resell CTL plate during the POI, AMUSA argues that any affiliated party whether a production or sales unit “must provide their resales of subject merchandise if the five percent regulatory threshold for reporting resales” has been met.¹¹³ However, AMUSA agrees with POSCO, that if the Department continues to collapse POSCO with these entities in the final determination, it should remove from the home market database all of POSCO’s sales “to all collapsed affiliates.”¹¹⁴
- With respect to collapsing POSCO with affiliated service center customers, AMUSA disputes POSCO’s interpretation of “producer” as that definition pertains to Section 351.401(f) of the Department’s Regulations. AMUSA asserts that the activities undertaken by these service centers creates a product that is both saleable and subject to the investigation.¹¹⁵
- AMUSA further asserts that the volume sold by the service centers is significant. AMUSA contends that failure to collapse POSCO with these affiliated service centers could induce POSCO to “shift business to these service centers” in future reviews.¹¹⁶
- AMUSA further asserts that the Department should include and apply weight average CONNUM costs as an element of its service center processing costs in its COP calculation. AMUSA asserts that the Department must include all home market sales in its cost test to determine whether these sales are within the ordinary course of trade.¹¹⁷

Department’s Position

We disagree with POSCO. In the *Preliminary Determination*, we collapsed POSCO with certain affiliates, to or through which POSCO sold subject merchandise (affiliated distributors).¹¹⁸ We also collapsed POSCO with certain affiliated companies that purchased hot rolled coil from POSCO or POSCO P&S (which is itself an affiliated company which sold subject merchandise), and which subsequently slit or sheared the coil into subject merchandise (affiliated service centers).¹¹⁹ In this final determination, we continue to find that collapsing POSCO with each of the entities identified in the *Preliminary Collapsing Memorandum* is necessary in order to avoid the potential for manipulation of price or production, as set forth in 19 CFR 351.401(f).

¹¹² See AMUSA Rebuttal Brief, at 2.

¹¹³ *Id.*, at 4.

¹¹⁴ *Id.*

¹¹⁵ *Id.*, at 6.

¹¹⁶ *Id.*, at 8.

¹¹⁷ *Id.*

¹¹⁸ See, generally, Memorandum from Michael J. Heaney to Scot Fullerton Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: POSCO Affiliation and Collapsing Memorandum, dated November 4, 2016 (*Preliminary Collapsing Memorandum*).

¹¹⁹ *Id.*

Pursuant to section 351.401(f)(1) of our regulations, we collapse affiliated producers into “a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and... there is a significant potential for the manipulation of price or production.” Pursuant to section 351.401(f)(2) of our regulations, in identifying a significant potential for the manipulation of price or production, the factors that the Department may consider include: (i) the level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

We continue to find that the regulatory requirements under 19 CFR 351.401(f)(1) are met with respect to the affiliated service centers. Record evidence demonstrates that the first collapsing prong (similar or identical production that would not require substantial retooling) is met because the service centers manufacture subject merchandise from the slitting of coils, making significant retooling unnecessary to restructure manufacturing priorities.¹²⁰ We disagree with POSCO’s assertion that these service centers are not “producers” of the subject merchandise absent substantial retooling of POSCO’s production facilities. While POSCO has cited *French Flat Products* to support its argument that its service centers are not “producers” of the merchandise,¹²¹ we find the facts in *French Flat Products* to be distinguishable from that in the instant investigation. In *French Flat Products*, we determined that affiliated resellers “cannot create cold-rolled subject merchandise from either hot-rolled coils or from slab” and instead performed “slitting and other processing functions” which in itself did not provide the defining feature of the merchandise being cold rolled to a specific gauge.¹²² Here, however, the step of shearing or cutting that is performed by POSCO’s affiliated service centers creates a saleable product which itself is subject to the scope of this investigation.

Record evidence also indicates that the second collapsing prong (potential for manipulation of price or production) is met with respect to the affiliated service centers. First, POSCO has a greater than five percent equity holding in each of its affiliated service centers, indicating common ownership.¹²³ Second, the operations of the companies are “intertwined” through their sale of a substantial portion of POSCO’s home market sales volume.¹²⁴ Third, and as noted in the *Preliminary Collapsing Memorandum*, in one instance there was a director of a POSCO affiliate who sat on the board of another POSCO affiliate.¹²⁵

¹²⁰ See Letter from POSCO to Secretary of Commerce Re: Carbon and Alloy Steel Cut to Length Plate from the Republic of Korea: Request for Exemption from Downstream Reporting and Confirmation of Reporting Requirements, dated June 29, 2016, (POSCO June 29, 2016 Letter) at 5-8 and Attachment 1.

¹²¹ See *Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold Rolled Carbon Steel Flat Products from France* 67 FR 62114 (October 3, 2002) (*French Flat Products*), and accompanying Issues and Decision Memorandum at Comment 2.

¹²² *Id.*

¹²³ See POSCO June 29, 2016 Letter, at Attachments 1 and 2.

¹²⁴ *Id.*, at 8.

¹²⁵ See *Preliminary Collapsing Memorandum* at 9; see also Letter from POSCO to Secretary of Commerce Re: Carbon and Alloy Cut to Length Plate from the Republic of Korea: Supplemental Sections A-D Questionnaire Response, dated October 24, 2016, at 6-7.

POSCO argues that there is only one documented instance of a service center manager sitting on the board of an affiliated service center and, thus, there is no significant potential for manipulation. However, as noted in the *Preliminary Collapsing Memorandum*, the *Preamble* to the final regulations clarifies that the factors applied under 19 CFR 351.401(f) are “non-exhaustive.”¹²⁶ The *Preamble* also states that “{t}he Department has not adopted the suggestion that it will collapse only in ‘extraordinary’ circumstances.”¹²⁷ The Department’s determination in this case is consistent with the statement in the *Preamble* that the “significant potential” criteria provided in 19 CFR 351.401(f) are non-exhaustive. In *Carbon Steel Pipes from India*, the Department stated that “{n}ot all of these criteria must be met in a particular case; the requirement is that the Department determine that the affiliated companies are sufficiently related to create the potential of price or production manipulation.”¹²⁸ Moreover, the Department’s determination to collapse is based on the “totality of the circumstances.”¹²⁹

Here, our determination is consistent with prior determinations, such as *Carbon Steel Pipes from India and Nails from Taiwan*, because we have based our collapsing analysis on the “totality of circumstances” associated with POSCO’s business operation and found that collapsing is appropriate even though one of the factors identified in 19 CFR 351.401(f)(2) (common board members or managers) is not present with respect to every affiliated service center.¹³⁰ We continue to find, as further explained in the *Preliminary Collapsing Memorandum*, that the similarity of production facilities between POSCO and its affiliated party service centers, along with the volume of transactions that POSCO had with affiliated its service centers, creates the potential for future manipulation of prices and costs between POSCO and its affiliated service centers.¹³¹ Absent such collapsing, POSCO could potentially shift a significant volume of its home market sales to these affiliated service centers.

POSCO also argues that the Department should not collapse it with its affiliated distributors, which it claims do not produce or resell CTL plate products. We disagree with POSCO and continue to find that it is appropriate to treat POSCO and its affiliated distributors as a single entity pursuant to 19 CFR 351.401(f). The Department’s determination in this investigation to collapse these entities is consistent with prior determinations in which we included non-producers in the collapsed entity. As we explained in *Australian Hot Rolled Steel*,¹³² the

¹²⁶ See *Preliminary Collapsing Memorandum* at 6 citing *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27345 (May 19, 1997) (*Preamble*).

¹²⁷ *Id.*

¹²⁸ See *Certain Welded Carbon Standard Steel Pipes and Tubes from India; Final Results of New Shipper Antidumping Duty Administration Review*, 62 FR 47632, 47638 (September 10, 1997) (*Carbon Steel Pipes from India*) (emphasis added).

¹²⁹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51436 (Oct. 1, 1997) (*Nails from Taiwan*) (“The totality of the circumstances presented by these facts indicate that the two companies operate under common control of the same individual/family with respect to sales and production decisions.”).

¹³⁰ See *Nails from Taiwan*, at 51436.

¹³¹ See *Collapsing Memorandum*, at 8 and 10. See also 351.401(f)(1).

¹³² *Certain Hot Rolled Steel Flat Products from Australia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 15241 (March 22, 2016), and accompanying Preliminary Decision Memorandum at 7-8, unchanged in *Certain Hot Rolled Steel Flat Products from Australia: Final Determination of Sales at Less Than Fair Value*, 81 FR 53406, 53407 (August 12, 2016) (collectively, *Australian*

Department has long recognized that it is appropriate to treat certain groups of companies as a single entity and to determine a single weighted-average margin for that entity to determine margins accurately and to prevent manipulation that would undermine the effectiveness of the antidumping law. While section 19 CFR 351.401(f) explicitly applies to producers, the Department has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria outlined in the regulation in its analysis. In a number of past cases, the Department has treated exporting companies as a single entity,¹³³ as well as producers and exporters as a single entity.¹³⁴

Furthermore, the U.S. Court of International Trade (CIT) has upheld the Department's practice of collapsing two entities that were sufficiently related to prevent the possibility of price manipulation, even when those entities were not both producers.¹³⁵ For example, in *Hontex II*,¹³⁶ the CIT held that, once a finding of affiliation is made, affiliated exporters can be considered a single entity where their relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise.¹³⁷

In this case, we noted in the *Preliminary Collapsing Memorandum* that POSCO either directly or indirectly owns a greater than five percent equity interest in the affiliated distributors, which shows significant common ownership among POSCO and these affiliates during the POI.¹³⁸ With respect to intertwined operations, POSCO's questionnaire responses show that POSCO had significant transactions with its affiliated distributors, which constituted a significant amount of POSCO's home market sales volume.¹³⁹ Because these affiliated entities identified by POSCO engaged the purchase of CTL plate from Korea, and the affiliated distributors, in particular, purchased significant amounts of CTL plate from POSCO during the POI, we continue to find that the operations of POSCO and the affiliated distributors are "intertwined" through the significant affiliated party transactions. We continue to find that these intertwined operations give POSCO the ability and the potential to shift sales and/or production among its affiliates.

We agree with both POSCO and AMUSA that because of our collapsing POSCO with affiliated distributors and service centers and our decision to treat POSCO as a single entity, any sales from POSCO to its affiliated distributors and service centers should be removed from POSCO's home market sales database.¹⁴⁰ However, concerning the inclusion of POSCO's service centers processing costs as an element of the weighted average COP calculation, we disagree with POSCO. In this investigation, we have employed our standard cost analysis. This analysis

Hot Rolled Steel).

¹³³ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 5.

¹³⁴ See *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 33578, 33580-33581 (June 14, 2010), *unchanged in Certain Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 69626 (November 15, 2010).

¹³⁵ See *Queen's Flowers de Colon v. United States*, 981 F. Supp. 617, 628 (CIT 1997).

¹³⁶ See *Hontex Enterprises v. United States*, 342 F. Supp. 2d 1225, 1230-34 (CIT 2004) ("*Hontex II*").

¹³⁷ *Id.*

¹³⁸ See *Collapsing Memorandum*, at 9.

¹³⁹ See POSCO's June 29, 2016 Letter, at Attachment 1.

¹⁴⁰ See *Final Analysis Memorandum*.

involves the weight-averaging of all costs by control number and to then test these weighted average costs to determine whether POSCO's home market sales are above the COP.¹⁴¹ Because these service centers accumulate processing costs which are an element of the weighted average COP, inclusion of the weight average costs of POSCO's service centers is necessary for the Department to conduct its COP analysis.¹⁴²

Comment 8: Calculation of POSCO Freight Cap

POSCO Comments:

- POSCO contends that the Department incorrectly aggregated all four of its delivery-related expenses (*i.e.*, handling fees, inland freight to the warehouse, inland freight from the warehouse to the customer, and warehousing), and erred in applying the freight cap to its home market sales. POSCO asserts that freight should be capped by inland freight from the warehouse to the customer as the only expense upon which POSCO incurs freight revenue.¹⁴³

AMUSA Comments:

- AMUSA asserts that the Department should include in its freight cap calculation all logistics expenses incidental to delivery of the merchandise. AMUSA asserts that where a company provides delivery in multiple stages, the freight cap should "encompass the totality of those delivery services."¹⁴⁴
- Moreover, AMUSA notes that POSCO separately reported the price of the product *per se* under the variable ("PROVALH") whereas POSCO separately reported a field (FRTREVVH) that captured all surcharges which POSCO received that are incidental to delivery of the merchandise.
- AMUSA asserts that the Department should amend its calculation to include freight revenue in those instances where the freight revenue is either equal or less than the movement expenses in question.¹⁴⁵

Department's Position:

We agree with AMUSA. POSCO provided delivery from its factory to the customer in multiple delivery stages. That is, POSCO shipped the merchandise to a warehouse, and then sequentially from the warehouse to its customer.¹⁴⁶ Moreover, POSCO's home market freight charges sometimes involved freight charges incurred in the delivery of the merchandise to intermediate locations and involved intra delivery warehousing.¹⁴⁷ Because of the multiple delivery stages that POSCO undertook in delivering the merchandise to its home market customers, we have

¹⁴¹ See the SAS Log of Part 3A of the Comparison Market Program which is attached at the Final Margin Program at Attachment 2.

¹⁴² *Id.*

¹⁴³ See POSCO Case Brief, at 19-20.

¹⁴⁴ See AMUSA Rebuttal Brief, at 11.

¹⁴⁵ *Id.*, at 12-13.

¹⁴⁶ See POSCO July 28, 2016 Section B response, at B-36

¹⁴⁷ See e.g., Sales Verification Report, at 21.

continued to include handling fees, inland freight to the warehouse, inland freight from the warehouse to the customer, and warehousing in our calculation of the freight cap. Finally, we agree with AMUSA that we should revise our calculation of the freight cap to use the actual amount of freight revenue in instances where POSCO's reported freight revenue is either equal or less than the amount of handling fees, inland freight to the warehouse, inland freight from the warehouse to the customer, and warehousing expenses reported by POSCO. We have revised our calculations accordingly.¹⁴⁸

Comment 9: Whether to Grant POSCO a CEP Offset

POSCO Comments:

- POSCO asserts that the Department should apply a CEP offset. POSCO asserts that it performed selling expenses to a greater degree and intensity in the home market than it did on its CEP sales. Specifically, POSCO asserts that in its July 7, 2016 Section A Response, it quantified differences in selling activity with regard to “strategic/economic planning, personal training/exchange, advertising, sales promotion, inventory maintenance, order input processing, direct sales personnel, sales marketing support and marketing research.”¹⁴⁹ POSCO further asserts that at verification it established that it incurs selling expenses to a greater degree and intensity in the home market than it did on its CEP sales.¹⁵⁰
- While acknowledging that it was denied a CEP offset in several past proceedings, POSCO notes several other past cases, *e.g.*, *Carbon Steel Flat Products XVI*,¹⁵¹ the Department granted it a CEP offset. POSCO concludes that the facts in the instant investigation (as in *Carbon Steel Flat Products XVI*) support the Department granting POSCO a CEP offset.

AMUSA Comments:

- AMUSA disputes POSCO's characterization of the degree and intensity of the selling expenses that POSCO incurred on its home market and CEP sales. AMUSA asserts that POSCO (as opposed to its CEP subsidiary) was responsible for many of the business activities that POSCO undertook on its U.S. sales.¹⁵²
- Additionally, AMUSA asserts that on CEP sales both POSCO and POSCO Daewoo engage in sales support that benefits POSCO America (POSAM) and POSCO Daewoo America.¹⁵³ Because POSCO provides sales support in both Korea and the United States on its CEP sales, the petitioners dispute POSCO's characterization of the intensity levels that POSCO provides on selling expenses and services such as strategic/economic

¹⁴⁸ See Final Analysis Memorandum.

¹⁴⁹ See POSCO Case Brief, at 22-24.

¹⁵⁰ *Id.*, at 24.

¹⁵¹ See *Certain Corrosion Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of the Sixteenth Administrative Review*, (75 FR 55745) (September 14, 2010), unchanged in *Certain Corrosion Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Sixteenth Administrative Review*, (75 FR 13490) (March 21, 2011) (*Carbon Steel Flat Products XVI*).

¹⁵² See AMUSA Rebuttal Brief, at 15-17.

¹⁵³ *Id.*, at 18.

planning, advertising, sales promotion, sales marketing support, market research, order input/processing, warranties, personnel training/exchange, technical/engineering services, and inventory maintenance.¹⁵⁴

- Additionally, the petitioners argue that in more contemporaneous cases than *Carbon Steel Flat Products XVI*, the Department has denied POSCO a CEP offset.¹⁵⁵

Department's Position:

We continue to find that no CEP offset is warranted for POSCO's CEP sales in this investigation. As we noted in the *Preliminary Determination*, the Department will grant a CEP offset under section 773(a)(7)(B) of the Act, if it determines that the NV level of trade (LOT) is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible).¹⁵⁶ In this final determination, we continue to find that the sales and marketing, freight and delivery, inventory maintenance, and warranty and technical support provided by POSCO in the home market do not establish a sufficient difference in the home market and CEP LOTs, pursuant to section 773(a)(7)(B) of the Act.¹⁵⁷ POSCO provided sales support to its CEP entities through a number of CEP entities which itself was supported by POSCO in Korea.¹⁵⁸ The role of these multiple entities in the sales process suggests that sales and marketing, freight and delivery, inventory maintenance, and warranty and technical support varied across both CEP and home market channels. Based on the foregoing, and consistent with our finding in *Korean Cold Rolled*, we continue to find from our examination of POSCO's home market and CEP selling activities that POSCO's CEP sales are not substantially more advanced than POSCO's home market sales.¹⁵⁹ Accordingly, we have continued to deny POSCO a CEP offset in these final results.

As AMUSA has noted, on CEP sales both POSCO and POSCO Daewoo engage in sales support which benefits both POSCO America (POSAM) and POSCO Daewoo America.¹⁶⁰ Also, we note that some of the selling activities to which POSCO references in support of its claimed CEP offset, (*e.g.*, strategic and economic planning) involve overall corporate policy rather than sales

¹⁵⁴ *Id.*, at 19-31.

¹⁵⁵ *Id.*, at 32-37. AMUSA cites to *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value* 81 FR 53419 (August 12, 2016), and accompanying Issues and Decision Memorandum at Comment 20. AMUSA also cites to the recently issued *Certain Carbon and Alloy Cut-To-Length Plate from the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 79441 (November 4, 2016), and accompanying Preliminary Decision Memorandum (final pending).

¹⁵⁶ See *Preliminary Determination*, and accompanying Preliminary Decision Memorandum, at 14.

¹⁵⁷ *Id.*, at 15; as noted in the Preliminary Decision Memorandum, in recent cases the Department has grouped selling expenses into the four categories of: 1) sales and marketing, 2) freight and delivery, 3) inventory maintenance and 4) warranty and technical support for purposes of conducting its LOT analysis. See *e.g.*, *Certain Cold Rolled Steel Flat Products from the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 11757 (March 7, 2016), and accompanying Issues and Decision Memorandum at 19, unchanged in *Certain Cold Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value* 81 FR 49953 (July 29, 2016) (*Korean Cold Rolled*).

¹⁵⁸ See POSCO July 7, 2016 Section A Response, at A-18.

¹⁵⁹ See *Korean Cold Rolled*, at Comment 19.

¹⁶⁰ See AMUSA Rebuttal Brief, at 15.

contact between a salesperson and POSCO's customer.¹⁶¹ As such, we continue to maintain that such activities benefit both home market and CEP sales activities. Moreover, as we noted in the Preliminary Decision Memorandum, within the home market, POSCO makes sales to end users (both affiliated and unaffiliated), sales through affiliated resellers, and "cyber-transactions." (Cyber-transactions are typically made to unaffiliated end users and usually involve sales of overrun and "non-prime merchandise."¹⁶²) Given POSCO's sales activities with regard to such cyber-transactions, we dispute POSCO's assertion that it consistently provides a greater degree of sales support on home market transactions than which it provides upon CEP transactions.

Based on our examination of the selling functions reported by POSCO in the home market and on its CEP sales, we continue to find insufficient evidence to suggest that the home market LOT is sufficiently more advanced than the CEP LOT to warrant granting POSCO a LOT adjustment. Accordingly, consistent with our finding in other cases (*e.g.*, *Korean Cold Rolled* and *Silicomanganese from Australia*), we have continued to make no CEP offset in this investigation.¹⁶³

¹⁶¹ See POSCO Section A Response, at A-23 and Exhibit A-8.

¹⁶² See Preliminary Decision Memorandum, at 14, citing POSCO July 7, 2016 Section A Response, at A-16-A17.

¹⁶³ See *Korean Cold Rolled*; see also; *Silicomanganese from Australia: Final Determination of Sales at Less Than Fair Value*, 81 FR 8682 (February 22, 2016) (*Silicomanganese from Australia*), and accompanying Issues and Decision Memorandum at Comment 2.

VII. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination in the investigation and the final weighted-average dumping margins in the *Federal Register*.



Agree

Disagree

3/29/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance