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Investigation
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MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of 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
Carbon and Alloy Steel Wire Rod from the Republic of Korea

I. Summary

We analyzed the comments of interested parties in the less-than-fair-value (LTFV) investigation of carbon and alloy steel wire rod (wire rod) from the Republic of Korea (Korea). As a result of our analysis, and based on our findings at verification, we made changes to the margin calculation for POSCO. We continue to find that critical circumstances do not exist for POSCO or the all other producers/exporters of wire rod from Korea. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. We received comments from interested parties for the following issues in this LTFV investigation:

- Comment 1: Whether to Apply AFA to POSCO Because Its Weighted-Average CONNUM-Specific Cost Database is Unreliable
- Comment 2: Whether to apply AFA to POSCO because It Failed to Report All of Its U.S. Sales
- Comment 3: Whether Commerce Should Use Additional Product Characteristics for Its Model Match Methodology
- Comment 4: U.S. Credit Expense (CREDITU)
- Comment 5: Whether POSCO Reported the Appropriate Indirect Selling Expense Incurred in the United States (INDIRS1U)
- Comment 6: Indirect Selling Expense Incurred in the Home Market (DINDIRS2U)
- Comment 7: Whether POSCO Failed to Report that Its Sale to Company B was an Affiliated Sale (CUSRELH)
- Comment 8: Negative Credit Expenses of Home Market Sales (CREDITH)



Comment 9: SAS Syntax for Capping Home Market Freight Revenue

Comment 10: Whether to Include Interest from Late Payment in the Interest Expense (INTEX) Calculation

II. Background

On October 31, 2017, Commerce published the *Preliminary Determination* in the *Federal Register*.¹ On November 28, 2017, Commerce published the *Amended Preliminary Determination*.² The period of investigation (POI) is January 1, 2016, through December 31, 2016.

On November 7, 2017, Commerce postponed the final determination of this investigation and revised the deadline to March 15, 2018.³ On January 23, 2018, Commerce exercised its discretion to toll deadlines affected by the closure of the Federal Government from January 20 through 22, 2018.⁴ If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final determination of this investigation is now March 19, 2018.

In August 2017, we issued a Preliminary Scope Memorandum.⁵ In September 2017, POSCO and British Steel submitted scope case briefs, to which the petitioners⁶ submitted a rebuttal brief.⁷ On November 20, 2017, we issued a Final Scope Memorandum.⁸

In November 2017, we verified sales and cost information submitted by POSCO in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act);⁹ POSCO and STINKO Co.,

¹ See *Carbon and Alloy Steel Wire Rod from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Negative Determination of Critical Circumstances*, 82 FR 50386 (October 31, 2017) (*Preliminary Determination*).

² See *Carbon and Alloy Steel Wire Rod from the Republic of Korea: Amended Preliminary Determination of Sales at Less Than Fair Value*, 82 FR 56220 (November 28, 2017) (*Amended Preliminary Determination*).

³ See *Carbon and Alloy Steel Wire Rod from Italy, the Republic of Korea, Spain, Turkey, and the United Kingdom: Postponement of Final Determinations of Less-Than-Fair-Value Investigation and Extension of Provisional Measures*, 82 FR 51613 (November 7, 2017) (*Postponement of Final Determination*).

⁴ See January 23, 2018 Memorandum, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum). All deadlines in this segment of the proceeding have been extended by 3 days.

⁵ See August 7, 2017 Memorandum re: Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, the United Arab Emirates, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations (Preliminary Scope Memorandum).

⁶ The petitioners are Gerdau Ameristeel US Inc., Nucor Corporation, Keystone Consolidated Industries, Inc., and Charter Steel (collectively, the petitioners).

⁷ See POSCO's September 6, 2017 Letter re: Scope Issues Case Brief (POSCO Scope Case Brief), British Steel's September 6, 2017 Letter re: Scope Case Brief (British Steel Scope Case Brief), and Petitioners' September 13, 2017 Letter re: Rebuttal Brief in Response to the Scope Case Briefs of British Steel and POSCO (Petitioners Scope Rebuttal Brief).

⁸ See November 20, 2017 Memorandum re: Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, the United Arab Emirates, and the United Kingdom: Final Scope Memorandum (Final Scope Memorandum).

⁹ See January 12, 2018 Memorandum re: Verification of the Cost Response of POSCO in the Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Korea (POSCO Cost Verification Report), January 12, 2018

Ltd. (STINKO, which stands for Steel in Korea) each submitted updated shipment data through October 2017.¹⁰ POSCO submitted a request for a hearing, but later withdrew its request.¹¹ In January 2018 and February 2018, the petitioners and POSCO submitted case and rebuttal briefs.¹² Based on our analysis of the comments received and findings from verifications, we revised the margin calculations for POSCO.

III. Critical Circumstances

In the *Preliminary Determination*, we found that critical circumstances did not exist for POSCO or for all-other producers and exporters.¹³ Further, POSCO and STINKO submitted updated shipment data through October 2017.¹⁴ Parties did not address critical circumstances in their case briefs.

Pursuant to section 735(a)(3) of the Act, and 19 CFR 351.210(c), we hereby make a final determination regarding critical circumstances. Regarding whether a history of dumping and material injury exists, in the *Preliminary Determination*, we found that there was not a history of injurious dumping of wire rod from Korea and that criterion is not met. No party submitted comments regarding that finding. As the record contains no other information or evidence that calls into question our preliminary finding, we adopt the reasoning and finding of acts outlined in the *Preliminary Determination* with respect to this issue. Therefore, we continue to find that there is not a history of injurious dumping of wire rod from Korea and that criterion has not been met.

Because there is no prior history of injurious dumping, we next examine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV, and whether there was likely to be

Memorandum re: Verification of the Sales Response of POSCO in the Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from the Republic of Korea (POSCO Sales Verification Report), and January 12, 2018 Memorandum re: Verification of the CEP Sales Response of POSCO in the Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from the Republic of Korea (POSCO CEP Sales Verification Report).

¹⁰ See POSCO's November 14, 2017 Letter re: POSCO's Updated Monthly Quantity and Value Shipment Data (POSCO Shipment Data), and STINKO's November 14, 2017 Letter re: STINKO's Updated Monthly Quantity and Value Shipment Data (STINKO Shipment Data); *see also* PDM at 7-8.

¹¹ See POSCO's November 30, 2017 Letter re: Request for Public Hearing (POSCO Hearing Request), *see also* POSCO's March 9, 2018 Letter re: Withdrawal of Hearing Request."

¹² See The petitioners' January 23, 2018 Letter re: Carbon and Alloy Steel Wire Rod from Korea: Petitioners' Case Brief (Petitioners Case Brief), POSCO's January 23, 2018 Letter re: Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Korea: Case Brief of POSCO (POSCO Case Brief), The petitioners' February 1, 2018 Letter re: Carbon and Alloy Steel Wire Rod from Korea: Petitioners' Rebuttal Brief (Petitioners Rebuttal Brief), and POSCO's February 1, 2018 Letter re: Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Korea: Rebuttal Brief of POSCO (POSCO Rebuttal Brief).

¹³ We found that importers did not have knowledge of dumping because POSCO's preliminary rate was 10.09 percent, which is below the 25 percent and 15 percent thresholds for EP and CEP sales used by Commerce to impute knowledge. We subsequently revised POSCO's preliminary dumping margin to 40.80 percent. *See Amended Preliminary Determination*. We also found that the volume of POSCO's imports did not increase by more than 15 percent over its imports in the base period. *See Preliminary Determination* and accompanying Decision Memorandum (PDM) at 4.

¹⁴ See POSCO Shipment Data and STINKO Shipment Data.

material injury by reason of such sales, pursuant to section 733(e)(1)(A)(ii) of the Act. When evaluating whether such imputed knowledge exists, Commerce normally considers margins of 25 percent or more for EP sales or 15 percent or more for CEP sales sufficient to meet the quantitative threshold to impute knowledge of dumping.¹⁵ In this final determination, Commerce found that the imputed knowledge standard is met because POSCO's final margin is greater than 25 percent for EP sales and 15 percent for its CEP sales.¹⁶

Because we determined that the first criterion under the Act was met, we next examined whether imports from POSCO were massive over a relatively short period, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(h). It is the Department's practice to base its critical circumstances analysis on all available data, using base and comparison periods of no less than three months.¹⁷ Accordingly, in the *Preliminary Determination*, Commerce compared shipment data for the period April 2017 through September 2017 (the last month for which shipment data was available) with the preceding six-month period of October 2016 through March 2017.¹⁸ As POSCO and STINKO submitted updated shipment data through October 2017 as requested, in the final determination, we compared shipment data for the period April 2017 through October 2017 with the preceding seven-month period of September 2016 through March 2017. Consistent with 19 CFR 351.206(i), we find that imports based on POSCO's reported shipments of merchandise under consideration during the comparison period did not increase by more than 15 percent over its respective imports in the base period.¹⁹ Therefore, we find that there are no massive imports for POSCO, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(h).²⁰

For producers and exporters subject to the all-others rate, the applicable rate is the rate for POSCO, which exceeds the threshold to impute knowledge to the customers or importers that the subject merchandise was being sold at LTFV, as described above. We also attempted to analyze, in accordance with 19 CFR 351.206(i), monthly shipment data for the period September 2016 through October 2017, using import data from Global Trade Atlas, adjusted to remove POSCO's shipment

¹⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17413, 17415-17417 (March 26, 2012).

¹⁶ See "Final Determination" section of the accompanying *Federal Register* notice.

¹⁷ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 47111, 47118-47119 (August 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 76916 (December 23, 2004), and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decisions Memorandum at Comment 3.

¹⁸ These base and comparison periods satisfy the regulatory provisions that the comparison period be at least three months long and the base period have a comparable duration.

¹⁹ See March 19, 2018 Memorandum re: Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from the Republic of Korea: Final Critical Circumstances Memorandum (Final Critical Circumstances Memorandum).

²⁰ For Commerce's analysis, which involves business proprietary information, see Final Critical Circumstances Memorandum.

data.²¹ However, consistent with the *Preliminary Determination*,²² we continue to find the resulting GTA data unusable for purposes of our massive imports analysis because the timing of POSCO's exports and the GTA data are not in alignment, and therefore are not comparable.²³ Thus, we based our analysis for all-other producers and exporters of wire rod from Korea on POSCO's data. Using this data, we determine that there was no massive increase in imports from these remaining companies, as defined by 19 CFR 351.206(h).²⁴

As a result, in accordance with section 733(e)(1) of the Act, we find that critical circumstances do not exist for POSCO. In addition, we also determine pursuant to section 733(e)(1) of the Act that critical circumstances do not exist for all-other producers and exporters of wire rod in Korea.

IV. Scope of the Investigation

The products covered by this investigation are certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high-nickel steel; (d) ball bearing steel; or (e) concrete reinforcing bars and rods. Also excluded are free cutting steel (also known as free machining steel) products (*i.e.*, products that contain by weight one or more of the following elements: 0.1 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorous, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium). All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3093, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, and 7227.90.6035 of the HTSUS. Products entered under subheadings 7213.99.0090 and 7227.90.6090 of the HTSUS may also be included in this scope if they meet the physical description of subject merchandise above. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these proceedings is dispositive.

²¹ See, e.g., *Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Critical Circumstances*, 77 FR 73430, 73432 (December 10, 2012), unchanged in *Certain Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 75973, 75974 (December 26, 2012) and *Certain Oil Country Tubular Goods from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination*, 74 FR 47210, 47212 (September 15, 2009), *Certain Oil Country Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination: Final Negative Critical Circumstances Determination*, 74 FR 64045, 64047 (December 7, 2009).

²² See *Preliminary Determination* PDM at 7.

²³ See Final Critical Circumstances Memorandum.

²⁴ *Id.*

V. Scope Comments

In September 2017, POSCO, British Steel, and the petitioners filed scope case and rebuttal briefs.²⁵ On November 20, 2017, we issued the Final Scope Memorandum in which we did not change the scope of this investigation.²⁶

VI. Final Determination of No Sales for STINKO

In the *Preliminary Determination*, we found that STINKO did not have sales of subject merchandise because the information on the record indicated that POSCO was the first party in the distribution chain with knowledge that the merchandise was destined from the United States.²⁷ In reaching that determination, we considered that POSCO was the producer of the subject merchandise that STINKO sold to the United States during the POI, and POSCO knew that the wire rod STINKO ordered was being sold to U.S. customers.²⁸ During the verification, we found no discrepancies with the information on the record with respect to this issue.²⁹ Further, no party submitted comments with respect to our preliminary finding that STINKO did not have sales. As the record contains no other information or evidence that calls into question our preliminary finding, Commerce adopts the reasoning and finding of facts outlined in the *Preliminary Determination* with respect to this issue. Therefore, we continue to find that STINKO did not have sales for the purpose of determining antidumping duty liabilities in the final determination.

VII. Final Determination of Affiliation and Collapsing

In the *Preliminary Determination*, we found that POSCO and Company A were affiliated under section 771(33)(E) of the Act during the first nine months of the POI (affiliated period) because the information on the record indicated that POSCO owned five percent or more shares of Company A during first nine months of the POI.³⁰ We also determined that POSCO and Company A were no longer affiliated during the last three months of the POI (unaffiliated period) after POSCO sold all of its remaining shares in Company A.³¹ In reaching that determination, we considered each subsection of section 771(33) of the Act.³²

Also, in the *Preliminary Determination*, we found that those two companies should not be treated as a single entity during the affiliated period for antidumping purpose pursuant to 19 CFR 351.401(f) because the information on the record indicated that the significant potential for manipulation of price or production between those two companies did not exist.³³ In reaching

²⁵ See POSCO Scope Case Brief, British Steel Scope Case Brief, and Petitioners Scope Rebuttal Brief.

²⁶ For discussion of these comments, see Final Scope Decision Memorandum.

²⁷ See *Preliminary Determination* PDM at 7.

²⁸ *Id.* at 8.

²⁹ See POSCO Sales Verification Report.

³⁰ See *Preliminary Determination* PDM at 8-10, and October 24, 2017 Memorandum re: Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from the Republic of Korea: Affiliation and Collapsing Memorandum (Affiliation and Collapsing Memorandum).

³¹ *Id.* at 8-10, and Affiliation and Collapsing Memorandum.

³² *Id.*

³³ *Id.*

that determination, we considered the level of common ownership, degree of management overlap, and evidence of intertwined operations.³⁴

During the verification, we found no discrepancies with the information on the record with respect to this issue.³⁵ Further, no party submitted comments with respect to our preliminary finding that those two companies were affiliated during the affiliated period but not affiliated after that period, and that those two companies should not be treated as a single entity during the affiliated period. As the record contains no other information or evidence that calls into question our preliminary findings, Commerce adopts the reasoning and findings of facts outlined in the *Preliminary Determination* with respect to this issue. Therefore, we continue to find that those two companies were affiliated under section 771(33)(E) of the Act during the first nine months of the POI, and were not affiliated under any sections of the Act during the last three months of the POI. Also, we continue to find that those two companies should not be treated as a single entity during the first nine months of the POI for antidumping purposes pursuant to 19 CFR 351.401(f).

VIII. Changes to the Margin Calculation

Based on our analysis of the comments received from parties and minor corrections from verifications, we made the following changes to the margin calculations:³⁶

1. We adjusted inventory carrying costs incurred in Korea (DINVCARU) for EP sales to STINKO in calculating POSCO's margin to reflect a minor correction obtained at sales verification.³⁷
2. We revised indirect selling expense incurred in the Home Market (DINDIRS2U) of POSCO Daewoo Corp. (PDW). *See* Comment 6.
3. We revised credit expense of home market sales (CREDIT3H) using the standard credit calculation formula. *See* Comment 8.
4. We revised the SAS syntax for capping home market inland freight revenue by inland movement expenses. *See* Comment 9.
5. We revised net interest expense (INTEX) ratio. *See* Comment 10.

IX. Discussion of the Issues

Comment 1: Whether to Apply AFA to POSCO Because Its Weighted-Average CONNUM-Specific Cost Database is Unreliable

Petitioners' Arguments

- Commerce should apply total adverse facts available (AFA) to POSCO because it failed to cooperate to the best of its ability. Specifically, POSCO failed to report its POI weighted-

³⁴ *Id.*

³⁵ *See* POSCO Sales Verification Report.

³⁶ *See* March 19, 2018 Memorandum re: Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from the Republic of Korea: Final Determination Margin Calculation for POSCO (Final Margin Memorandum).

³⁷ *See* POSCO Sales Verification Report.

average CONNUM-specific costs and failed to explain or demonstrate why it was not feasible to report the POI weighted-average CONNUM-specific costs.³⁸ POSCO belatedly admitted that the reported cost differences are not related to the CONNUM's physical characteristics, but instead relate to other things such as timing differences. As AFA, Commerce should apply the higher of either the highest calculated transaction specific margin from the preliminary determination or the highest petition rate margin the final determination.

- Instead of reporting weighted-average costs that reflect the physical characteristic as established by Commerce, POSCO's reported CONNUM costs reflected three additional product characteristics (*i.e.*, quality, surface quality, and metallurgical properties).³⁹
- POSCO had multiple opportunities to establish a complete and accurate record. Nevertheless, POSCO never submitted the required POI weighted-average CONNUM-specific cost file based on Commerce's model match criteria.⁴⁰
- While Commerce made several requests, POSCO did not provide an adequate analysis of the differences in CONNUM physical characteristics for certain similar CONNUMs and did not demonstrate that the reported cost differences were driven by the differences in the physical characteristics of the CONNUMs.⁴¹
- Commerce verified that the reported raw material costs reflected large cost differences associated with the timing of raw material purchases. Also, the reported conversion costs reflected cost differences that were unrelated to the physical characteristics of the CONNUMs.
- Commerce's normal practice is to calculate costs on an annualized period of investigation and a respondent's reported product costs should reflect meaningful cost differences attributable to different CONNUM physical characteristics.⁴²
- Commerce should reject POSCO's submitted cost file for the final determination because POSCO impeded this investigation and failed to fulfill its obligation to provide an accurate and complete response to Commerce.
- An accurate POI weighted-average CONNUM-specific cost file based on Commerce's model match criteria is critical to the antidumping analysis. As such, POSCO's reported costs are unreliable. Therefore, use of partial facts available as was done at the *Preliminary*

³⁸ See Petitioners Case Brief at 2-13.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2011-2012, 79 FR 37284 (July 1, 2014), and accompanying Issues and Decision Memorandum at Comment 1, and *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and New Shipper Review*; 2014-2015, 81 FR 62712 (September 12, 2016), and accompanying Issues and Decision Memorandum at Comment 1.

Determination is not appropriate when the missing information is core to the antidumping analysis and leaves little room for the substitution of partial facts without undue difficulty.⁴³

POSCO's Arguments

- There is no factual or legal basis to apply AFA. As instructed by Commerce, POSCO reported complete and accurate cost data. The petitioners' allegations rely on misstatements, mischaracterizations, and misunderstanding of the comprehensive and fully verified record (e.g., 13,000 pages of questionnaire responses and 5,000 pages of verification exhibits). No significant issues exist in POSCO's cost data. POSCO has acted to the best of its ability and has fully cooperated with Commerce on all issues.⁴⁴
- In the *Preliminary Determination*, Commerce reallocated POSCO's reported conversion costs based on the common diameter range of wire rod and assumed that the conversion costs would not vary based on the diameter range. Commerce should reverse this adjustment in the final determination.⁴⁵
- The record shows that POSCO reported its costs on a CONNUM-specific weighted-average basis and the reported costs were based on POSCO's normal accounting records maintained in the ordinary course of business that were in accordance with Korean International Financial Reporting Standards.⁴⁶
- Cost differences exist between CONNUMs with the similar physical characteristics. However, because the CONNUMs which Commerce created for the antidumping proceeding do not reflect all factors, such as various other physical differences, other raw material differences or timing of production, etc., the cost differences associated with all factors are not taken into account.⁴⁷
- Raw material prices in the fourth quarter of the period of investigation (POI) were higher than the raw material prices in the first three quarters of the POI. Consequently, CONNUMs with greater production volume in the latter part of the POI had higher raw material costs than similar CONNUMs with greater production volume in earlier quarters of the POI.⁴⁸
- The conversion cost differences between similar CONNUMs resulted from other factors such as quality and metallurgical properties that Commerce declined to include in the CONNUM physical characteristics.⁴⁹
- The record contains no support for the idea that conversion costs vary only based on diameter. Out of the fourteen CONNUM physical characteristics, only one characteristic,

⁴³ See *Mukand Ltd. v. United States*, 767 F.3d 1300, 1308 (Fed. Cir. 2014), 767 F.3d 1300, 1308.

⁴⁴ See POSCO Rebuttal Brief at 2-5 and 19.

⁴⁵ See POSCO Case Brief at 8-13.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

“diameter” was determined through the rolling process while the other characteristics were determined through the steel making process. POSCO incurred conversion costs during the steel making process and thus, the preliminary determination ignored the conversion cost differences incurred at the steel making process (*i.e.*, which precedes the rolling process). Consequently, Commerce unfairly introduced inaccuracies and distortions into the antidumping calculation by masking the conversion cost differences arising from the steel making process which determined almost all of the CONNUM physical characteristics.⁵⁰

- Because the CONNUM physical characteristics established by Commerce do not capture all of the meaningful physical differences that impact prices and costs, POSCO reported two sets of cost data: one with the POI weighted-average CONNUM-specific costs reflecting Commerce’s fourteen CONNUM physical characteristics and another one with the POI weighted-average CONNUM-specific cost reflecting the same fourteen characteristics plus three additional characteristics proposed by POSCO.⁵¹
- The latter cost data is more appropriate and accurate because the former cost data masks the cost differences resulting from the differences in physical characteristics that Commerce’s model match hierarchy does not reflect.⁵²
- Further, the adjustment made in the preliminary determination should be reversed because POSCO reported its costs consistent with its normal accounting records and Commerce attempted to “smooth” out costs that vary naturally for reasons unrelated to Commerce’s CONNUM characteristics. POSCO’s cost reporting methodology is reasonable, accurate, and non-distortive. There is no factual or legal basis to apply adverse facts available to POSCO’s reported costs.⁵³

Commerce’s Position:

The record of this investigation does not support a finding of AFA with respect to the cost data issues raised by the petitioners.

Section 776(a) of the Act provides that Commerce, subject to section 782(d) of the Act, will select from “facts otherwise available” on the record if necessary information is not available on the record or an interested party: 1) withholds information that has been requested by Commerce; 2) fails to provide such information within the deadlines established, or in the form or manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified.

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In so doing, Commerce is not required to

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

determine, or make any adjustments to, a weighted-average dumping margin based on assumptions about information an interested party would have provided if the interested party had complied with Commerce's request for information.⁵⁴ In addition, the SAA explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁵⁵ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.⁵⁶ It is Commerce's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.⁵⁷

Our analysis of the record does not support a finding that POSCO misreported its cost data, withheld information requested by Commerce, or significantly impeded this proceeding. The record shows that POSCO fully responded to Commerce's requests for information and provided clarification or additional information to remedy deficiencies identified in Commerce's supplemental questionnaire responses.⁵⁸ As such, Commerce finds that POSCO fully complied with Commerce's requests for information, and, therefore, we agree with POSCO that the application of total AFA is not warranted.

In this case, the petitioners assert that POSCO did not submit POI weighted-average CONNUM-specific costs, by which they mean that cost differences are present in the reported data that relate to factors other than the physical characteristics of the products. For example, certain products were produced during months when raw material prices were higher or lower, resulting in higher or lower costs being assigned to the given products. The petitioners object to Commerce's use of the data in the *Preliminary Determination*, as they allege that POSCO purposely refused to adjust the data itself as POSCO preferred that Commerce use the cost data that included the three additional product characteristics (*i.e.*, quality, surface quality, and metallurgical properties), that were not part of Commerce's CONNUM physical characteristics. We disagree that selecting from facts otherwise available, with or without an adverse inference,

⁵⁴ See section 776(b)(1)(B) of the Act; See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*TPEA Interpretative Rule*).

⁵⁵ See the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) at 838; see also *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

⁵⁶ See, *e.g.*, *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); and *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997) (*Preamble*).

⁵⁷ See, *e.g.*, *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Decision Memorandum at page 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

⁵⁸ See POSCO's August 23, 2017 Response to Supplemental Section D Questionnaire (POSCO First DSQR) and POSCO's October 11, 2017 Response to Second Supplemental Section D Questionnaire (POSCO Second DSQR).

is warranted here because the record shows that POSCO reported its costs based on its normal books and records, as was required. We have used the database (*i.e.*, poscop02_doc) constructed according to the physical characteristics designated by Commerce reported in POSCO Second DSQR, but have reasonably accounted for the cost differences not associated with the products' physical characteristics.⁵⁹ POSCO's accounting system calculates standard costs and variances each month, and for reporting purposes, such costs were assigned to CONNUMs and weight averaged for the entire POI. POSCO submitted two different versions of the POI weighted-average CONNUM-specific cost databases: one version based on Commerce's CONNUM physical characteristics according to the model match criteria and another version which included the three additional product characteristics that are not part of the CONNUM physical characteristics.⁶⁰ Commerce examined at verification the reported POI weighted-average CONNUM-specific cost database constructed using Commerce's model match criteria and verified that they were based on POSCO's normal books and records.⁶¹ Further, POSCO responded to Commerce's multiple supplemental questionnaires in a timely manner and fully participated in the verification of the submitted cost data. Therefore, we find that the application of total AFA is not warranted with respect to POSCO's reported cost data.

Nevertheless, because of certain anomalies⁶² that result from monthly fluctuations in material prices and processing differences from particular processing routings, we determined that POSCO's reported CONNUM-specific cost data does not reasonably reflect the costs associated with the production and sale of merchandise under consideration. Pursuant 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 merchandise." Accordingly, we are instructed by the Act to rely on the 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 reasonably reflect the cost to produce and sell the merchandise. In the instance case, POSCO reported CONNUM-specific costs were based on its normal books and records that are kept in accordance with Korean GAAP. Thus, the question facing Commerce was whether the CONNUM-specific per-unit costs from POSCO's normal books reasonably reflect the cost to produce and sell the merchandise under consideration.

During the investigation, Commerce asked POSCO why certain pairs of similar CONNUMs with virtually identical physical characteristics had significant raw material and conversion cost

⁵⁹ See POSCO Second DSQR at poscop02_doc.

⁶⁰ See POSCO's July 7, 2017 Section D Questionnaire Response (POSCO DQR) at D-2. Commerce used the first version of the cost data in the preliminary determination. See October 24, 2017 Memorandum re: Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from the Republic of Korea: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – POSCO (Preliminary Cost Memorandum).

⁶¹ See Cost Verification Report.

⁶² See March 19, 2018 Memorandum re: Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from the Republic of Korea: Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – POSCO (Final Cost Memorandum).

differences. We also asked POSCO why the reported conversion costs showed significant cost differences between similar products within a common diameter range. In response, POSCO explained that the raw material costs during the fourth quarter of the POI were relatively higher than the other three quarters. Thus, if a product was produced in the fourth quarter, the standard raw material costs assigned to that product would be higher than that for a product that was produced during the other three quarters. Further, POSCO explained that the processing costs were affected by the product specification such as quality and grade. Thus, if products with the higher quality and grade were included in a CONNUM, the processing costs for this CONNUM would be higher compared to a CONNUM that includes a lesser quality and grade of products because the former CONNUM would incur additional processing costs.⁶³ In addition, as explained in the Cost Verification Report, POSCO's standard conversion costs were determined by the product-specific routing based on the production path assigned to each product. POSCO has multiple cost centers (including multiple steel making and rolling lines) that are performing the same production process on identical products and depending on the individual production path (*i.e.*, cost center) assigned to each product, the standard conversion costs assigned to a product might be different for the same production process. As such, the conversion cost differences between CONNUMs are also impacted by the processing routing rather than just differences in the CONNUM physical characteristics and associated processing costs.⁶⁴

At the outset of this case, Commerce identified the CONNUM physical characteristics that are most significant in differentiating the significant price differences between products. These are the physical characteristics that define unique products (*i.e.*, the CONNUMs) for sales comparison purposes and to establish the level of detail to capture the important differences when comparing the products in price-to-price comparisons. Thus, under section 773(f)(1)(A) and 773(a)(6)(C)(ii) and (iii) of the Act, a respondent's costs should reflect meaningful cost differences attributable to these different physical characteristics. This ensures that the product-specific costs Commerce used for the sales-below-cost test, constructed value (CV) and difference-in-merchandise (DIFMER) adjustment accurately reflect the physical characteristics deemed important in establishing the prices of the products. Thus, Commerce normally does not rely on a respondent's reported costs where cost differentials between CONNUMs are driven by factors other than the CONNUM physical characteristics, such as timing differences or routing variations or cost system conventions.⁶⁵ The Court of International Trade (CIT) has upheld Commerce's reallocation of costs for the sales-below-cost test, the CV calculations, and the

⁶³ POSCO also stated that it submitted the additional alternate cost data that included these additional product characteristics, quality, surface quality, and metallurgical properties which would smooth out the conversion costs between CONNUMs. However, Commerce has not accepted these additional product characteristics as matching criteria. *See* Cost Verification Report at page 17.

⁶⁴ *Id.*

⁶⁵ *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2010-2011, 78 FR 35248 (June 12, 2013), and accompanying Issues and Decision Memorandum at Comment 1; *see also Certain Oil Country Tubular Good from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2014-2015, 82 FR 18105 (April 17, 2017) and accompanying Issues and Decision Memorandum at Comment 23; *see also Certain Steel Nails from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2014-2016, 83 FR 4028 (January 29, 2018), and accompanying Issues and Decision Memorandum at Comment 3.

DIFMER adjustment where a respondent's reported costs reflect cost differences due to factors other than Commerce's CONNUM physical characteristics.⁶⁶

We disagree with POSCO that Commerce introduced inaccuracies and distortions into the preliminary determination by masking the conversion cost differences arising from the steel making process. When Commerce asked POSCO to explain why the reported conversion costs showed significant cost differences between similar products within a common diameter range, POSCO never explained that the conversion cost differences were explainable from steel making process differences.⁶⁷ Further, POSCO is a fully integrated steel producer and the manufacturing process for all steel products begins at the steel making stage. Although there may be slight differences in the steel making recipes (*i.e.*, differences in the percentages of alloy mixes) for different wire rod products, the conversion process at the steel making stage itself does not vary significantly between products.⁶⁸ Thus, it appears that the magnitude of the reported conversion cost differences between products within a common diameter range go well beyond the conversion cost differences arising from the steel making process as alleged by POSCO in their case briefs.

In this case, POSCO's reported raw material cost reflected significant cost differences, as identified by POSCO itself as being associated with the timing of the purchase of the raw materials used to make the products, which artificially mask or inflate the cost differences associated with physical differences of products, and in turn affect the price-to-price comparison and cost test. Also, POSCO's reported conversion costs reflected cost differences that cannot be explained by Commerce's designated physical characteristics, nor by the processing differences alleged in POSCO's case brief. Thus, for the reasons stated above, Commerce recalculated POSCO's reported CONNUM-specific raw material costs and reallocated the reported conversion costs based on the common diameter range of wire rod, for the final determination.

Comment 2: Whether to Apply AFA to POSCO because it Failed to Report All of its U.S. Sales

Petitioners' Arguments

- A comparison of POSCO's U.S. sales database on CBP data shows that it failed to report three U.S. sales.⁶⁹ As POSCO failed to report all of its U.S. sales, it withheld information from Commerce. As a result, POSCO has not acted to the best of its ability in responding to Commerce's questionnaires, and those uncooperative behavior merits the application of total AFA to POSCO in this final determination. As AFA, the petitioners urge Commerce to apply either the highest transaction specific margin from the *Preliminary Determination* or the highest the petitioners' estimated margin (*i.e.*, 43.25 percent) to POSCO in the final determination.

⁶⁶ See *Thai Plastic Bag Indus. Co. Ltd. v. United States*, 752 F. Supp. 2d 1316, 1324-25 (CIT 2010).

⁶⁷ See POSCO's August 23, 2017 Response to Supplemental Section D Questionnaire (POSCO First DSQR) at SD-24 to SD-26 and POSCO's October 11, 2017 Response to Second Supplemental Section D Questionnaire (POSCO Second DSQR) at SD2-9 to SD2-11; see also, Cost Verification Report at page 17.

⁶⁸ See Cost Verification Report Exhibit 5 (Production Flow Chart), and DQR at D-4 to D-6.

⁶⁹ See Petitioners Case Brief at 14.

POSCO's Arguments

- No factual or legal basis exists to apply AFA. As instructed by Commerce, POSCO reported all U.S. sales made during the POI based on date of sale (*i.e.*, factory shipment date or U.S. affiliate's invoice date).⁷⁰ The petitioners' allegations rely on misstatements, mischaracterizations, and misunderstanding of the comprehensive and fully verified record (*e.g.*, 13,000 pages of questionnaire responses and 5,000 pages of verification exhibits). No significant issues exist in its U.S. sales data. POSCO has acted to the best of its ability and has fully cooperated with Commerce on all issues.
- The record of this investigations shows that two of three entries identified by the petitioners were of shipments exported prior to the POI. The third entry was reported in its U.S. sales database.⁷¹

Commerce's Position:

Commerce has examined the record evidence with respect to U.S. sales data issues raised by the petitioners and finds that the record of this investigation does not support a finding of AFA with respect to POSCO's U.S. sales.

Our analysis of the record does not support a finding that POSCO misreported its sales data, or withheld information requested by Commerce. The record shows that POSCO fully responded to Commerce's requests for information and provided clarification or additional information where necessary to remedy deficiencies identified in Commerce's supplemental questionnaire responses.⁷² As such, Commerce finds that POSCO fully complied with Commerce's requests for information, and, therefore, we agree with POSCO that the application of total AFA is not warranted.

The petitioners raised this issue about three CBP entries before the preliminary determination. Our analysis of export dates in the CBP data confirms that POSCO exported the first two entries prior to the POI.⁷³ Given that we determined that factory shipment date is the date of sale,⁷⁴ the date of sale for these two sales was outside the POI and POSCO was not required to report them. Further, our analysis also confirmed that POSCO reported the third entry as a U.S. sale in its U.S. sales database.⁷⁵

⁷⁰ See POSCO Rebuttal Brief at 10.

⁷¹ *Id.*

⁷² See POSCO's July 28, 2017 Response to the July 11, 2017 Supplemental Section A Questionnaire (POSCO ASQR), POSCO's August 10, 2017 Response to Supplemental Sections B and C Questionnaire-Part 1 (POSCO BCSQR Pt. 1), and POSCO's August 18, 2017 Response to Supplemental Sections B and C Questionnaire-Part 2 (POSCO BCSQR Pt. 2).

⁷³ See August 1, 2017 Memorandum re: Data Query (CBP Data Expanded).

⁷⁴ See *Preliminary Determination* PDM at 12-13.

⁷⁵ See POSCO's August 18, 2017 Response to Supplemental Sections B and C Questionnaire-Part 2 (POSCO BCSQR Pt.2) at posus04_stinko.

The petitioners first raised the issue of discrepancy between entered quantities reported by the CBP and sales quantities reported by the POSCO in their deficiency comments in POSCO's June 16, 2017 section A response.⁷⁶ In response to this comment, Commerce asked POSCO in a supplemental questionnaire to reconcile its EP and CEP sales with CBP data.⁷⁷ In its response to that supplemental questionnaire, POSCO stated that the best logical explanations without access to either CBP data or entry documents of unaffiliated local exporters are: (1) certain importer(s) identified POSCO as the manufacturer even though POSCO was the shipper or "invoicing party" of the merchandise, and (2) timing between the date of shipment from Korea and the date of entering the United States, which means CBP data might include merchandise shipped from Korea prior to the POI but entered the United States during the POI and not include merchandise shipped from Korea during the POI but entered the United States after the POI.⁷⁸ After analyzing POSCO's response, we released the same CBP data with additional information (*e.g.*, export date).⁷⁹ POSCO timely responded and demonstrated that it has completely reported EP and CEP sales.⁸⁰ The petitioners did not comment on the expanded CBP data; nor did they comment on the POSCO's comment on the expanded CBP data.

Regarding the first two entries identified by the petitioners, the CBP data shows that their respective export date precedes the first day of POI,⁸¹ which indicates their dates of sale were not in the POI and therefore, POSCO was not required to report them.

Regarding the third entry identified by the petitioners, the entry number appeared on the CBP data is the same one which appeared on a CBP Entry Summary contained in an entry package reported in Exhibit SA-1-B-7 of STINKO's ASQR.⁸² Further, POSCO's purchase order number, POSCO's tax invoice number, specification, size, quantity, and final customer from the entry package are the same ones reported in PONUM, INVOICEU, SPECGRADEU, DINUMU, QTYU, and FINALCUST of POSCO's U.S. sales database posus04_stinko.⁸³ Thus, POSCO reported this entry.

Further, we verified that POSCO reported all U.S. sales with its accounting records and found no discrepancies.⁸⁴ We find that POSCO reported all of its U.S. sales and fully responded to our requests for information concerning the difference in quantities between CBP data and its

⁷⁶ See POSCO's June 16, 2017 Response to Section A of Initial AD Questionnaire (POSCO AQR Pt.3) and the petitioners' June 29, 2017 Letter re: Comments on POSCO's June 16, 2017 Section A Response (Petitioners Cmts. on POSCO AQR Pt.3).

⁷⁷ See Commerce's July 11, 2017 Letter to POSCO re: Supplemental Questionnaire; POSCO's July 13, 2017 Letter re: Request to Amend Supplemental Section A Questionnaire; and Commerce's July 20, 2017 Letter to POSCO re: Responding the Request of Modify or Withdraw Seven Questions in July 11, 2017 Supplemental Questionnaire. (collectively, POSCO ASQ).

⁷⁸ See POSCO's July 28, 2017 Response to the July 11, 2017 Supplemental Section A Questionnaire (POSCO ASQR).

⁷⁹ See CBP Data Expanded.

⁸⁰ See POSCO's August 4, 2017 Letter re: Comments on August 1 CBP Data Release (POSCO Cmts. on Expanded CBP Data).

⁸¹ See CBP Data Expanded.

⁸² See STINKO's July 28, 2017 Response to the July 10, 2017 Supplemental Section A Questionnaire (STINKO Second ASQR) at Exhibit SA-1-B-7.

⁸³ See POSCO BCSQR Pt.2 at posus04_stinko.

⁸⁴ See POSCO Sales Verification Report.

reported U.S. sales. Therefore, we find that there is no basis on which to apply total AFA to POSCO.

Comment 3: Whether Commerce Should Use Additional Product Characteristics for Model Match

POSCO's Arguments

- Commerce should include three additional product characteristics in POSCO's model-matching criterion for ensuring fair and accurate comparison of U.S. sales to normal value. POSCO reported those characteristics and corresponding CONNUM2 with exceedingly detailed explanation. However, Commerce requested POSCO to remove such valid factual evidence from the record after the petitioners commented it. By adopting the petitioners' inappropriately suggested question, Commerce predetermines the issue without giving the company an opportunity to develop the record and is impinging upon the company's due process rights.
- Substantial record evidence confirms that those three additional product characteristics (*i.e.*, quality, surface quality and metallurgical properties) are "sufficiently meaningful" to warrant such inclusion. Excluding those critical components affecting costs and selling prices that will result in less accurate matches of U.S. sales to normal values that will overstate the antidumping duty margin calculated for POSCO.
- Commerce has the discretion and precedent to add product characteristics solely for one respondent if the facts on the record warrant such treatment. In *Shrimp Ecuador*,⁸⁵ Commerce added two product characteristics for one, but not for the other two mandatory respondents, or for mandatory respondents in concurrent investigations of the same product from five other countries (*i.e.*, Brazil, China, India, Thailand, and Vietnam).⁸⁶

Petitioners' Arguments

- Inclusion of QUALITY appeared to be nothing more than POSCO's attempt to replace Commerce's specific and objective reporting criteria, based on specific physical characteristics of wire rod, with a less specific system designed to introduce inconsistencies and subjectivity into the matching process. SURFACE QUALITY was not only a non-physical characteristic of wire rod but was subjective and arbitrary. INCLUSION OF METALLURGICAL PROPERTIES would result in arbitrary reporting and subjective interpretation by each mandatory respondent in the ten subject countries.
- POSCO did not address any of the critical flaws. Commerce considered those proposed product characteristics and properly rejected them in developing its final model matching criteria.

⁸⁵ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Ecuador, 69 FR 76913 (December 23, 2004) (*Shrimp Ecuador*).

⁸⁶ See POSCO Case Brief at 4.

Commerce's Position:

Commerce has continued to use the CONNUMs reported based on the CONNUM methodology set forth in the initial questionnaire for these final results.

In making its fair value comparisons for margin calculation purposes, Commerce compares U.S. sales to sales of a “foreign like product.” Section 771(16) of the Act defines “foreign like product” in descending order of preference as follows:

- (A) The subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise.
- (B) Merchandise (i) produced in the same country and by the same person as the subject merchandise, (ii) like that merchandise in component material or materials and in the purposes for which used, and (iii) approximately equal in commercial value to the subject merchandise.
- (C) Merchandise (i) produced in the same country and by the same person and of the same general class or kind as the merchandise which is the subject of the investigation, (ii) like that merchandise in the purposes for which used, and (iii) which the administering authority determines may reasonably be compared with that merchandise.⁸⁷

Pursuant to the statutory language, Commerce must first look for identical merchandise with which to match the United States model to the comparable home-market or third country market model.⁸⁸ The courts have recognized that the statute is silent with respect to the methodology that Commerce must use to match a U.S. product with a suitable home-market product, and that this silence is an indication Congress afforded Commerce considerable discretion in this regard.⁸⁹ The courts have held that it is Commerce’s responsibility to establish the model matching methodology, given reasonable minds may differ over what might be a complex task, and that interested parties might be expected to support an alternative advantageous to itself.⁹⁰ The courts also have acknowledged that Commerce constructs a methodology for identifying the “foreign like product” by devising a hierarchy of commercially significant characteristics suitable to each class or kind of merchandise, and then utilizes these characteristics to compare United States sales to sales in the comparison market.⁹¹

⁸⁷ See *NSK v. United States*, 217 F. Supp. 2d 1291, 1299-1300 (CIT 2002) (“Section 771(16) establishes a descending hierarchy of preferential modes that Commerce must select for matching purposes.”).

⁸⁸ See *Fagersta Stainless AB v. United States*, 577 F. Supp. 2d 1270, 1276 (CIT 2008), citing *Viraj Forgings, Ltd. v. United States*, 283 F. Supp. 2d 1335, 1340 (CIT 2003), citing *Torrington v. U.S.*, 146 F. Supp. 2d 845, 874 (CIT 2001).

⁸⁹ See *JTEKT Corp. v. United States*, 717 F. Supp. 2d 1322, 1329 (CIT 2010), citing *SKF USA, Inc. v. United States*, 537 F.3d 1373, 1379 (Fed.Cir. 2008) (quoting *Koyo Seiko Co. v. United States*, 66 F.3d 1204, 1209 (Fed.Cir. 1995)), and *Pesquera Mares Australes Ltda. v. United States*, 266 F.3d 1372, 1384 (Fed.Cir. 2001).

⁹⁰ See *United Engineering & Forging v. United States*, 779 F. Supp 1375, 1381 (CIT 1991) (quoting *Timken Company v. United States*, 630 F. Supp. 1327, 1338 (CIT 1986)).

⁹¹ 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).

Commerce has a long-standing practice of developing product characteristics and a model-match methodology in the early stages of each proceeding, and in consultation with the interested parties.⁹² Consistent with that, Commerce issued a proposed methodology on the record of all the concurrent antidumping wire rod investigations, including the Korea investigation. Commerce provided interested parties in all the concurrent wire rod AD investigations the opportunity to comment on a proposed CONNUM methodology and, after considering comments and rebuttal comments from various parties, provided the final product characteristics to be used for determining CONNUMs in those investigations.⁹³ POSCO received that final CONNUM methodology in the Initial AD Questionnaire.⁹⁴ POSCO has proposed that the Commerce utilize CONNUMs that POSCO created which utilizes three additional product characteristics that POSCO had identified in its model match comments submission (“Quality,” “Surface Quality,” and “Metallurgical Properties”).⁹⁵ POSCO submitted two sets of sales and costs databases. POSCO used the model-match criteria identified by Commerce in one set of sales and costs databases.⁹⁶ POSCO also submitted a second set Commerce of sales and costs databases that incorporated the three additional fields even though Commerce had not incorporated these fields in the final CONNUM methodology it provided to all respondents in all the concurrence wire rod investigations.⁹⁷

Commerce’s final CONNUM methodology was established with the issuance of the Final Model Match Methodology to the various respondents, including POSCO.⁹⁸ The courts have upheld Commerce’s discretion to reject model matching proposals from interested parties after Commerce has requested that respondents submit data conforming to model match Commerce has established.⁹⁹ POSCO has identified a case in which later changes to the CONNUM

⁹² See, e.g., *Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2013-2014, 81 FR 46647 (July 18, 2016), and accompanying IDM at Issue 1; *Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea*, 71 FR 29310 (May 22, 2006) and accompanying IDM at Comment 1; *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 66 FR 14889 (March 14, 2001) and accompanying IDM at Comment 9; *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings from Italy*, 65 FR 81830 (December 27, 2000) and accompanying IDM at Comment 9A; and *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 65 FR 13943 (March 15, 2000) and accompanying IDM at Comment 12.

⁹³ See *Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, United Arab Emirates, and United Kingdom: Initiation of Less-Than-Fair-Value Investigations*, 83 FR 19207, 19208 (April 26, 2017) (*Initiation Notice*).

⁹⁴ See Commerce’s May 19, 2017 questionnaire issued to POSCO (Initial AD Questionnaire) at pages B-9 to B-16 (section B) and pages C-7 to C-14 (section C); references below are only to Section B pages, as the information in Sections B and C are identical in this regard. Note that typographical errors for one of the product characteristics were subsequently corrected. See June 1, 2017 Memorandum re: Correction of Typographical Errors in Field 3.11 (Minimum Specified Sulfur Content).

⁹⁵ See, e.g., POSCO Case Brief at 2-8.

⁹⁶ See POSCO BCSQR Pt.1, POSCO BCSQR Pt.2, and POSCO Second DSQR.

⁹⁷ *Id.*

⁹⁸ See *Initiation Notice* at 19208.

⁹⁹ See *Maverick Tube Corp. v. United States*, 107 F. Supp. 3d 1318, 1330 (CIT 2015)(citing *JTEKT Corp. v. United States*, 37 F. Supp. 3d 1326, 1336 (CIT 2014)) (“The court has upheld Commerce’s decision not to revise model-matching criteria when the request was made ‘at a time that did not allow Commerce to distribute to the various respondents initial questionnaires that would solicit the necessary information to adopt’ the model-matching criteria

methodology were accepted for a single respondent, contrary to Commerce's ordinary practices, but the citing of an isolated exception, or several such exceptions, had they been cited, does not itself warrant such divergence from standard Commerce policy in other instances, and we do not find the cited case dispositive in this instance.

POSCO quotes the decision in *Ecuador Shrimp* where, in explaining its acceptance of "organic status" as a distinguishing characteristic for CONNUM methodology, Commerce determined that "a shrimp product meeting the particular organic specifications is analogous to a steel product meeting tolerance, strength, or other tested criteria (e.g., minimum specified yield strength in the flat-rolled steel or structural beam proceedings), where the criteria identify intrinsic physical (performance) characteristics of the product."¹⁰⁰ However, in this wire rod investigation, as discussed below, "quality" is not an "intrinsic physical (performance) characteristic" of wire rod. The products reflected in individual POSCO qualities that POSCO chose to segregate within its proposed QUALITY field may tend to have similar physical properties, but, as discussed below, Commerce's final CONNUM methodology, and, in particular, product characteristic fields that represent actual physical characteristics that are testable criteria, results in substantial differentiation of products of different POSCO "qualities."

POSCO also notes the Ecuador Shrimp case involved another field, "grade," that was accepted by Commerce for the respondent in question.¹⁰¹ POSCO notes Commerce, in its discussion in *Ecuador Shrimp* of the "grade" issue, stated it "has the discretion and precedent to apply a model-matching criterion solely in relation to a particular respondent if the facts of record warrant such treatment...."¹⁰² As discussed throughout this position, in this wire rod investigation Commerce does not find the facts of record warrant such treatment. POSCO does not discuss in its case brief Commerce's specific rationale for allowing a "grade" field to be added for the particular respondent in *Ecuador Shrimp*. In that case, Commerce noted the respondent had demonstrated its internal grading system was "consistent with the grading standards of the National Marine Fisheries' United States Standards for Grades of Fresh Frozen Shrimp and the Southeastern Fisheries Association Product Quality Control Standard."¹⁰³ In this wire rod investigation, in contrast, POSCO's "qualities" do not coincide with those cited by the ITC, and with regards to the proposed "surface quality" and "metallurgical properties" fields, POSCO has not identified any standards by which to evaluate its reporting of those fields.¹⁰⁴ Furthermore, in *Shrimp Ecuador* Commerce noted that at verification it had "observed physical differences" between the respondent's "Grade A and Grade B products for such factors as dehydration, soft shell, bites on shell, and melanosis...."¹⁰⁵ In this wire rod investigation, in contrast, those physical properties associated with products in different "qualities" segregated by POSCO within its "quality" field are largely accounted for by existing fields in Commerce's

changes," and concluding the "arguments were thus untimely and Commerce's decision not to revise the model-matching method was reasonable").

¹⁰⁰ See POSCO Case Brief at 4-5, citing *Shrimp Ecuador* and accompanying Issues and Decision Memorandum at Comment 7.

¹⁰¹ *Id.* at 4.

¹⁰² See *Shrimp Ecuador* and Accompanying Issues and Decision Memorandum at Comment 8.

¹⁰³ *Id.*

¹⁰⁴ For discussion of these issues, see below.

¹⁰⁵ See *Shrimp Ecuador* and Accompanying Issues and Decision Memorandum at Comment 8.

final CONNUM methodology, and for the other two proposed fields, no objective criteria were described by POSCO for reporting purposes.¹⁰⁶

POSCO states Commerce's final CONNUM methodology does not account for the three characteristics that POSCO proposes, which POSCO states are "critical components affecting costs and selling prices, thereby resulting in less accurate matches to U.S. sales to normal values that will overstate the antidumping duty margin."¹⁰⁷ POSCO also claims these three product characteristics "have a significant impact on POSCO's costs and selling prices," and asserts that Exhibit SD-23 to POSCO's August 23, 2017, supplemental Section D response "provides the cost comparisons for similar CONNUMs and demonstrates the cost differences arising from differences in quality."¹⁰⁸ However, costs for particular company products and groups of company products may vary for a variety of reasons, as even POSCO notes in its case brief in discussion of a conversion cost issue.¹⁰⁹ Furthermore, the exhibit referenced by POSCO does not demonstrate that cost differences arose from "quality" or, if this is what POSCO means here by quality, from the three individual characteristics proposed by POSCO for inclusion in the CONNUM methodology.¹¹⁰

Regarding the relevance of costs for determining CONNUM methodology, POSCO apparently relies on *Ecuador Shrimp*, a decision over ten years old, which in turn cites an almost twenty-year old decision stating that Commerce "has further defined what makes a physical characteristic 'meaningful' or 'significant' as 'both price differences in the marketplace and cost differences which may reflect different production processes.'"¹¹¹ However, Commerce has repeatedly determined that differences in costs, in and of themselves, are not the basis for defining CONNUMs. Section 771(16)(A) of the Act requires Commerce to base its model-match criteria on "physical characteristics."¹¹² Furthermore, while significant differences in costs between products may sometimes point to commercially significant variations in physical characteristics, numerous precedents confirm that significant differences in physical characteristics should be considered regardless of possible differences or similarities in costs.¹¹³

¹⁰⁶ For discussion of these issues, *see* below.

¹⁰⁷ *See* POSCO Case Brief at 3.

¹⁰⁸ *Id.* at 8.

¹⁰⁹ *Id.* at 10 ("...as the Department has observed in many other cases, cost differences can exist between similar CONNUMs that have slight differences in the component physical characteristics because of factors that the CONNUMs...do not reflect, such as other physical differences in the raw materials or finished products, timing of production, *etc.*").

¹¹⁰ POSCO also cites other cost response exhibits and submissions in the aforementioned conversion cost issue as "explaining and demonstrating that certain CONNUMs had greater conversion costs than similar CONNUMs because the former included certain steel qualities that have much greater conversion costs." *See* POSCO Case Brief at 10. However, those exhibits do not illustrate the cost differences for the additional three characteristics proposed by POSCO, let alone the need for any additional product characteristics.

¹¹¹ *See* POSCO Case Brief at 4, citing *Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from Mexico*, 64 FR 14872, 14875 (March 29, 1999).

¹¹² *See* *NSK v. United States*, 217 F. Supp. 2d 1291, 1299-1300 (CIT 2002) ("Section 771(16) establishes a descending hierarchy of preferential modes that Commerce must select for matching purposes.").

¹¹³ *See, e.g., Certain Cold-Rolled Steel Flat Products from the United Kingdom: Final Determination of Sales at Less Than Fair Value*, 81 FR 49929 (July 29, 2016), and accompanying IDM at Comment 5 ("With respect to cost differences, while we may consider cost differences attributable to significant differences in physical characteristics in determining whether to accept proposed respondent-specific code categories, cost differences alone are not

With regard to pricing differences, POSCO has not demonstrated that pricing differences arose as a result of differences in the three product characteristics it proposes, or even the extent to which such pricing differences are correlated with variations in those three proposed characteristics. Furthermore, even if such differences had been shown to have existed for POSCO during the POI, that would not be sufficient to warrant a change in the standard methodology established for all the respondents in all the concurrent wire rod investigations.

First, such pricing differences, even if they existed, could be accounted for by the final Department CONNUM methodology given Commerce's methodology largely achieves the differentiation POSCO states is required by the QUALITY field, as discussed below. Furthermore, such variation in pricing of assorted products sold by a single respondent under investigation for possible unfair trading can hardly be the basis for establishment of a model match methodology, let alone for revising it after it has been established following the model match comment period.¹¹⁴ Prices for products sold may diverge "wildly" from each other for various reasons, both for a single respondent and between respondents, including dumping.¹¹⁵

dispositive as to whether to create additional categories. There may be other factors that explain differences in costs between different products besides differences in physical characteristics, such as differences in production quantities, differences in the timing of production, etc."); *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review: 2012-2013*, 79 FR 71087 (December 1, 2014), and accompanying IDM at General Issues Comment 1; *Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 77 FR 32531, 32534 (June 1, 2012), unchanged at *Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman*, 77 FR 64480 (October 22, 2012) ("The goal of the product characteristic hierarchy is to identify the best possible matches with respect to the characteristics of the merchandise. While variations in cost may suggest the existence of variation in product characteristics, such variations do not constitute differences in products in and of themselves. Furthermore, the magnitude of variations in cost may differ from company to company, and even for a given company over time, and therefore do not, in and of themselves, provide a reliable basis for identifying the relative importance of different product characteristics."); *Stainless Steel Wire Rod from Sweden: Final Results of Antidumping Duty Administrative Review*, 73 FR 12950 (March 11, 2008), and accompanying IDM at Comment 1 ("Cost variations are not the determining factor in assigning product characteristics for model-matching purposes."); *Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying IDM at Model Match Comment 1 ("...the Department focuses its selection of model match characteristics on unique measurable physical characteristics that the product can possess..." and "...differences in price or cost, standing alone, are not sufficient to warrant inclusion in the Department's model-match of characteristics which a respondent claims to be the cause of such differences...."); and *Certain Hot-Rolled Lead and Bismuth Carbon Steel Flat Products from the United Kingdom: Final Results of Antidumping Duty Administrative Review*, 63 FR 18879 (April 16, 1998), at Comment 2 ("The creation of a product concordance inherently relies upon the matching of significant physical characteristics, not on cost groupings in a company's cost accounting system.").

¹¹⁴ See *Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying IDM at Model Match Comment 1 ("...the Department focuses its selection of model match characteristics on unique measurable physical characteristics that the product can possess..." and "...differences in price or cost, standing alone, are not sufficient to warrant inclusion in the Department's model-match of characteristics which a respondent claims to be the cause of such differences....").

¹¹⁵ See *Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 82 FR 16366 (April 4, 2017) and accompanying Issues and Decision Memorandum at Comment 1.

With regards to the three proposed fields, POSCO is correct that a Surface Quality field has been used as a product characteristic in certain prior steel wire rod proceedings, and that a Quality field has been used in certain other steel investigations. However, Commerce is not required to incorporate past methodology, or portions of past methodology, in new proceedings.¹¹⁶ Furthermore, even if Commerce were to ignore the procedural and methodological problems associated with POSCO's proposed alteration of the methodology that are discussed above, its proposal would still be inappropriate for additional reasons associated with each proposed field, as discussed in detail below.¹¹⁷

As noted above, POSCO proposed the Quality, Surface Quality, and Metallurgical Properties fields for the current wire rod investigations, and one additional party, British Steel (ultimately a respondent in one of the other concurrent investigations), agreed in rebuttal comments with POSCO's proposal.¹¹⁸ However, no other producers, exporters, or other interested parties in the ten concurrent AD investigations proposed such product characteristic fields, supported POSCO's proposal, or otherwise objected to the absence of those fields in Commerce's original CONNUM proposal. Furthermore, the petitioners actively opposed POSCO's proposal,¹¹⁹ as did certain other interested parties who collectively objected to POSCO's proposed "unnecessary rework of Commerce's proposed CONNUM characteristics."¹²⁰ The latter went so far as to state Commerce's original "CONNUM proposal, with the addition of a matching characteristic for vanadium, would capture the full universe of the chemical and physical characteristics needed to accurately distinguish between different types of wire rod."¹²¹ POSCO has not demonstrated that any of the concepts it reflects in its proposed fields are of unique nature to its products, and it is evident that the views of POSCO and British Steel cannot be assumed to reflect those of the industry in general with regard to wire rod products.

Regardless of what parties may have stated regarding their views or preferences, Commerce is required to determine what is most appropriate for its analysis. As noted above, POSCO has not provided justification for its request that Commerce in this instance alter its established CONNUM methodology in this case, including the range of product characteristics to be included, that would apply to all parties in all concurrent investigations. Commerce's final

¹¹⁶ "There is no statutorily mandated method for matching U.S. products with home market products; accordingly, Commerce has discretion in selecting a methodology and the court reviews that choice for reasonableness." *Maverick Tube Corp. v. United States*, 107 F. Supp. 3d 1318, 1329 (CIT 2015), citing *SKF USA, Inc. v. United States*, 537 F.3d 1373, 1379 (Fed. Cir. 2008).

¹¹⁷ Note that if even one of the fields in question is deemed inappropriate for any of the many reasons cited above and below, the entire alternative CONNUM scheme proposed by POSCO is flawed with regards to accuracy of reported cost data. That is because the alternative CONNUMs all reflect all three additional fields (as well as the ones required by Commerce) and Commerce would be unable to reconfigure POSCO's data to reflect only one or two of the additional three fields proposed by POSCO.

¹¹⁸ See British Steel's May 15, 2017 model match rebuttal comments, "British Steel's Rebuttal Comments on Product Characteristics" at 3. Note that there is no evidence that British Steel has continued to oppose Commerce's established CONNUM methodology.

¹¹⁹ See Petitioners' May 15, 2017 model match rebuttal comments, "Petitioners' Rebuttal Comments in Response to POSCO's May 10, 2017 Letter" at 1-4 and 7-11.

¹²⁰ See Global Steel Wire S.A.'s, CELSA Atlantic SA's, and Compania Espanola de Laminacion's joint May 15, 2017 model match rebuttal comments at 3.

¹²¹ *Id.* at 3.

CONNUM methodology is based on criteria that are objective and verifiable, while the additional fields proposed by POSCO, as discussed below, are of limited value due to ambiguity of terminology, as evidenced by information provided on the record by various interested parties, including POSCO itself, as explained below. Also, with regards to POSCO's claim that products are not properly distinguished from each other by Commerce's final CONNUM methodology, discussion below clarifies that existing fields provide some of the product differentiation of POSCO products which POSCO claims can only be achieved through the additional fields it has proposed.

POSCO's proposed QUALITY field, as reflected in its questionnaire response, segregates products based on the following subcategories, each with a single distinct reporting code: Low Carbon Quality; Carbon Steel Quality for Machine Structural Use; Core Wire of Covered Electrodes; High Carbon Quality/High Tensile Strength; Piano Wire Quality; Carbon Steel for Cold Heading & Forging (Cold Heading Quality); Tire Cord Quality; Spring Steel; and Other (please specify).¹²² The wire rod qualities identified in lists referenced by the ITC and petitioners and derived from an industry publication, however, differ significantly in many instances from those proposed by POSCO: Chain Quality; Cold-Finishing Quality; Cold-Heading Quality; Concrete Reinforcement Quality; Fine Wire Quality; High Carbon and Medium-High Carbon Quality; Industrial (standard) Quality; Music Spring Wire Quality; Scrapless Nut Quality; Tire Cord Quality; and Welding Quality.¹²³ In addition, POSCO's product brochure identifies numerous other possible "qualities" that POSCO has not identified in its model match proposal (e.g., Free-Cutting Steel, Bearing Steel, Low-Alloyed Steel, Weather Resistance Steel, etc.).¹²⁴ Finally, in other documents, POSCO has referred to another quality, "tire bead quality," which does not appear in either POSCO's brochure or in its proposed QUALITY field.¹²⁵

¹²² See POSCO's July 7, 2017, Section B response at B-13. These categories correspond with those POSCO proposed in its May 10, 2017, model match comments at 2-4, other than the fact that those model match comments did not include a reporting code for "other."

¹²³ See Petitioners' March 28, 2017 Petition at Exhibit I-5 (Table I-4, page I-17), cited in petition narrative at page 8. Note that the United States International Trade Commission (ITC) has recently identified those same eleven qualities in its current investigation. See *Carbon and Certain Alloy Steel Wire Rod from Belarus, Italy, Korea, Russia, South Africa, Spain, Turkey, Ukraine, United Arab Emirates, and the United Kingdom*, Investigation Nos. 701-TA-573-574 and 731-TA-1349-1358 (Preliminary), Publication 4693 (May 2017) (*ITC Preliminary Report*) at page I-11 and chart I-2 on page I-12. Furthermore, the ITC has identified yet another quality, mesh quality, not identified in POSCO's proposed QUALITY field or in its product brochure. See *ITC Preliminary Report* at 32 (footnote 195) and V-5.

¹²⁴ See, e.g., September 7, 2017 Memorandum to the File at unnumbered Attachment (POSCO Product Brochure) at various pages. Note that the brochure was originally submitted by POSCO in its Section A questionnaire response, but was placed on the record again later by Commerce attached to a narrative memorandum that does not contain information pertinent to the issues under discussion in this issues and decision memorandum.

It appears from products POSCO claims should be reported in the "Core Wire of Covered Electrodes" (see POSCO's July 7, 2017 Section B response at B-13) that this subcategory corresponds with the "Steel for Welding Wire" quality in the POSCO brochure (see POSCO Brochure at 18). POSCO's insertion of an "Other (please specify)" code in that field in its questionnaire response, which it did not reference in its Model Match comments, does not explain why, if a distinct QUALITY field is necessary, the products its brochure identify as "free-cutting steel," "bearing steel," "low-alloyed steel," and "weathering steel," among others for which no code was proposed, should be grouped together as identical under a single reporting code.

¹²⁵ See, e.g., POSCO's May 12, 2017 scope comments at 1-12. While POSCO at times speaks of "tire cord quality" and "tire bead quality" as if they are one and the same, there is no basis for coming to such a conclusion.

While it is evident that various types of wire rods are grouped colloquially under general terms such as those referenced in the lists above, the extent to which those terms which are common to different lists are defined or understood by different parties to have common meanings is unclear. This, in conjunction with the above-mentioned disparities in the terms themselves as they appear on the record of this investigation, support Commerce's conclusion that it is preferable to define CONNUMs based on more objective criteria.

Even considering the "quality" distinctions identified by POSCO, distinctions between products across those "qualities" appear to be largely accounted for by fields in Commerce's final CONNUM methodology. Eight of POSCO's nine subcategories, as noted above, possess specific "quality" names, and POSCO has identified sample specifications/standards that it groups in each of those. However, POSCO did not provide copies of all the actual specifications/standards for its sale products, despite the fact that Commerce's questionnaire requested that information.¹²⁶ Nevertheless, the qualities identified in POSCO's proposed field can be linked to corresponding ones in POSCO's brochure, which contains some product characteristic information (*e.g.*, chemical requirements, *etc.*) for particular products classified by POSCO under each such quality.¹²⁷ In conjunction with some additional information on the record, POSCO's brochure enables analysis of the general extent to which Commerce's final CONNUM methodology provide differentiation of products in different POSCO qualities in the absence of any QUALITY field.¹²⁸

Furthermore, POSCO has cited descriptions of exclusions from past wire rod orders that refer to them as distinct categories of products. *See e.g.*, POSCO's Scope Comments dated May 12, 2017 at 6-7. However, if they are virtually the same, there is no explanation for why POSCO did not identify "tire bead quality" under the reporting code that it proposed for "tire cord quality" under its QUALITY product characteristic.

¹²⁶ *See* POSCO's June 16, 2017 section A response at page A3-28 (in response to Commerce's request that POSCO "{i}nclude copies of the industry specifications or standards for each market," POSCO responded that it would "provide the industry specifications or standards in the home market and U.S. market based on the reported sales data for both market {sic} in conjunction with its forthcoming Sections B-D Responses;" however, no industry specifications or standards were provided in those responses). On August 1, 2017, Commerce reiterated its request that POSCO submit the standards and specifications applicable to POSCO's home market and U.S. sales. *See* letter to POSCO entitled "Collapsing, Section B, and Section C Supplemental Questionnaire" at 4-5. On August 2, 2017, POSCO requested Commerce scale back its request for standards/specifications (*see* August 2, 2017 letter entitled "Request to Amend Supplemental Sections B and C Questionnaire"), and on August 4, 2017 Commerce modified the request so that POSCO only need provide selected ones (*see* August 4 letter to POSCO entitled "Response to Request to Modify or Withdraw Three Questions in the August 1, 2017 Supplemental Questionnaire").

Consequently, POSCO has submitted only a few of the many relevant industry standards (*see* POSCO's August 21, 2017, Section B/C Supplemental Response at SBC-39 and Exhibit SBC-30). The POSCO Brochure contains a more comprehensive picture of the range of POSCO products.

¹²⁷ POSCO's insertion of an "Other (please specify)" code in its questionnaire response, which it did not reference in its Model Match comments, does not explain why, if a distinct QUALITY field is necessary, the products its brochure identify as "free-cutting steel," "bearing steel," "low-alloyed steel," and "weathering steel," among others for which no code was proposed, should be grouped together as identical under a single reporting code.

¹²⁸ Commerce has noted, and POSCO acknowledged, that a few typographical errors exist in the POSCO brochure. *See* May 18, 2017 memorandum from Steve Bezirgianian to The File, "Clarification and Correction of Information in POSCO Brochure," dated May 18, 2017. POSCO did not subsequently identify any additional errors in the brochure, and Commerce has not identified any. No references are made below to products whose descriptions contained those few typographical errors referenced in the May 18, 2017 memorandum.

As POSCO admits, the carbon content field provides some differentiation of products falling in different POSCO quality groupings. For example, virtually all of the “low carbon quality” products referenced in POSCO’s brochure are distinguished from all the “high carbon quality” products in the brochure by the carbon content field alone. Of the twenty grades of “high carbon quality” products identified in POSCO’s brochure, only one of them would be considered “identical,” with respect to Commerce’s carbon content field, to any of the “low carbon quality” products.¹²⁹ Furthermore, that single “high carbon quality” grade is distinguished by Commerce’s final CONNUM methodology from some of those “low carbon quality” products with which it is considered “identical” for carbon content purposes by the manganese content field.¹³⁰

With regards to POSCO’s proposed QUALITY field, POSCO groups what it calls “high tensile strength steel quality” products with “high carbon quality” products. The chemical content requirements of some of the “high tensile strength quality” products are comparable to some of the “high carbon quality” products, but some are distinguished by differences in various chemical requirements for which there are fields in Commerce’s CONNUM methodology, such as silicon.¹³¹ Where the chemistries of “high tensile strength steel quality” and “high carbon quality” products are very comparable, there is no reason, based on the record, to purposely distinguish such products for CONNUM purposes, and POSCO is not even proposing that Commerce do so. Consequently, comparisons below to products of other qualities (*e.g.*, “spring steel quality,” *etc.*), for ease of reference, allude simply to “high carbon quality” steel, with no reference to the expression “high tensile strength steel quality.”

POSCO includes a subcategory for “carbon steel for machine structural use quality.” Based on the information provided in POSCO’s brochure, there is little difference, with respect to the common elements identified with requirement levels (carbon, silicon, manganese, phosphorus, and sulfur, all represented by fields in Commerce’s final CONNUM methodology), between the lower carbon content products under the “carbon steel for machine structural use quality” and comparable “low carbon quality” products, and little difference between the higher carbon content products under the “carbon steel for machine structural use quality” and comparable

¹²⁹ See POSCO Brochure at 14 and 24 (Low Carbon Quality) and 15 and 16 (High Carbon Quality), in conjunction with the minimum carbon content field as defined in the May 19, 2017 questionnaire at page B-9.

¹³⁰ *Id.* at 14 and 24 (Low Carbon Quality) and 15 and 16 (High Carbon Quality), in conjunction with the minimum manganese content field as defined in the May 19, 2017 questionnaire at page B-13. POSCO’s Brochure refers to other categories, perhaps “qualities,” of products containing the name “high carbon steel”: High Carbon Steel for Micro Cable (one product listed), and High Carbon Steel for Bridge Cable (four products listed). See POSCO Brochure at 24. It is not evident whether POSCO intends such products to be covered under its “High Carbon Quality/High Tensile Strength” subcategory under its QUALITY field but, in any case, these products are distinguished by Commerce’s final CONNUM methodology from all the “Low Carbon Quality” products, and from various other products as well, based on carbon content, and the four products listed under “High Carbon Steel for Bridge Cable” are distinguished from various other products based on silicon content. See POSCO Brochure at 24, in conjunction with the minimum carbon content field and the minimum silicon content field, as defined in the May 19, 2017 questionnaire at B-9 and B-14, respectively.

¹³¹ *Id.* at 15 and 16 (High Carbon Quality) and 25 (High Tensile Strength Steel Quality), in conjunction with the minimum manganese content field and the minimum silicon content field, as defined in the May 19, 2017 questionnaire at B-13 and B-14, respectively. In fact, the silicon content requirements of three of the nine “high tensile strength steel quality” products are such that they would be distinguished from virtually every other product in the POSCO brochure by the minimum silicon content field.

“high carbon quality” products. The amounts of maximum copper, nickel, and chromium that can be present in the “carbon steel for machine structural use quality” products are strictly limited, while no limits are identified for the “low carbon quality” or the “high carbon quality” products. However, there are no content requirements for copper, nickel, or chromium identified for the “low carbon quality” or “high carbon quality” steels listed in the POSCO brochure.¹³² POSCO has not provided additional information explaining what might differentiate “carbon steel for machine structural use quality” products from other quality products, and the presence of the phrase “machine structural use” in its name does not clarify what particular properties are present in such products as opposed to others. Consequently, comparisons below to products of other qualities (*e.g.*, “spring steel quality,” *etc.*), for ease of reference, allude to “low carbon quality” or “high carbon quality,” with no reference to “carbon steel for machine structural use quality,” as POSCO has not demonstrated why the latter should be differentiated from comparable “low carbon quality” or “high carbon quality” products.

The carbon content field distinguishes all the listed “spring steel quality” products from all the “low carbon quality” steel products.¹³³ It also distinguishes all of the listed “spring steel quality” steel products from all of the “welding wire quality” products.¹³⁴ Furthermore, it distinguishes all of the “spring steel quality” from all of the “tire cord quality” products.¹³⁵ Furthermore, the carbon content field distinguishes all the “piano steel quality” products from all of the “spring steel quality” products.¹³⁶

Eight of the nine “spring steel quality” products fall in one minimum carbon content subcategory in Commerce’s final CONNUM methodology, and 32 of the 51 “high carbon quality” products fall in a different minimum carbon content subcategory, ensuring they would be classified in a different CONNUM than those eight “spring steel quality” products.¹³⁷ Five of the remaining nineteen “high carbon quality” products are distinguished from all the “spring steel quality” products by the manganese content field.¹³⁸ The other fourteen “high carbon quality” products are distinguished from the “spring steel quality” products by the chromium content and/or the silicon content fields.¹³⁹

¹³² *Id.* at 14 and 24 (Low Carbon Quality), 15 and 16 (High Carbon Quality), and 23 (Carbon Steel for Machine Structural Use Quality).

¹³³ *Id.* at 14 and 24 (Low Carbon Quality) and 18 and 26 (Spring Quality), in conjunction with the minimum carbon content field as defined in the May 19, 2017 questionnaire at page B-9.

¹³⁴ *Id.* at 18 and 26 (Spring Quality) and 18 and 25 (Welding Wire Quality), in conjunction with the minimum carbon content field as defined in the May 19, 2017 questionnaire at page B-9.

¹³⁵ *Id.* at 18 and 26 (Spring Quality) and 24 (Tire Cord Quality), in conjunction with the minimum carbon content field as defined in the May 19, 2017 questionnaire at B-9.

¹³⁶ *Id.* at 17 (Piano Steel Quality) and 18 and 26 (Spring Steel Quality), in conjunction with the minimum carbon content field, as defined in the May 19, 2017 questionnaire at B-9.

¹³⁷ *Id.* at 15 and 16 (High Carbon Quality) and 18 and 26 (Spring Steel Quality), in conjunction with the minimum carbon content field as defined in the May 19, 2017 questionnaire at B-9.

¹³⁸ *Id.* at 15 and 16 (High Carbon Quality) and 18 and 26 (Spring Steel Quality), in conjunction with the minimum manganese content field as defined in the May 19, 2017 questionnaire at B-13.

¹³⁹ *Id.* at 15 and 16 (High Carbon Quality) and 18 and 26 (Spring Steel Quality), in conjunction with the minimum chromium content and the minimum silicon content fields as defined in the May 19, 2017 questionnaire at B-10 and B-14, respectively.

The carbon content field distinguishes eight of the nine “spring steel quality” products from 29 of the 31 “cold heading quality” products.¹⁴⁰ The remaining two “cold heading quality” products are distinguished from the nine “spring steel quality” products by either the chromium content field or the silicon content field.¹⁴¹

The carbon content field alone distinguishes all of the “cold heading quality” products from all of the “tire cord quality” products.¹⁴² Between the carbon, manganese, and silicon fields in Commerce’s final CONNUM methodology, only some of the “cold heading quality” products are distinguished from some of both the “low carbon quality” products and the “high carbon quality” products.¹⁴³ Furthermore, based on the total depth of decarburization requirements identified in the brochure for the “cold heading quality” products, and the existence of a total decarburization field in Commerce’s final CONNUM methodology, the “cold heading quality” products would be distinguished from all the “low carbon quality” products.¹⁴⁴ For some of the “high carbon quality” products for which distinction from “cold heading quality products” is not achieved by the carbon content field, such distinction is achieved through the manganese content field.¹⁴⁵ Furthermore, the absence in the brochure of any reference to specific total decarburization requirements for any “high carbon quality” products suggests that such products may be differentiated from “cold heading quality” products by the total decarburization field, as total decarburization requirements are identified in the brochure for the “cold heading quality” products which would result in a different reporting code for CONNUM purposes from that applicable to products with no such requirements.¹⁴⁶

The carbon content field distinguishes some of the “cold-heading quality” products from some of the “welding wire quality” products.¹⁴⁷ In addition, the “cold-heading quality” products are distinguished from some of the other “welding wire quality” products through the maximum sum of phosphorus and sulfur contents field.¹⁴⁸ Of the remaining “welding wire products,” most are

¹⁴⁰ *Id.* at 18 and 26 (Spring Steel Quality) and 20 (Cold Heading Quality), in conjunction with the minimum carbon content field as defined in the May 19, 2017 questionnaire at B-9.

¹⁴¹ *Id.* at 18 and 26 (Spring Steel Quality) and 20 (Cold Heading Quality), in conjunction with the minimum chromium content field and the minimum silicon content field, as defined in the May 19, 2017 questionnaire at B-10 and B-14, respectively.

¹⁴² *Id.* at 20 (Cold Heading Quality) and 24 (Tire Cord Quality), in conjunction with the minimum carbon content field as defined in the May 19, 2017 questionnaire at B-9.

¹⁴³ *Id.* at 14 and 24 (Low Carbon Quality), 15 and 16 (High Carbon Quality), and 20 (Cold Heading Quality), in conjunction with the minimum carbon content field, minimum manganese content field, and the minimum silicon content field, as defined in the May 19, 2017 questionnaire at B-9, B-13, and B-14, respectively.

¹⁴⁴ *Id.* at 9 and 12-13, in conjunction with the total decarburization field as defined in the May 19, 2017 questionnaire at B-12 and B-13.

¹⁴⁵ *Id.* at 15 and 16 (High Carbon Quality) and 20 (Cold Heading Quality), in conjunction with the minimum manganese content field as defined in the May 19, 2017 questionnaire at B-13.

¹⁴⁶ Page 5 of the POSCO Brochure suggests that POSCO’s “high carbon quality” products, unlike its “low carbon quality” products, may have total decarburization requirements. However, the pages of the brochure that identify various decarburization requirements do not refer to “high carbon quality” steel products. *See* POSCO Brochure at 5.

¹⁴⁷ *See* POSCO Brochure at 18 and 25 (Welding Wire Quality) and 20 (Cold Heading Quality), in conjunction with the minimum carbon content field as defined by the May 19, 2017 questionnaire at B-9.

¹⁴⁸ *Id.* at 18 and 25 (Welding Wire Quality) and 20 (Cold Heading Quality), in conjunction with the maximum sum of phosphorus and sulfur contents field as defined by the May 19, 2017 questionnaire at B-11 and B-12.

distinguished from the “cold-heading quality” products by the manganese content and/or molybdenum content fields.¹⁴⁹

The carbon content field distinguishes 29 of the 31 “cold-heading quality” products from all twelve of the “piano steel quality” products.¹⁵⁰ The two remaining “cold-heading quality” would be considered “identical” to two “piano steel quality” products with respect to carbon content only, but would be distinguished from one of those “piano steel quality” products by the manganese content field.¹⁵¹

As noted above, “piano steel quality” products are largely distinguished from “spring quality” and “cold heading quality” products through existing fields in Commerce’s final CONNUM methodology. With regards to other POSCO “qualities,” the carbon content field distinguishes all the “piano steel quality” products from all the “low carbon quality” products.¹⁵² The carbon content field also distinguishes all the “piano steel quality” products from all the “welding wire quality” products.¹⁵³ Thirty-two of the fifty-one “high carbon quality” products are distinguished from all of the “piano steel quality” products based on the carbon content field.¹⁵⁴ Of the remaining “high carbon quality” products, each are distinguished from many of the “piano steel quality” products by the carbon content and/or the manganese content fields.¹⁵⁵

Some of the “piano steel quality” products are distinguished from some of the “tire cord quality” products by the carbon content and/or the manganese content fields.¹⁵⁶ Furthermore, while the POSCO Brochure identifies specific total depth of decarburization requirements for the individual “tire cord quality” products, it does not do so for any of the “piano steel quality” products. The requirements for “tire cord quality” products would result in those products being assigned the reporting code for the total decarburization field that represents the most stringent

¹⁴⁹ *Id.* at 18 and 25 (Welding Wire Quality) and 20 (Cold Heading Quality), in conjunction with the minimum manganese content and minimum molybdenum content fields, as defined by the May 19, 2017 questionnaire at B-13 and at B-13 and B-14, respectively.

¹⁵⁰ *Id.* at 17 (Piano Steel Wire Quality) and 20 (Cold Heading Quality), in conjunction with the minimum carbon content field as defined by the May 19, 2017 questionnaire at B-9.

¹⁵¹ *Id.* at 17 (Piano Steel Wire Quality) and 20 (Cold Heading Quality), in conjunction with the minimum manganese content field as defined by the May 19, 2017 questionnaire at B-13.

¹⁵² *Id.* at 14 and 24 (Low Carbon Quality) and 17 (Piano Steel Quality), in conjunction with the minimum carbon content field as defined by the May 19, 2017 questionnaire at B-9.

¹⁵³ *Id.* at 17 (Piano Steel Quality) and 18 and 25 (Welding Wire Quality), in conjunction with the minimum carbon content field as defined by the May 19, 2017 questionnaire at B-9.

¹⁵⁴ *Id.* at 15 and 16 (High Carbon Quality) and 17 (Piano Steel Quality), in conjunction with the minimum carbon content field as defined by the May 19, 2017 questionnaire at B-9.

¹⁵⁵ *Id.* at 15 and 16 (High Carbon Quality) and 17 (Piano Steel Quality), in conjunction with the minimum carbon content field and the minimum manganese content field, as defined by the May 19, 2017 questionnaire at B-9 and B-13, respectively.

¹⁵⁶ *Id.* at 17 (Piano Steel Wire Quality) and 24 (Tire Cord Quality), in conjunction with the minimum carbon content field and the minimum manganese content field, as defined by the May 19, 2017 questionnaire at B-9 and B-13, respectively.

requirement with respect to that property.¹⁵⁷ Nothing in POSCO's brochure suggests that is the case for "piano steel quality" products.¹⁵⁸

As noted above, "welding wire quality" products are largely distinguished from "spring quality," "cold heading quality," and "piano steel quality" products through existing fields in Commerce's final CONNUM methodology. All the "welding wire quality" products are distinguished from all the "high carbon quality" products by the carbon content field.¹⁵⁹ Some of the "welding wire quality" products are differentiated from the "low carbon quality" steel products by the maximum sum of phosphorus and sulfur contents field.¹⁶⁰ Most of the remaining "welding wire quality" products are differentiated from the "low carbon quality" products by the manganese and/or molybdenum fields.¹⁶¹ Finally, the carbon content field distinguishes all of the "welding wire quality" products from all of the "tire cord quality" products.¹⁶²

The considerable extent to which the "tire cord quality" products are distinguished from the products of various other qualities (*i.e.*, "welding wire quality," "piano steel quality," "cold heading quality," "spring steel quality") by the fields that exist in Commerce's final CONNUM methodology is evident from the analysis above. The carbon content field distinguishes all the "low carbon quality" products from the "tire cord quality" products.¹⁶³ Of the four "tire cord quality" products, the carbon content field distinguishes those products from most of the "high carbon quality" products.¹⁶⁴ Of the remaining "high carbon quality" products, most are distinguished from the "tire cord quality" products by the manganese content field.¹⁶⁵

Furthermore, the HTSUS definition of tire cord quality steel includes a requirement that the nitrogen content be no greater than 0.008 percent by weight.¹⁶⁶ The nitrogen content field in Commerce's final CONNUM methodology distinguishes products with such a nitrogen content requirement (such that the maximum allowable content level is 0.008 percent by weight, or some lower maximum level) from all others (*i.e.*, those for which the maximum allowable content level is some amount greater than 0.008 percent, and those for which there is no limit placed on

¹⁵⁷ *Id.* at 12. There are three such reporting codes for the total decarburization field. *See* May 19, 2017 questionnaire at B-12 and B-13.

¹⁵⁸ The POSCO Brochure indicates that decarburization requirements may exist for piano steel quality products, but does not identify any specific requirements for any of them. *See* POSCO Brochure at 9 and 12.

¹⁵⁹ *See* POSCO Brochure at 15 and 16 (High Carbon Quality) and 18 and 25 (Welding Wire Quality) in conjunction with the minimum carbon content field as defined by the May 19, 2017 questionnaire at B-9.

¹⁶⁰ *Id.* at 14 and 24 (Low Carbon Quality) and 18 and 25 (Welding Wire Quality) in conjunction with the maximum sum of phosphorus and sulfur contents field as defined in the May 19, 2017 questionnaire at B-11 and B-12.

¹⁶¹ *Id.* at 14 and 24 (Low Carbon Quality) and 18 and 25 (Welding Wire Quality), in conjunction with the minimum manganese content and minimum molybdenum content fields, as defined by the May 19, 2017 questionnaire at B-13 and at B-13 and B-14, respectively.

¹⁶² *Id.* at 18 and 25 (Welding Wire Quality) and 24 (Tire Cord Quality) in conjunction with the minimum carbon content field as defined by the May 19, 2017 questionnaire at B-9.

¹⁶³ *Id.* at 14 and 24 ("Low Carbon Quality") and 24 ("Tire Cord Quality"), in conjunction with the minimum carbon content field as defined by the May 19, 2017 questionnaire at B-9.

¹⁶⁴ *Id.* at 15 and 16 ("High Carbon Quality") and 24 ("Tire Cord Quality"), in conjunction with the minimum carbon content field as defined by the May 19, 2017 questionnaire at B-9.

¹⁶⁵ *Id.* at 15 and 16 ("High Carbon Quality") and 24 ("Tire Cord Quality"), in conjunction with the minimum manganese content field as defined by the May 19, 2017 questionnaire at B-13.

¹⁶⁶ *See, e.g.*, the March 28, 2017 petition at Exhibit I-6, page 72-7.

how much nitrogen can be present).¹⁶⁷ POSCO has itself repeatedly referenced a product exclusion from past wire rod AD and CVD orders of tire cord quality products defined with an even tighter constraint on the content of nitrogen than that in the HTSUS definition of tire cord quality steel.¹⁶⁸ POSCO even stated it would be acceptable to POSCO for Commerce to exclude such tire cord quality products from this investigation using that very same exclusion language, modified slightly but with no requested change to the maximum allowable nitrogen content, which was 0.006 percent.¹⁶⁹ Therefore, even though POSCO's brochure makes no reference to nitrogen content, the nitrogen content would appear to provide further differentiation of "tire cord quality products" from other "quality" products, for which POSCO has not identified any nitrogen content limitations, either in their product brochure or elsewhere on the record.

In summary, while the chemical element and total depth of decarburization fields in Commerce's final CONNUM methodology by no means fully distinguishes every product in each "quality" identified by POSCO from every product in all the other "qualities" identified by POSCO. However, there would be no requirement that it do so, even if the subcategories in POSCO's proposed QUALITY field were consistent with those identified by other sources (*e.g.*, the ITC) and understood to mean the same things throughout the industry, which they are not. Commerce is not required, through its CONNUM methodologies, to distinguish products due to every possible variation that may exist between them.¹⁷⁰ Commerce concludes that, based primarily on public information describing a broad range of POSCO products obtained from POSCO's own wire rod product brochure, Commerce's final CONNUM methodology provides a substantial amount of product differentiation across "qualities" as identified by POSCO.¹⁷¹

With regard to the proposed Surface Quality and Metallurgical Properties fields, POSCO and other parties had an opportunity at the outset of the concurrent wire rod investigations to suggest additional physical criteria that might have further distinguished certain types of steel wire rods from others for CONNUM classification purposes. In fact, since the outset of the investigations, POSCO has used such criteria in its description of certain "tire cord" wire rod that it has argued should be found outside the scope of the investigation. For example, POSCO referred to "tire cord and tire bead quality wire rod" as merchandise that "cannot have inclusions greater than 20

¹⁶⁷ See the maximum nitrogen content field as defined by the May 19, 2017 questionnaire at B-15.

¹⁶⁸ See POSCO's May 12, 2017 Model Match Comments at 6-7, and POSCO's September 6, 2017, Scope Case Brief at 10-11.

¹⁶⁹ See POSCO's September 6, 2017, Scope Case Brief at 13.

¹⁷⁰ See, *e.g.*, *Timken Co. v. U.S.*, 630 F. Supp. 1327, 1338 (CIT 1986) (holding that it is Commerce "rather than an interested party that should make the determination as to what 'similar' characteristics are of the most significance" because "it is hard to imagine that a foreign manufacturer, given the option of selecting what constitutes similar merchandise, and assuming that there exists more than one product from which such a choice can be made, would not make the choice of merchandise most advantageous to itself").

¹⁷¹ Furthermore, Commerce's analysis above does not address the extent to which some products in a given quality might be distinguished from products in other qualities as a result of the various other fields in Commerce's final CONNUM methodology (*i.e.*, metallic coating, diameter range, and heat treatment). For example, POSCO has indicated that the diameters of wire rod for tire cord production that have minimum carbon content of 0.80 percent (which accounts for two of the four "tire cord quality" products in its brochure) fall in the range of 5.00 mm to 6.50 mm, which only accounts for two of the three possible diameter ranges identified by the diameter field in Commerce's final CONNUM methodology. See POSCO's September 6, 2017, Scope Case Brief Comments at 12 and the POSCO Brochure at 24, in conjunction with the diameter range field as defined in the May 19, 2017 questionnaire at B-15.

microns,” that has “carbon segregation per heat average of 3.0 mm or better using the European Method NFA 04-114,” and that has “a surface quality with no surface defects of a length greater than 0.20 mm.”¹⁷² If POSCO believed that properties such as inclusion size, carbon segregation, and surface defect length were important, it could have proposed in its model match comments such fields with objective standards for comparison.¹⁷³

In any case, with regards to POSCO’s proposed “Surface Quality” field, POSCO states that Commerce should consider “the surface quality level guarantees (for surface defects and decarburization standards)” in its CONNUM methodology. POSCO asserts its proposed Surface Quality achieves that by differentiating products that that meet “surface defect and decarburization standards or provides guarantees for certain critical applications such as cold heading quality (CHQ), PC strand, tire bead, or tire cord” from products not meeting either of those criteria.¹⁷⁴ However, as noted above, decarburization is accounted for in an existing field in Commerce’s final CONNUM methodology, and is based on measurable criteria, rather than references to requirements for particular “qualities” linked to applications, which POSCO employs in its Surface Quality field methodology.¹⁷⁵ Regarding surface defects, while POSCO claims that “{f}or each ‘quality’ specification, POSCO provides different guarantees for surface defects,” but POSCO has not explained how they differ, or why such differences, to the extent they exist and are important to distinguish in a specific field, could not be represented in a field designed to differentiate products from each other using objective criteria.¹⁷⁶

It is true that POSCO’s proposed Surface Quality field mirrors to a considerable extent such a field from some prior wire rod proceedings. It does so in that it distinguishes products that meet “surface defect and decarburization standards or provides guarantees for certain critical applications such as cold heading quality (CHQ), PC strand, tire bead, or tire cord” from products not meeting either of those criteria. However, POSCO’s proposal excludes important narrative directions Commerce provided in those other proceedings.¹⁷⁷ Furthermore,

¹⁷² See POSCO’s May 12, 2017, Scope Comments at 3.

¹⁷³ Further discussion of some of these concepts, in the context of POSCO’s proposed Surface Quality and Metallurgical Properties fields, *see* below.

¹⁷⁴ See POSCO Case Brief at 6.

¹⁷⁵ POSCO’s proposal for this field, in contrast, segregates products for certain “critical applications,” for which it provides an illustrative list using the less objective quality-type terms “cold heading quality,” “PC strand,” “tire bead,” and “tire cord.” See POSCO Section B at B-14. As discussed above, the POSCO “cold-heading quality” and “tire cord quality” products are largely distinguished from each other, and from other products POSCO has classified in other “qualities,” by fields in Commerce’s final CONNUM methodology. With regards to “PC strand” and “tire bead,” the only references in the POSCO brochure to such terms (*i.e.*, “bead” and “PC”) are in descriptions associated with products in certain POSCO “qualities” (*i.e.*, “High Carbon Steel Quality,” “High Tensile Strength Steel Quality,” and “Piano Wire Steel Quality”; *see* POSCO Brochure at 10) that are also largely distinguished from each other, and from other products POSCO has classified in other “qualities,” by fields in Commerce’s final CONNUM methodology.

¹⁷⁶ See POSCO Case Brief at 6. POSCO’s product brochure makes some references to some maximum dimensions associated with “surface defects” for certain products. See POSCO Product Brochure at 12-13, referencing surface defect information for only “Spring Steel” and “Carbon Steel for Cold Heading & Forging” quality products. Elsewhere, POSCO made reference to surface defect length limitations for tire cord and tire bead quality products. See, *e.g.*, POSCO’s September 6, 2017, Scope Case Brief at 3.

¹⁷⁷ The narrative description of the field used by Commerce in other proceedings was not included by POSCO in its proposal (compare prior Commerce methodology included in Attachment 3 of POSCO’s May 10, 2017, Model

Commerce's original proposed CONNUM methodology differed in various ways from the methodology used in those prior proceedings, signaling that parties should not be constrained by the limitations of such past proceedings, and Commerce's final CONNUM methodology, as noted above, included a field on related subject matter (*i.e.*, decarburization) that was presented in a more objective way than previous references to less clear terms such as "guarantees" or "critical applications."

With regards to POSCO's proposed "Metallurgical Properties" field, the field proposed by POSCO would differentiate between those products for which "guarantees for inclusions and segregation" are provided from those for which no such guarantees are provided.¹⁷⁸ POSCO states that "{f}or each 'quality' specification, POSCO provides different guarantees" for inclusions and segregation.¹⁷⁹ This global statement about all POSCO "qualities" would appear to suggest that all products, based on POSCO's stated methodology, would be reported with the single reporting code that covers products for which guarantees for inclusions and segregation are provided. Such a product characteristic field would be superfluous under such circumstances.

POSCO seems to clarify that the guarantees referenced above may not be provided for some products, when it later states that "{p}roducts that provide one or all of {the guarantees for surface defects, decarburization, inclusions, and segregation} have much higher selling prices – and are in turn more costly to produce given the stricter manufacturing controls – than products that do not."¹⁸⁰ For purposes of the proposed "Metallurgical Properties" field, that would suggest that there may be products for which there are guarantees for both inclusions and for segregations, others for which there is a guarantee for one but not the others, and others for which there are no guarantees. However, no such clarification exists in the field that was actually proposed by POSCO in its model match comments, or in its questionnaire responses in which it reported the field.¹⁸¹ The field proposed by POSCO, as it was actually written, does not cover all the scenarios described by POSCO in its case brief, as it does not identify how products should be reported with respect to the proposed Metallurgical Properties field where there is a guarantee for inclusions, but not one for segregation, or for products for which there is a guarantee for segregation, but not one for inclusions. This alone would be enough to disqualify reliance upon this field as reported by POSCO.

Match Comments, to POSCO's actual proposal at page 6 of that submission (the latter also provided by POSCO in its July 7, 2017 Section B response at B-14)). That narrative, which POSCO chose to exclude from its proposal and questionnaire response with no explanation, requires the respondent to submit actual standards, customer specifications, and other requirements used to classify "surface quality," and to describe in narrative all the applications determined to fall into the "critical" one that is relevant for the first of the two subcategories, and the surface defect and decarburization requirements associated with those applications. *See* the prior Commerce methodology as it appears Attachment 3 of POSCO's May 10, 2017, Model Match Comments at Attachment 3. POSCO is proposing an alternative that would not require it to explain how it was reporting the field in question, or to provide documentation that would support such explanations.

¹⁷⁸ *See* POSCO's July 7, 2017 Section B response at B-14.

¹⁷⁹ *See* POSCO Case Brief at 6.

¹⁸⁰ *Id.* at 6.

¹⁸¹ *See* POSCO's May 10, 2017 Model Match Comments at 6, and POSCO's July 7, 2017 questionnaire response at B-14.

In addition, POSCO has not provided information supporting its claim that prices vary according to such guarantees, and did not explain precisely what is covered by the “guarantees” and what is not. POSCO states that “the relevant information on these components {(e.g., inclusions and segregation)} is included as part of the mill certificate.”¹⁸² However, an actual guarantee would exist independent of any particular test results on a mill test certificate, whether in order confirmation documents, or requirements in specifications or standards to which the sales are made, *etc.* The mill test certificates may identify test results that conform to some guarantee, but what test results constitute such conformity would be defined by the documentation that identifies such requirements. POSCO has not explained where such requirements, agreed upon with customers, are identified for purposes of confirming how this field is being reported, and as noted did not provide standards or specifications for many of the products it sold in the home market and U.S. market. POSCO’s proposed Metallurgical Properties field did not require any documentation or explanation at all regarding how reporting of the field would be determined for individual sales. This, and the fact that there is no evidence of how POSCO reported the field when there was a guarantee for only one item (inclusions or segregation) but not both, makes the proposed field unusable.

Commerce has determined that the record evidence does not support the use of the three additional proposed product characteristics for POSCO. Accordingly, Commerce is continuing to use the reported CONNUMs based on Commerce’s final CONNUM methodology.

Comment 4: U.S. Credit Expense (CREDITU)

Petitioners’ Arguments

- POSCO submitted the Federal Reserve short-term interest rate, and erroneously used that rate to calculate U.S. credit expense (CREDITU), without stating that it did not have any U.S. dollar short-term borrowings. However, POSCO’s 2016 financial statements show that it had short-term borrowing in foreign currency. Accordingly, Commerce requested POSCO to revise the U.S. short-term borrowing rate and update the CREDITU.¹⁸³
- POSCO revised the U.S. short-term borrowing rate based on its short-term borrowing, but did not use that the revised rate to update the CREDITU. This is yet another example of POSCO’s uncooperative behavior.¹⁸⁴

POSCO’s Arguments

- The petitioners failed to understand that the revised U.S. short-term borrowing rate was based on a POSCO’s long-term borrowing, whereas CREDITU should be based on short-term borrowing. POSCO did not have any U.S. dollar-denominated short-term borrowing

¹⁸² See POSCO Case Brief at 6.

¹⁸³ See Petitioners Case Brief at 19.

¹⁸⁴ *Id.*

during the POI, and thus it correctly based CREDITU on a POI-average of short-term interest rates published by the Federal Reserve.¹⁸⁵

- POSCO provided a U.S. short-term interest rate using POI portion of a long-term borrowing. If Commerce should determine to base CREDITU on a long-term borrowing rate it is a departure from its practice. However, there is no need or basis to do so.¹⁸⁶

Commerce's Position:

We have continued to use the POI-average of short-term interest rates published by the Federal Reserve to calculate CREDITU in these final results. The regulations at 19 CFR 351.102(b)(48) define short-term loan as “the loan, the terms of repayment for which are one year or less,” whereas the regulations at 19 CFR 351.102(b)(32) define long-term loan as “the loan, the terms of repayment for which are greater than one year.” Thus, the regulations use one year as the threshold for distinguishing short-term from long-term loans.

Commerce Policy Bulletin 98.2, which describes our practice, states:

In cases where a respondent has no short-term borrowings in the currency of the transaction, we will use publicly available information to establish a short-term interest rate applicable to the currency of the transaction. . . . For dollar transactions, we will generally use the average short-term lending rates calculated by the Federal Reserve to impute credit expenses. Specifically, we will use the Federal Reserve's weighted-average data for commercial and industrial loans maturing between one month and one year from the time the loan is made.¹⁸⁷

POSCO based CREDITU on a POI-average of short-term interest rates published by the Federal Reserve in its section C questionnaire response.¹⁸⁸ In its deficiency comments on POSCO's response, the petitioners claimed that POSCO's 2016 financial statements show that POSCO had a foreign short-term borrowing.¹⁸⁹ In response to the petitioners' concern, Commerce asked POSCO to revise its reported short-term interest rate if the alleged foreign short-term borrowing was denominated in U.S. dollars (USD).¹⁹⁰ In its response to that supplemental questionnaire, POSCO reported that the loan at issue was denominated in USD but did not meet the Commerce definition of short-term loans since it was a seven-year loan which matured after the POI.¹⁹¹ In response to our question, POSCO calculated a rate using POI monthly balances and interest expenses of the seven-year loan, but did not use that rate to re-calculate the credit expense in its

¹⁸⁵ See POSCO Rebuttal Brief at 12.

¹⁸⁶ *Id.*

¹⁸⁷ See <https://enforcement.trade.gov/policy/bull98-2.htm>

¹⁸⁸ See POSCO CQR at C-39 and Exhibit C-17-A.

¹⁸⁹ See the petitioners' July 21, 2017 Letter re: Comments on POSCO's Sections B, C, and D Questionnaire Response (Petitioners Cmts. on POSCO BQR CQR DQR) at 32.

¹⁹⁰ See Commerce's August 1, 2017 Letter to POSCO re: Collapsing, Section B, and Section C Supplemental Questionnaire; POSCO's August 2, 2017 Letter re: Request to Amend Supplemental Sections B and C Questionnaire; Commerce's August 4, 2017 Letter to POSCO re: Response to Request to Modify or Withdraw Three Questions in the August 1, 2017 Supplemental Questionnaire (collectively, POSCO BCSQ).

¹⁹¹ See POSCO's August 10, 2017 Response to Supplemental Sections B and C Questionnaire-Part 1 (POSCO BCSQR Pt.1) at SBC-22.

U.S. sales database (*i.e.*, posus04).¹⁹² Further, POSCO confirmed it had no USD-denominated short-term borrowings during the POI.¹⁹³

We note that the petitioners cited to a section of POSCO's 2016 financial statement for its claim of foreign short-term borrowing.¹⁹⁴ However, the title of the that section is "(c) Current portion of long-term borrowings as of December 31, 2016 and 2015 are as follows." In this section, the issuance date and maturity date show that each borrowing lasted more than a year, including the one cited by the petitioners.¹⁹⁵ Thus, the "foreign short-term borrowing" referenced by the petitioners is not a short-term borrowing as defined by the Commerce's regulation. In addition, immediately above the long-term borrowing section, the same financial statement has a short-term borrowing section which listed one annual short-term borrowing in KRW,¹⁹⁶ and there is no record evidence contradicting POSCO's reporting that POSCO did not have annual short-term borrowing in U.S. dollars during the POI.

As POSCO did not have annual short-term borrowing in U.S. dollars, Commerce's practice is to use rates of 31 to 365-day loans published by Federal Reserve.¹⁹⁷ Therefore, POSCO is not required to revise its reported credit expense using a rate calculated from a seven-year loan.

Comment 5: Whether POSCO Reported the Appropriate Indirect Selling Expense Incurred in the United States (INDIRS1U)

Petitioners' Arguments

- POSCO America Corp. (POSAM)'s indirect selling expense ratio contains two errors: the exclusion of certain interest expenses and the inclusion of certain income offsets that are not permitted by Commerce. This is another example of POSCO's uncooperative behavior.¹⁹⁸
- There is no reason to exclude certain interest expenses as these were incurred by POSAM. Also, POSCO did not demonstrate that certain income offsets are related to its main business or products, nor did it provide detailed itemization of miscellaneous income.¹⁹⁹

¹⁹² *Id.* at SBC-22 and Exhibit SBC-15; *see also*, POSCO BCSQR Pt.2 at posus04.

¹⁹³ *Id.* at SBC-22.

¹⁹⁴ *See* Petitioners Comments on POSCO BQR CQR DQR at 32.

¹⁹⁵ *See* POSCO BCSQR Pt.1 at SBC-22 and Exhibit SBC-14.

¹⁹⁶ *Id.* at SBC-22 and Exhibit SBC-14.

¹⁹⁷ *See, e.g., Certain Carbon and Alloy Steel Cut-to Length Plate from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 82 FR 16345 (April 4, 2017), and accompanying Issues and Decision Memorandum at Comment 9; *see also, Certain Oil Country Tubular Goods from the Republic of the Philippines: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41976 (July 18, 2014), and accompanying Issues and Decision Memorandum at 16.

¹⁹⁸ *See* Petitioners Case Brief at 21-22.

¹⁹⁹ *Id.*

POSCO's Arguments

- Inclusion of certain interest expenses in INDIRS1U ratio calculation would double-count those expenses. Because POSAM's financial statements are consolidated into POSCO's financial statements, its interest expenses are included in POSCO's interest expenses and therefore already included in the net interest expense (INTEX) of COP calculation.²⁰⁰
- The two income offsets relate to POSAM's general activities, or matters related to certain steel product sales, and their corresponding costs are included in the numerator of the INDIRS1U ratio calculation.²⁰¹
- The miscellaneous income included in the INDIRS1U ratio calculation is immaterial and Commerce routinely includes these types of non-operating income as offsets. Conceptually, miscellaneous gains should offset miscellaneous losses to ensure that the miscellaneous losses are not overstated.²⁰²

Commerce's Position:

In the final determination, we have relied upon the Indirect Selling Expense Incurred in the United States (INDIRSU) reported in POSCO's Section C response²⁰³ and have not included the interest incomes/expense, two certain income offsets and corresponding expenses, and miscellaneous income from the revised ratio calculation. We note that the petitioners filed deficiency comments stating that POSCO's INDIRS1U ratio calculation should be updated with all SG&A and interest expenses.²⁰⁴ In responding to that comment, we issued a supplemental questionnaire which requested the ratio calculation to be updated with all SG&A and interest expenses.²⁰⁵ In response to that supplemental questionnaire, POSCO provided the updated ratio calculation as requested by adding Interest Income, Interest Expense, Other Expenses, and Other Income appeared on POSAM's 2016 income (loss) statement.²⁰⁶ Meanwhile, it argued that the revised ratio calculation double-counted interest expenses.²⁰⁷ While POSCO itemized those incomes and expenses, POSCO provided general ledger account numbers and names but not source documents for those incomes and expenses, which included two income offsets and corresponding expenses, and miscellaneous income at issue.²⁰⁸

The record shows that POSCO used the net interest expense from its 2016 consolidated financial statements to report net interest expense (INTEX) in its Section D response.²⁰⁹ As POSAM's

²⁰⁰ See POSCO Rebuttal Brief at 13-14.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ See POSCO's July 7, 2017 Section C Questionnaire Response (POSCO CQR) at C-44 and Exhibit C-18-B.

²⁰⁴ See Petitioners Cmts. on POSCO BQR CQR DQR.

²⁰⁵ See POSCO BCSQ.

²⁰⁶ See POSCO BCSQR Pt.1 at SBC-26 and Exhibit SBC-17; see also POSCO AQR Pt.2 at Exhibit A-47 POSCO America Corporation (An indirectly wholly owned subsidiary of POSCO, Seoul, Korea) Financial Statements December 31, 2016 and 2015, Statements of Comprehensive Income (Loss); see also POSCO CEP Sales Verification Report at Exhibit CEP VE13.

²⁰⁷ See POSCO BCSQR Pt.1 at SBC-26.

²⁰⁸ *Id.* at SBC-16 and Exhibit SBC-17.

²⁰⁹ See POSCO DQR at D-34.

financial statements are consolidated into POSCO's consolidated financial statements,²¹⁰ POSAM's net interest expense is consolidated into POSCO's net interest expenses and reported in the INTEX. Thus, the petitioners' suggested inclusion of POSAM's interest expense and income in the INDIRS1U ratio calculation would double-count those expenses and incomes. Therefore, we have not included POSAM's interest expenses and incomes in POSCO's INDIRS1U ratio calculation.

We note that POSCO's revised INDIRS1U calculation included additional income offsets, as well as certain expenses, for POSAM, but did not explain the nature of those offsets/expenses, nor did it submit supporting documents (*e.g.*, trial balance, claim and/or payment record) which would allow us to discern the nature of those offsets and expenses.²¹¹ During the verification, we tied the general ledger balances to the POSAM's audited financial statements.²¹² Thus, the general ledger accounts' names are the only description of those offsets/expenses. Without supporting documents, we found no basis to qualify those offsets and expenses for being included in the ratio calculation.

Therefore, we have used the INDIRS1U ratio methodology from POSCO's CQR in this final determination.²¹³ As explained above, we find that POSCO responded to our request for information concerning the indirect selling expense incurred in the United States, and we are satisfied with the responses that POSCO provided. Therefore, we do not find that POSCO was uncooperative with respect to reporting its indirect selling expenses incurred in the United States and we continue to find there is no basis for applying AFA with respect to POSCO's cost reporting.

Comment 6: Indirect Selling Expense Incurred in the Home Market (DINDIRS2U)

Petitioners' Arguments

- Commerce's long-standing policy is to include current bad debt expenses in the indirect selling expense,²¹⁴ citing *CORE Italy Inv. Final*, *Glycine India Inv. Final*, *CFS Paper Korea Inv. Final*, and *Stainless Bar India AR Prelim*.²¹⁵ Further, Commerce's well-established practice is to exclude prior period items, such as reversal for allowance of bad debt (account

²¹⁰ See POSCO's June 9, 2017 Response to Section A of Initial AD Questionnaire (POSCO AQR Pt.2) at Exhibit A-10 "POSCO and Subsidiaries Consolidated Financial Statements December 31, 2016 and 2015" at General Information.

²¹¹ See POSCO BCSQR Pt.1 at SBC-26 and Exhibit SBC-17.

²¹² See POSCO CEP Sales Verification Report at Exhibit CEP VE13.

²¹³ See POSCO CQR at C-44 and Exhibit C-18-B.

²¹⁴ See Petitioners Case Brief at 20-24.

²¹⁵ See *Certain Corrosion-Resistant Steel Products from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35320 (June 2, 2016) (*CORE Italy Inv. Final*); *Notice of Final Determination of Sales at Less Than Fair Value: Glycine from India*, 73 FR 16640 (March 28, 2008) (*Glycine India Inv. Final*); *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the Republic of Korea*, 72 FR 60630 (October 25, 2007) (*CFS Paper Korea Inv. Final*); *Notice of Preliminary Results of Antidumping Duty Administrative Review, Intent to Rescind and Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 72 FR 10151 (March 7, 2007) (*Stainless Bar India AR Prelim*).

receivable),²¹⁶ citing *Carbon Alloy Pipe Brazil AR Final*, *Stainless Bar India AR Final*, and *Stainless Wire Rod Korea Inv. Final*.²¹⁷

- In addition, POSCO claimed certain adjustments (*i.e.*, allocation of branch management, payment commission, payment fee-consulting fee) but failed to meet its burden of establishing entitlement to such adjustments, which is again another example of its uncooperative behavior.²¹⁸

POSCO's Arguments

- The four items that the petitioners argue about are related to a single small volume trial sale made by POSCO Daewoo, which should be excluded from the margin calculation.²¹⁹
- As explained fully in August 10, 2017 supplemental response, it is mathematically incorrect and unjust for the petitioners to argue that Commerce should include bad debt expense and exclude the reversal of the same bad debt expense in the indirect selling expense calculation.²²⁰
- POSCO has explained fully the nature of other adjustments (*i.e.*, allocation of branch management, payment commission, payment fee-consulting fee) and the reasons for them, and the petitioners' attempts to show otherwise, or to claim non-cooperation because they disagree with POSCO's methodology, must be rejected.²²¹

Commerce's Position:

We have continued to include the sale at issue in POSCO's margin calculation for this final determination. Moreover, we have revised POSCO's DINDIRS2U ratio calculation by adding the reversal for allowance of bad-debt (accounts receivable) and bad-debt expense. We made no changes with to the DINDIRS2U calculation with respect to allocation of branch management expenses, payment commission, and payment fee-consulting fee for this final determination.²²²

As explained in the Initial AD Questionnaire, Commerce excludes sample sales from the margin calculation when they are outside the ordinary course of trade.²²³ In order to conclude that sales

²¹⁶ See Petitioners Case Brief at 20-24.

²¹⁷ See *Notice of Final Results of Antidumping Duty Administrative Review: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil*, 70 FR 7243 (February 11, 2005) (*Carbon Alloy Pipe Brazil AR Final*), and accompanying Issues and Decision Memorandum at Comment 6; see also, *Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review*, 68 FR 47543 (August 11, 2003) (*Stainless Bar India AR Final*); see also *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea*, 63 FR 40404 (July 29, 1998) (*Stainless Wire Rod Korea Inv. Final*).

²¹⁸ See Petitioners Case Brief at 20-24.

²¹⁹ See POSCO's Rebuttal Brief at 15.

²²⁰ *Id.* and POSCO BCSQR Pt.1 at SBC-24, SBC-26 and Exhibit SBC-16.

²²¹ *Id.*

²²² See March 19, 2018 Memorandum re: Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from the Republic of Korea: Final Determination Margin Calculation (Final Margin Memorandum).

²²³ See Commerce's May 19, 2017 Letter to POSCO re: Antidumping Duty Investigation Questionnaire (Initial AD Questionnaire) at Appendix I Glossary of Terms at Sample Sale.

qualify as “sample sales,” Commerce typically requires information that demonstrates that the sales were not for consideration (*i.e.*, the sales price net of movement expenses is not greater than zero) and not in commercial quantities.²²⁴ POSCO reported a sale which it characterized as a “trial sale” in its U.S. sales database. However, the record shows that it did not provide information which demonstrates that the sale at issue was a sample sale as defined by the Initial AD Questionnaire. Specifically, POSCO did not provide information demonstrating the sales were not made for consideration (*i.e.*, the sales price net of movement expenses is not greater than zero) and or made in commercial quantities.²²⁵

POSCO’s Allowance for Bad-Debt is a liability account for estimated uncollectable accounts receivable, and it is reversed by Reversal for Allowance of Bad-Debt (accounts receivable) and Bad-Debt Expense when the accounts receivable is collected or not.²²⁶ Thus, Reversal for Allowance of Bad-Debt (accounts receivable) and Bad-Debt Expense are related and should each be included in our DINDIRS2U calculation. Further, as the record shows that POSCO’s payment terms are much shorter than one year,²²⁷ the Allowance for Bad-Debt is unlikely from prior years, and therefore, the transactions underlying its Reversal for Allowance of Bad-Debt (account receivable) are not reducing prior year’s liability. Since the Reversal for Allowance of Bad-Debt (account receivable) is not reversing prior year’s expense, the petitioners’ reliance on *Carbon Alloy Pipe Brazil AR Final*, *Stainless Bar India AR Final*, and *Stainless Wire Rod Korea Inv. Final* is misplaced.²²⁸ As Reversal for Allowance of Bad-Debt (account receivable) and Bad-Debt Expense both reflect uncollected accounts receivable after payment terms during the current year, both are included in DINDIRS2U ratio calculation.

We noted that the allocation of branch management expenses has two entries²²⁹ and included both in our revised DINDIRS2U ratio calculation.²³⁰

With respect to payment commission and payment fee-consulting fee, the transaction lists and sample accounting vouchers on the record indicate a lapse of time between several smaller expenses and few lump-sum reimbursements.²³¹ Thus, the record explained the cause of the balances and POSCO met its burden of establishing entitlement to such adjustments.

²²⁴ See Initial AD Questionnaire at Appendix I Glossary of Terms at Sample Sale.

²²⁵ *Id.* and POSCO’s May 30, 2017 Response to Section A of Initial AD Questionnaire (POSCO AQR Pt.1) at A-6, the petitioners’ June 8, 2017 Letter: “Petitioners Comments on POSCO’s Partial Section A Response” at 2, and POSCO’s June 9, 2017 Letter: “POSCO’s Response to Petitioners’ June 8 Comments.

²²⁶ See POSCO BCSQR Pt.1 at SBC-24, SBC-26 and Exhibit SBC-16.

²²⁷ See POSCO CQR at C-24 Terms of Payment and Exhibit C-7.

²²⁸ See *Notice of Final Results of Antidumping Duty Administrative Review: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil*, 70 FR 7243 (February 11, 2005), and accompanying Issues and Decision Memorandum at Comment 6; see also, *Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review*, 68 FR 47543 (August 11, 2003); see also *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea*, 63 FR 40404 (July 29, 1998).

²²⁹ See POSCO CQR at C-43 and Exhibit C-18-A (page 2 and 5), and POSCO BCSQR Pt.1 at SBC-24 and Exhibit SBC-16 (SN 91 and 257).

²³⁰ See Final Margin Memorandum.

²³¹ See POSCO BCSQR Pt.1 at SBC-24 and Exhibit SBC-16 at Document 2 and Document 6.

As explained above, we find that POSCO cooperated with Commerce and responded to our request for information concerning the DINDIRS2U, and we are satisfied with the clarification and supporting documents that POSCO provided.

Comment 7: Whether POSCO Failed to Report that Its Sale to Company B Was an Affiliated Sale

Petitioners' Arguments

- POSCO acknowledged that it was affiliated with Company A during part of the POI. Company A's financial statements indicate that POSCO is affiliated with Company B.²³² Moreover, POSCO incorrectly reported the relationship with Company B in the home market sales database, and therefore prohibited Commerce from conducting arm's-length test on its sales to Company B. This is again another example of POSCO's uncooperative behavior.²³³

POSCO's Rebuttal Brief:

- The petitioners provided no analysis whatsoever as to what provision under section 771(33) they contend that POSCO is affiliated with Company B. POSCO had no direct or indirect equity interest in Company B, and these two companies neither jointly control any company or are jointly controlled by any company. Thus, there is no legal or factual basis for finding POSCO to be affiliated with Company B.²³⁴

Commerce's Position:

We found no basis to determine that POSCO is affiliated with Company B. In the Final Determination of Affiliation and Collapsing section, above, we found that POSCO was affiliated with Company A during the first nine months because the information on the record indicated that POSCO owned five percent or more shares of Company A during that period. We also found that POSCO and Company A were no longer affiliated after POSCO sold all of its shares in Company A. The petitioners' reliance on a page from Company A's financial statement to support its claim that POSCO and Company B were affiliated is misplaced. While Company A's financial statement acknowledges a relationship between Company A and Company B, it gives no indication of any affiliation between POSCO and Company B. Moreover, there is no other information on the record that indicates that POSCO is affiliated with Company B under section 771(33) of the Act.

We therefore find that there is no record information to establish an affiliation between POSCO and Company B.

²³² The names of Company A and Company B, as well as Company A's financial statement, consist of BPI.

²³³ See Petitioners' Case Brief at 24-25.

²³⁴ See POSCO Rebuttal Brief at 15-16.

Comment 8: Negative Credit Expenses of Home Market Sales

Petitioners' Arguments

- POSCO incorrectly set negative home market credit expense to zero under the bald claim that Commerce frequently permits the zeroing of negative credit expenses in other cases. As stated in *PET Resin Indonesia Inv. Final*, Commerce's policy is to include actual credit expenses in the margin calculation. Commerce should find that this is another example of POSCO's uncooperative behavior.²³⁵

POSCO's Arguments

- From its initial questionnaire response, POSCO has explained its methodology for reporting home market credit expenses. Commerce has, thus, long been aware of this methodology, and at no point did it request POSCO to report negative credit expenses for any home market sales rather than zero.²³⁶
- Commerce did request POSCO to recalculate credit expenses to "consider the deduction of early payment discounts from the gross unit price," and POSCO complied. The petitioners quibble over POSCO's methodology, but this is not an example of non-cooperation; rather, it reflects a methodology that POSCO reported consistent with the well-established principle that there can be no opportunity cost where payment is received in advance.²³⁷

Commerce's Position:

We disagree with POSCO's treatment of these negative home market credit expenses. For the final determination, we have therefore applied our standard credit calculation formula to calculate home market credit expenses at issue, thereby accurately reflecting the estimated opportunity cost incurred between the time of shipment and the receipt of payment from the customer. If the customer pays before the time of shipment, the seller receives the benefit of the time value of money. Accordingly, setting negative credit expenses to zero would not accurately reflect normal business practice and would in fact, distort the final margin calculations.²³⁸

Therefore, we have used negative credit expenses for the final results.

Finally, Commerce notes that we did not request further information from POSCO on this particular issue. Therefore, there is no record evidence to support a finding that POSCO was uncooperative with respect to this matter.

²³⁵ See Petitioners Case Brief at 25-27.

²³⁶ See POSCO Rebuttal Brief at 16-17.

²³⁷ *Id.*

²³⁸ See Notice of Final Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin from Indonesia, 70 FR 13456 (March 21, 2005) (*PET Resin Indonesia Inv. Final*), and accompanying Issues and Decision Memorandum at Comment 9.

Comment 9: SAS Syntax for Capping Home Market Freight Revenue

Petitioners' Arguments

- Commerce's programming error resulted in home market freight revenue not being capped by freight expenses.²³⁹

POSCO did not rebut this argument

Commerce's Position:

We agree with the petitioners and have revised our home market sales program so that home market freight revenues are capped by movement expenses.²⁴⁰

Comment 10: Whether to Include Interest from Late Payment Interest in the Interest Expense (INTEX) Calculation

Petitioners' Arguments

- POSCO included interest income earned on the late payments from its customers in the financial expense ratio calculation. The interest income earned from the late payments is not earned from the company's working capital and current assets and thus, it should be excluded from the financial expense ratio calculation.²⁴¹

POSCO's Arguments

- The interest income earned on the late payments is appropriately included in the financial expense ratio calculation because it is directly related to sales and recorded as other interest income in POSCO's normal accounting records.²⁴²
- The interest income earned from the late payments is minuscule. Thus, Commerce should not make an adjustment under section 777A(a)(2) which permits Commerce to disregard any adjustment having an *ad valorem* effect of less than 0.33 percent.²⁴³

Commerce's Position:

We have revised our calculation from the *Preliminary Determination* and have not included interest earned on late payments from its customers in the interest expense calculation for this final determination.²⁴⁴ Commerce's practice is to disallow an offset to a respondent's financial expenses for interest income attributable to short-term receivables.²⁴⁵ Commerce has explained

²³⁹ See Petitioners Case Brief at 28.

²⁴⁰ See Final Margin Memorandum.

²⁴¹ See Petitioners Case Brief at 28-29.

²⁴² See POSCO Rebuttal Brief at 17-18.

²⁴³ *Id.*

²⁴⁴ See Final Cost Memorandum and Final Margin Memorandum.

²⁴⁵ See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezer from Mexico, 77 FR 17422 (March 26, 2012), and

that interest revenue attributable to short-term receivables is more appropriately treated in an antidumping duty calculation as an adjustment to price. Specifically, Commerce's practice is to treat interest income attributable to short-term trade receivables as an offset to a respondent's imputed-credit expenses.²⁴⁶ Accordingly, for this final determination, Commerce has disallowed an offset to POSCO's financial expenses for the interest income earned on the late payments from its customers.

X. 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 of the investigation in the *Federal Register* and inform the International Trade Commission of our determination.

☒

Agree

☐

Disagree

3/19/2018

X



Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

accompanying Issues and Decision Memorandum at Comment 32; *see also*, *Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils from Germany*, 64 FR 30710, 30746 (June 8, 1999).

²⁴⁶ *See Gray Portland Cement and Clinker from Mexico: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 2902 (January 18, 2006), and accompanying Issues and Decision Memorandum at Comment 9 (stating that "we treat interest income earned on accounts receivable as an adjustment to the selling price"); *see also*, *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), and accompanying Issues and Decision Memorandum at Comment 2.