



A-580-885

Administrative Review

POR: 10/14/2016–3/31/2018

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December 13, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Phosphor Copper from the Republic of Korea: Issues and Decision
Memorandum for the Final Results of Antidumping Duty
Administrative Review; 2016-2018

I. SUMMARY

We analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the antidumping duty (AD) order on phosphor copper from the Republic of Korea (Korea)¹ covering the period of review (POR), October 14, 2016 through March 31, 2018. We determine that the sole respondent, Bongsan Co., Ltd. (Bongsan) did not make sales of subject merchandise at less than normal value during the POR. We recommend that you approve the positions set forth in the “Analysis of Comments” section of this memorandum. Below is the complete list of the issues in this review for which we received comments:

- Comment 1: Adverse Facts Available (AFA) to Bongsan
- Comment 2: Cost-Based Particular Market Situation (PMS)
- Comment 3: Bongsan’s Costs on a Quarterly-Average Basis
- Comment 4: Bongsan’s Financial Expense Ratio

II. BACKGROUND

On June 17, 2019, the Department of Commerce (Commerce) published the *Preliminary Results* of this review.² On July 17, 2019, the petitioner and Bongsan each requested a hearing,

¹ See *Phosphor Copper from the Republic of Korea: Antidumping Duty Order*, 82 FR 18893 (April 24, 2017) (*Order*).

² See *Phosphor Copper from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2018*, 84 FR 28009 (June 17, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).



respectively.³ On August 13, 2019, Commerce postponed the final results of this review until December 13, 2019.⁴ On September 24, 2019, Commerce issued a post preliminary decision memorandum regarding the PMS and pricing agreement alleged by Metallurgical Products Company (the petitioner).⁵ On October 3, 2019, the petitioner and Bongsan submitted their respective case briefs.⁶ On October 8, 2019, the petitioner and Bongsan submitted their respective rebuttal briefs.⁷ On November 20, 2019, Commerce held a public hearing.

III. SCOPE OF THE ORDER

The merchandise covered by this *Order* is master alloys⁸ of copper containing between 5 percent and 17 percent phosphorus by nominal weight, regardless of form (including but not limited to shot, pellet, waffle, ingot, or nugget), and regardless of size or weight. Subject merchandise consists predominantly of copper (by weight), and may contain other elements, including but not limited to iron (Fe), lead (Pb), or tin (Sn), in small amounts (up to one percent by nominal weight). Phosphor copper is frequently produced to JIS H2501 and ASTM B-644, Alloy 3A standards or higher; however, merchandise covered by this investigation includes all phosphor copper, regardless of whether the merchandise meets, fails to meet, or exceeds these standards.

Merchandise covered by this *Order* is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7405.00.1000. This HTSUS subheading is provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

IV. PARTICULAR MARKET SITUATION AND PRICING AGREEMENT ALLEGATIONS

On December 3 and 10, 2018, the petitioner submitted an allegation of a PMS with respect to the Korean copper and electricity markets and an allegation of an AD reimbursement arrangement.⁹ On June 10, 2019, Commerce initiated a PMS investigation regarding alleged distortions to the

³ See Petitioner's Letter, "Phosphor Copper from the Republic of Korea: Request for Hearing," dated July 17, 2019; see also Bongsan's Letter, "Phosphor Copper from the Republic of Korea: Request for Hearing," dated July 17, 2019.

⁴ See Memorandum, "Phosphor Copper from the Republic of Korea: Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review; 2016-2018," dated August 13, 2019.

⁵ See Memorandum, "Post Preliminary Analysis of Particular Market Situation Allegation and Pricing Agreement Allegation in the Antidumping Duty Administrative Review: Phosphor Copper from the Republic of Korea; 2016-2018," dated September 24, 2019.

⁶ See Petitioner's Letter, "Phosphor Copper from the Republic of Korea: Petitioner's Case Brief," dated October 3, 2019 (Petitioner's Case Brief); see also Bongsan's Letter, "Phosphor Copper from the Republic of Korea - Case Brief," dated October 3, 2019 (Bongsan's Case Brief).

⁷ See Petitioner's Letter, "Phosphor Copper from the Republic of Korea: Petitioner's Rebuttal Brief," dated October 8, 2019 (Petitioner's Rebuttal Brief); see also Bongsan's Letter, "Phosphor Copper from the Republic of Korea - Rebuttal Brief," dated October 8, 2019 (Bongsan's Rebuttal Brief).

⁸ A "master alloy" is a base metal, such as copper, to which a relatively high percentage of one or two other elements is added.

⁹ See Petitioner's Letter, "Phosphor Copper from the Republic of Korea: Petitioner's Particular Market Situation Allegation," dated December 3, 2018 (PMS Allegation).

Korean copper and electricity markets and stated that it would also examine the petitioner's allegation that Bongsan engaged in an alleged pricing scheme involving its U.S. customers. In our post-preliminary analysis, we found that, with respect to the PMS allegation on Korean copper market: (1) Korean's Public Procurement Service (PPS), the government entity that sold copper in the Korean market, has a very small share of the domestic Korean copper market; (2) the PPS sold copper above the London Metal Exchange (LME) price during the POR; (3) record evidence indicates that during the POR, the PPS exclusively sold pure copper; and (4) Bongsan did not buy pure copper during the POR. Therefore, we found no evidence to conclude that distorted prices existed in the Korean copper market during the POR as alleged by the petitioner.¹⁰ Concerning electricity, we explained that while Commerce may have found in other proceedings that government involvement in the electricity market contributed to a PMS along with other factors (*e.g.*, subsidization and U.S. countervailing duties imposed on material inputs), no other factors exist here, including the distortion of Korean copper prices. Therefore, based on the totality of circumstances, we preliminarily determined that a cost-based PMS did not exist during the POR.¹¹

Regarding the alleged pricing agreement between Bongsan and its U.S. customers, Commerce preliminarily determined that there is insufficient evidence on the record indicating that Bongsan entered into the alleged pricing agreement with its U.S. customers during or after the POR.¹² We further preliminarily determined that with regard to an adjustment under 19 CFR 351.402(f), there is insufficient evidence of payment on behalf of the importer or reimbursement to the importer of antidumping duties by the producer or exporter of the subject merchandise that have been made to date.¹³ Thus, we preliminarily found that 19 CFR 351.402(f) does not apply.

As discussed below in Comments 1 and 2, in these final results we continue to find that the record does not support an affirmative finding of a cost-based PMS, or an affirmative finding of a pricing agreement between Bongsan and its U.S. customers that would render Bongsan's reported U.S. prices unreliable.

V. CHANGES MADE SINCE THE *PRELIMINARY RESULTS*

Based on our analysis of the comments received from parties, we have revised Bongsan's reported financial expense ratio used in the preliminary margin calculations. *See* Comment 4 below and Final Sales and Cost Calculation Memorandum for Bongsan for details.¹⁴

¹⁰ *See* Memorandum, "Post Preliminary Analysis of Particular Market Situation Allegation and Pricing Agreement Allegation in the Antidumping Duty Administrative Review: Phosphor Copper from the Republic of Korea; 2016-2018," dated September 24, 2019 (Post Preliminary Analysis Memorandum), at 7-8.

¹¹ *Id.* at 8.

¹² *Id.* at 10-11.

¹³ *Id.*

¹⁴ *See* Memorandum, "Final Results of the Antidumping Duty Administrative Review of Phosphor Copper from the Republic of Korea (2016-2018): Sales and Cost of Production Calculation Memorandum for Bongsan Co., Ltd." dated concurrently with this memorandum (Final Sales and Cost Calculation Memorandum).

VI. ANALYSIS OF COMMENTS

Comment 1: AFA to Bongsan

Petitioner's Comments

- Bongsan failed to provide full and accurate information regarding its U.S. sales prices through intentional misconduct where Bongsan offered a “kickback scheme” to reimburse its U.S. customers. The “kickback scheme” impedes Commerce’s ability to establish accurate and reliable U.S. prices for the subject merchandise and therefore, it manipulates and distorts Commerce’s dumping margin calculation.¹⁵ The scheme’s existence warrants the application of total AFA.
- In a supplemental questionnaire response, Bongsan provided documentation relating to a “price renegotiation” for a sale to the United States that had been reported as a billing adjustment.¹⁶ However, Bongsan failed to demonstrate that the renegotiated price and the reported U.S. sales price are reliable.¹⁷
- In its post-preliminary questionnaire response, Bongsan failed to provide full and accurate information to Commerce.¹⁸ Bongsan obfuscated rather than divulged to Commerce its offer to its U.S. customers.¹⁹
- In communicating with its U.S. customers regarding the post-preliminary questionnaire issued by Commerce, Bongsan provided its customers with leading information in order to generate a self-serving response. Additionally, one of Bongsan’s U.S. customers did not provide a signed declaration stating that a pricing agreement did not exist. Furthermore, the affidavits submitted by Bongsan are carefully worded, and it is unclear whether Bongsan’s U.S. customers, in fact, certified to the accuracy and reliability of Bongsan’s claims that no “kickback scheme” exists.²⁰
- Record evidence demonstrates that Bongsan and its customers will likely agree to Bongsan’s offer at the end of the current review.
- By engaging in this type of agreement, Bongsan has actively prevented Commerce from identifying an accurate and reliable U.S. sale price, which distorts Commerce’s calculated dumping margins.
- Commerce should reconsider its preliminary findings by rejecting Bongsan’s reported U.S. sales prices. Regardless of whether Bongsan’s offer was accepted, Bongsan’s attempt to manipulate the dumping analysis warrants the application of total AFA.

¹⁵ See Petitioner’s Case Brief at 1.

¹⁶ *Id* at 2; see also Bongsan’s Letter, “Phosphor Copper from the Republic of Korea: Second Supplemental Questionnaire Response,” dated November 28, 2018 (SQR2), at Attachments S2-1a.

¹⁷ See Petitioner’s Case Brief at 3-4; see also Final Sales and Cost Calculation Memorandum for certain Business Proprietary Information (BPI).

¹⁸ See Bongsan’s Letter, “Phosphor Copper from the Republic of Korea: Third Supplemental Questionnaire Response,” dated July 30, 2019 (SQR3), at Attachments 3, 4, and 6.

¹⁹ See Petitioner’s Case Brief at 4-5; see also Final Sales and Cost Calculation Memorandum for certain BPI reference.

²⁰ See Petitioner’s Case Brief at 7-10; see also Final Sales and Cost Calculation Memorandum for certain BPI reference.

- Pursuant to section 776(a) of the Act, Commerce may base a determination on facts available when necessary information is not on the record or an interested party withholds information, fails to provide information in a timely manner, significantly impedes a proceeding, or provides unverifiable information.²¹
- In selecting among facts available, Commerce may rely on an adverse inference if the agency determines that an interested party has failed to cooperate by not acting to the best of its abilities.²²
- In determining whether an interested party has met this standard, Commerce evaluates “whether {the} respondent has put forth its maximum effort to provide {it} with full and complete answers to all inquiries in an investigation.”²³
- In this review Bongsan has not acted to the best of its ability and, therefore, the application of total AFA is warranted.

Bongsan’s Rebuttal Comments

- Commerce should reject the petitioner’s AFA argument and continue to rely on Bongsan’s reported sales and cost data to calculate Bongsan’s weighted-average dumping margin, because the record demonstrates Bongsan accurately reported its U.S. sale prices in accordance with Commerce’s instructions.²⁴
- The petitioner’s claim that Bongsan’s reported U.S. sale prices are inaccurate and unreliable and that Bongsan attempted to “inappropriately manipulate” its AD liability by allegedly engaging in a “kickback scheme” to reimburse its U.S. customers mischaracterizes the nature of certain proprietary communications between Bongsan and its U.S. customers and is baseless.²⁵
- The record demonstrates that Bongsan accurately reported its U.S. sales prices.²⁶
- Throughout this proceeding, Bongsan has responded to Commerce’s questionnaires while attempting to clarify the record where the petitioner has sought to distort it.²⁷
- With respect to a sale for which “Bongsan initiated the renegotiation of prices with its U.S. customers due to increased costs associated with Bongsan’s operations,” Bongsan provided the documentation requested by Commerce to explain the circumstances surrounding the sales, the reason for price renegotiation, and how the renegotiation impacted Bongsan’s costs.²⁸
- The final confirming email messages and the documentation for the sale at issue clearly reflect that the final renegotiated accommodation provided only for an increase to the agreed-upon price, as stated on the commercial invoice from Bongsan to the customer. Thus, the commercial invoice reflects that the material terms had been firmly established, and the customer paid the full invoice amount. Neither the U.S. customer’s email reciting the terms of

²¹ See Petitioner’s Case Brief at 2.

²² *Id.*

²³ See Petitioner’s Case Brief at 2 and 6 (citing *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382 (Federal Circuit 2003) (*Nippon Steel*)).

²⁴ See Bongsan’s Rebuttal Brief at 1-3.

²⁵ *Id.* at 3; see also Post Preliminary Analysis Memorandum.

²⁶ See Bongsan’s Rebuttal Brief at 3.

²⁷ *Id.* at 6.

²⁸ *Id.* at 7; see also SQR2 at S2-1-2, Exhibit S2-1a.

the agreement, nor Bongsan's confirmation e-mail, memorialized any agreement that Bongsan would provide any "kickback" scheme.²⁹

- Bongsan's price negotiations with its U.S. customers reflected Bongsan's effort to recoup the increased costs Bongsan expected to incur with respect to the subject merchandise.³⁰
- The affidavit and certification from Bongsan's U.S. customers clearly demonstrate that no alleged pricing agreement or "kickback scheme" transpired. Therefore, a finding that Bongsan entered into an alleged pricing agreement with its U.S. customers during or after the POR would be based purely on speculation.³¹
- In its Post Preliminary Analysis Memorandum, Commerce weighed the evidence and found that there was not sufficient evidence "indicating that Bongsan entered into the alleged pricing agreement with its U.S. customers during or after the POR."
- Commerce found no record evidence that contradicts either the sworn declarations from both Bongsan and one of its U.S. customers that they never entered into any such agreement, or the certification from Bongsan's other U.S. customer regarding the accuracy of the information with respect to the nonexistence of such pricing agreement.³²
- Throughout this administrative review, Bongsan has emphasized that no communications with its U.S. customers reflect a reimbursement agreement with its U.S. customers. No record evidence contradicts Bongsan's characterization.³³
- Bongsan has provided all requested information, including Bongsan's correspondence with its U.S. customers to support its responses to Commerce's questions. The only obfuscation arises from the petitioner's mischaracterization of the substance and context of these communications.³⁴ There is no basis to claim that Bongsan was uncooperative or attempted to obfuscate the facts.
- The statute permits the "use of facts otherwise available" when an interested party "withholds information that has been requested" by Commerce.³⁵ In order to resort to an adverse inference to fill a gap in the record, the statute requires that a party has failed to cooperate to the best of its ability,³⁶ meaning the party failed to "put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation."³⁷
- Nothing in the statute permits Commerce to apply an adverse inference where a party has cooperated fully in order to placate a petitioner's incorrect speculations such as the instant review.³⁸ Therefore, Commerce should reject the petitioner's proposed total AFA or partial AFA adjustment to Bongsan's reported U.S. price because the record demonstrates that Bongsan accurately reported its U.S. sale prices in accordance with Commerce's instructions.³⁹

²⁹ See Bongsan's Rebuttal Brief at 7-9; see also SQR2 at Exhibit S2-1a.

³⁰ See Bongsan's Rebuttal Brief at 4 (citing Post Preliminary Analysis Memorandum).

³¹ *Id.*

³² *Id.*

³³ See Bongsan's Rebuttal Brief at 21.

³⁴ *Id.* at 11-12; see also Bongsan's SQR3 at S3-2.

³⁵ See section 776(a)(2)(A) of the Act.

³⁶ See section 776(b) of the Act.

³⁷ See Bongsan's Rebuttal Brief at 21 (citing *Nippon Steel*, 337 F. 3d at 1382).

³⁸ See Bongsan's Rebuttal Brief at 22.

³⁹ *Id.* at 1-3.

Commerce’s Position: The petitioner’s alleged “kickback scheme” through a reimbursement agreement stems from a “price renegotiation” for one of Bongsan’s sales to the United States where Bongsan initiated a price renegotiation due to a change under which the cash deposits for estimated AD duties for the subject merchandise was expected to increase.⁴⁰ In order to recoup the expected increase, Bongsan renegotiated with its U.S. customers. In SQR2 at Exhibit S2-1a, Bongsan provided the following documents: (1) its e-mail correspondence with its U.S. customer, in which Bongsan and its customer renegotiated the price for the sale at issue; (2) both the initial and revised purchase orders; (3) the commercial invoices reflecting the changes to the material terms of sale; and (4) the shipping documents. During the price renegotiation, Bongsan proposed various alternatives regarding how to share the increased cash deposits for estimated AD duties between Bongsan and its U.S. customers. One of the proposed alternatives was through a certain pricing agreement by which Bongsan would reimburse its U.S. customers if certain conditions are met.⁴¹ The petitioner argues that Bongsan’s “reimbursement alternative” proposal constitutes a “kickback scheme” that impedes Commerce’s ability to establish the final U.S. prices for the subject merchandise in its margin calculations and that the scheme’s existence warrants the application of total AFA.

As stated in the Post Preliminary Analysis Memorandum, in response to the petitioner’s pricing agreement allegation, on July 12, 2019, Commerce issued a supplemental questionnaire in which we instructed Bongsan and its U.S. customers to provide “any email correspondence, contracts/agreements, or other related documents regarding any agreements to rebate or repay any duty refunds,” which are related to the e-mail correspondence in which Bongsan made the pricing agreement proposal.⁴² Bongsan provided a timely response on July 30, 2019.⁴³

Consistent with our findings in the Post Preliminary Analysis Memorandum, we continue to find that the “reimbursement alternative” proposed by Bongsan was never implemented. The email correspondence provided in SQR3 contains no evidence that Bongsan entered into a reimbursement agreement with its U.S. customers.⁴⁴ As detailed in Post Preliminary Analysis Memorandum, Bongsan provided in SQR3 a signed declaration from Myung-Joong Kim, Vice President of Bongsan, who is the sole contact person with Bongsan’s U.S. customers, in which Mr. Kim attests to the lack of an agreement or payment.⁴⁵ Also, SQR3 contains a signed declaration from one of the U.S. customers attesting that it did not enter into the proposed pricing agreement with Bongsan and never intended or expected that the final terms of any negotiated price in connection with any purchase of phosphor copper from Bongsan would include a reimbursement in any form for any reason.⁴⁶ For the other U.S. customer to whom Bongsan had proposed the identical reimbursement arrangement, the customer never acknowledged Bongsan’s statement in question, and there is no evidence that it entered into an agreement with Bongsan

⁴⁰ *Id.* at 7-9; *see also* SQR2 at S2-1 and S2-2.

⁴¹ *See* SQR2 at Exhibit S2-1a.

⁴² *See* Commerce’s Letter, “3rd Supplemental Questionnaire to Bongsan Co., Ltd. (Bongsan)’s Sections A-D Questionnaire Responses,” dated July 12, 2019.

⁴³ *See* Post Preliminary Analysis Memorandum at 4; *see also* SQR3.

⁴⁴ *See* Post Preliminary Analysis Memorandum at 10; *see also* SQR3 at 1-3 and Attachments 1-2.

⁴⁵ *See* Post Preliminary Analysis Memorandum at 10-11; *see also* SQR3 at Attachment 3.

⁴⁶ *See* Post Preliminary Analysis Memorandum at 10-11; *see also* SQR3 at Attachment 3.

for a rebate or refund.⁴⁷ While this customer did not provide a signed declaration attesting to the nonexistence of a pricing arrangement between itself and Bongsan, the customer provided a certification affirming the accuracy of the information contained in SQR3.⁴⁸ Therefore, we continue to find that there is insufficient evidence on the record indicating that Bongsan entered into the alleged pricing agreement with its U.S. customers for the reported U.S. sales during the POR.

Additionally, we continue to find that the activity noted by the petitioner does not fit the description of an AD duty reimbursement agreement under Commerce's regulation.⁴⁹ Specifically, 19 CFR 351.402(f) expressly addresses schemes in which the exporter reimburses or agrees to reimburse antidumping duties to the U.S. importer, or the exporter directly pays the AD duty on behalf of the importer. We find that the alleged pricing agreement at issue is more akin to a rebate to the unaffiliated customer once the duty amount is determined.

Furthermore, we find that the application of total or partial adverse facts available is not warranted. Section 776(a) of the Act provides that Commerce shall apply facts otherwise available if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information in the form and manner requested by Commerce; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified. Section 776(b) of the Act provides that Commerce may apply an adverse inference when selecting from among the facts otherwise available if an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

In this review, Bongsan has complied with all of our requests for information and acted to the best of its ability when supplying the alleged pricing agreement information to Commerce. During this segment of the proceeding, in addition to its initial questionnaire response,⁵⁰ Bongsan submitted three complete supplemental responses.⁵¹ Based on the information contained in these questionnaire responses, as stated above, we find no evidence that Bongsan attempted to manipulate the dumping analysis, warranting the application of total AFA. We find that Bongsan did not withhold information, fail to provide information in a timely manner, or significantly impede the proceeding,

Therefore, we find that the issues raised by the petitioner concerning Bongsan's alleged pricing agreement do not meet the criteria for facts otherwise available, as provided in section 776(a) of the Act, much less demonstrate that Bongsan has failed to comply to the best of its ability, as provided in section 776(b) of the Act. Accordingly, for these final results, we continue to find

⁴⁷ See Post Preliminary Analysis Memorandum at 10-11; *see also* SQR3 at Attachment 4.

⁴⁸ See Post Preliminary Analysis Memorandum at 10-11; *see also* SQR3 at Attachment 6.

⁴⁹ See Petitioner's Case Brief at 1-11; *see also* Final Sales and Cost Calculation Memorandum for further details.

⁵⁰ See Bongsan's Letter, "Phosphor Coper from the Republic of Korea – Section B-D Response," dated August 13, 2018 (BCDQR); *see also* Bongsan's letter, "Phosphor Copper from the Republic of Korea – Section A Response," (July 19, 2018) (AQR).

⁵¹ See Bongsan's letter, "Phosphor Coper from the Republic of Korea – First Supplemental Questionnaire Response," dated October 17, 2018 (SQR1); *see also* SQR2; and SQR3.

that there is insufficient evidence on the record indicating that Bongsan entered into the alleged pricing agreement with its U.S. customers concerning sales during the POR.⁵²

Comment 2: Cost-Based Particular Market Situation

A. General Comments

Petitioner's Comments

- If Commerce does not apply AFA, it should adjust Bongsan's costs to account for the cost-based PMS caused by the Korean Government's involvement in the copper and electricity markets.
- Under section 504 of the Trade Preferences Extension Act of 2015 (TPEA)⁵³, where a "particular market situation" exists in the home market such that "the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade," Commerce is authorized to "use another calculation methodology under this subtitle or any other calculation methodology" in constructing normal value.⁵⁴
- The SAA provides a non-exhaustive list of examples indicating that a PMS might exist, including where there is government control over pricing to such an extent that home market prices cannot be considered to be competitively set.⁵⁵
- Under section 504 of the TPEA, Congress also authorized Commerce to make adjustments to reported costs to account for distortions in the costs of production, without implying that the home market should be wholly disregarded,⁵⁶ which authorizes Commerce to go beyond the economic considerations listed in the SAA and address a broader range of distortive effects that affect either sales prices or the cost of production.
- The record demonstrates that the government is not only active in these markets, but that these activities distort the prices for copper prices and electricity prices in Korea and have distorted Bongsan's cost of production during the period of review. Accordingly, Commerce should make adjustments to account for this PMS.⁵⁷

Bongsan's Rebuttal Comments

- The record does not support the petitioner's allegations that Korean copper prices or electricity prices are distorted such that Commerce should adjust Bongsan's costs to account for a PMS.⁵⁸

⁵² See Post Preliminary Analysis Memorandum at 10-11.

⁵³ See also section 773(e) of the Act.

⁵⁴ See Trade Preferences Extension Act of 2015, H.R. 1295, 114th Cong. § 504 (2015-2016) (enacted); see also Petitioner's Case Brief at 12.

⁵⁵ See Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, vol. 1 (SAA), at 822 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4162; see also Petitioner's Case Brief at 12-13.

⁵⁶ See SAA at 822; see also Petitioner's Case Brief at 12-13.

⁵⁷ See Petitioner's Case Brief at 14.

⁵⁸ See Bongsan's Rebuttal Brief at 24.

B. *Korean Government's Involvement in the Copper Market*

Petitioner's Comments

- The PPS publicly states that it stockpiles and releases copper for the purpose of maintaining price stability in Korea. The PPS's act of stockpiling copper itself artificially influences supply and demand and therefore distorts supplier pricing and purchaser decisions.⁵⁹
- The PPS's stockpiling activities create downward pressures on prices in Korea, regardless of whether the stockpiles are released, and lowers prices in Korea for all purchasers.
- Bongsan reports that copper is one of only two direct materials used to produce subject merchandise. Thus, copper accounts for a significant percentage of Bongsan's cost of manufacturing (COM). Therefore, a small price distortion for copper will significantly impact Bongsan's COM.⁶⁰
- During the POR, Bongsan's percentage increase in the COM from the period of investigation (POI) was substantially below the percentage increase in copper prices as measured by LME prices. Further, Bongsan's average copper purchase price was above the LME copper price during the POI, but it was below the LME copper price during the POR. This information indicates that Bongsan's purchased copper prices were distorted by PPS's interventions in the Korean copper market.⁶¹
- The relatively insignificant size of the PPS's sales of copper into the Korean market during the 2015-2017 period does not demonstrate that the PPS does not distort the market. For a commodity product, the petitioner asserts that, below market price offerings by "one seller . . . will necessarily depress all prices." Thus, regardless of the PPS's quantity of sales, all purchasers would be able to benefit from depressed prices resulting from the PPS's presence in the market.⁶²
- Commerce's finding that PPS prices were above LME prices was incorrect because Commerce failed to account for the fact that copper is sold on an "LME plus" basis. Thus, the PPS's prices can be above the LME price and still be below the market price. For example, if the market price for copper was LME plus \$100 and the PPS was selling at LME plus \$20, the PPS would still be selling above the LME price but well below the market-based price. In other words, that the PPS sold copper at prices above the LME's prices is irrelevant.⁶³
- Commerce appears to misplace relevance on the fact that the PPS sells pure copper and Bongsan did not purchase pure copper to produce subject merchandise. The price for pure copper obviously affects the price for non-pure copper. Thus, PPS's sale of pure copper distorted the prices of non-pure copper that Bongsan purchased.⁶⁴
- There is no reason to believe that, under normal market conditions, the price of pure copper would vary significantly; thus, the fact that Bongsan's purchase prices relative to the LME price changed notably between the POI and the POR indicate that forces other than market forces, *i.e.*, the PPS's intervention in the market, were affecting Bongsan's purchase price.⁶⁵

⁵⁹ See Petitioner's Case Brief at 16.-17.

⁶⁰ *Id.* at 17-18; *see also* Final Sales and Cost Calculation Memorandum for further details.

⁶¹ See Petitioner's Case Brief at 18; *see also* Final Sales and Cost Calculation Memorandum for further details.

⁶² See Petitioner's Case Brief at 19; *see also* Final Sales and Cost Calculation Memorandum for further details.

⁶³ See Petitioner's Case Brief at 19-20.

⁶⁴ *Id.* at 20.

⁶⁵ See Petitioner's Case Brief at 20; *see also* Final Sales and Cost Calculation Memorandum for further details.

- Absent the Korean Government’s intervention in the copper market, the petitioner claims, Bongsan’s copper costs during the POR should have increased commensurately with the increase in the LME copper prices. Accordingly, Commerce should adjust Bongsan’s COM to account for the PMS by increasing Bongsan’s direct material cost by the percentage derived by the petitioner.⁶⁶

Bongsan’s Rebuttal Comments

- The record does not support the petitioner’s allegations that Korean copper prices are distorted such that Commerce should adjust Bongsan’s costs to account for a PMS.⁶⁷
- The petitioner’s entire PMS theory for copper prices derives from a statement made nearly a decade prior to this POR.⁶⁸ The conclusion drawn by the petitioner, that PPS pricing for copper is below market price during the POR, is speculative and is contradicted by the record evidence.⁶⁹
- The article demonstrates that PPS’s purpose in stockpiling copper is to respond to market shocks caused by unusual economic conditions and not to insulate Korean firms from normal market conditions.
- The record demonstrates that PPS’s activities to prevent supply chain disruptions is simply a mechanism by which PPS assists smaller firms that may lack the resources to manage market risk in the manner that large firms regularly engage in through hedging and other derivative investment vehicles. These activities undertaken on behalf of smaller companies do not demonstrate that the PPS’s activities in the copper market affect market prices for copper or the prices that Bongsan paid.⁷⁰
- The PPS’s share of copper supplied to the domestic Korean market during the POR was too small to have materially affected copper pricing in the Korean market.⁷¹
- The PPS’s pricing for copper generally exceeded the LME average and mirrored trends in LME copper pricing almost perfectly during the POI and POR. Even if the relative prices were irrelevant, the trend data strongly indicate that the PPS’s copper pricing is market based.⁷²
- The petitioner’s argument that the presence and availability of low-priced copper necessarily pushes down all prices of copper is speculative and contradicted by the record evidence. The analysis submitted by Bongsan comparing the PPS’s supply to overall Korean copper purchases demonstrates the PPS’s supply was too small to have a material effect on Korean copper pricing overall.⁷³

⁶⁶ See Petitioner’s Case Brief at 21; *see also* Final Sales and Cost Calculation Memorandum for further details.

⁶⁷ See Bongsan’s Rebuttal Brief at 24.

⁶⁸ See Bongsan’s Rebuttal Brief at 26; *see also* Bongsan’s Letter, “Phosphor Copper from the Republic of Korea: Response to the Petitioner’s Pre-Preliminary Results Comments and Bongsan’s Additional Comment Concerning the Preliminary Results,” dated May 29, 2019.

⁶⁹ See Bongsan’s Rebuttal Brief at 26; *see also* PMS Allegation at Attachment 18, where the petitioner includes an article dated March 8, 2009, attributing a quote to the PPS administrator indicating that PPS will offer metals during an unspecified period.

⁷⁰ See Bongsan’s Rebuttal Brief at 27.

⁷¹ *Id.* at 25, 27.

⁷² *Id.* at 24, 27

⁷³ *Id.* at 28; *see also* Bongsan’s Letter, “Response to PMS Deficiency Questionnaire,” dated April 10, 2019 (Bongsan’s Response to PMS Deficiency Questionnaire), at Attachment H.

- Commerce weighed the evidence in the Post Preliminary Analysis Memorandum, and specifically found that the PPS's involvement could not have distorted Korean copper market prices. The petitioner cites no evidence to undermine the Commerce's findings in the Post Preliminary Analysis Memorandum. The petitioner merely wants Commerce to reach a different conclusion based on the same evidence Commerce already considered.⁷⁴
- The petitioner's entire argument in favor of a PMS adjustment is based on the flawed premise that, because copper accounts for a significant percentage of Bongsan's total COM during the POR, any change in Bongsan's total COM between the POI and POR should have tracked the change in LME copper prices between the POI and POR.⁷⁵
- For the petitioner's assumption to hold true, Bongsan's copper purchase prices should precisely reflect the LME price of copper.⁷⁶ However, as the petitioner itself observes, the record reflects that Bongsan's copper purchase prices were slightly above the LME average price during the POI, but they are below the LME average price during the POR. This supports the record evidence that, during the POR, the PPS exclusively sold pure copper, but Bongsan did not buy pure copper because Bongsan reported that it only purchases non-pure copper during the POR.⁷⁷
- The petitioner's speculation that "the price of non-pure copper is obviously dictated by the price of pure copper" is not supported by the record. Bongsan's own experience trading with local suppliers indicates that the non-pure copper pricing moves independently of LME pricing and is dependent on Korean domestic supply and demand conditions.⁷⁸
- While purchasers and suppliers of non-pure copper are conscious of LME pricing and may use LME pricing as a reference for negotiating market prices for non-pure copper, the record indicates that non-pure copper is typically priced at a level that is less than that of the LME price. This comports with basic economic expectations because, whereas LME copper is traded internationally and moves based on international supply and demand, Bongsan purchases non-pure copper solely from Korean domestic sources.⁷⁹
- Non-pure copper sells at a lower price compared to pure copper prices. Thus, one cannot extrapolate that Bongsan purchased non-pure copper at below-market prices during the POR because Bongsan's increase in the cost of production (COP) from the POI to the POR was less than the increase of the pure copper price, as tracked by the LME, during the same period. Accordingly, Commerce cannot find that a cost-based PMS for non-pure copper existed during the POR and should make no such adjustment in the final results.⁸⁰

⁷⁴ See Bongsan's Rebuttal Brief at 28-29.

⁷⁵ *Id.* at 28-29 (citing Petitioner's Case Brief at 18-19).

⁷⁶ See Bongsan's Rebuttal Brief at 29.

⁷⁷ See Bongsan's Rebuttal Brief at 30; *see also* Bongsan Response to PMS Deficiency Questionnaire at 5, Attachment D.

⁷⁸ See Bongsan's Rebuttal Brief at 30; *see also* Bongsan Response to PMS Deficiency Questionnaire at 6, Attachment F.

⁷⁹ See Bongsan's Rebuttal Brief at 30; *see also* Bongsan Response to PMS Deficiency Questionnaire at Attachments E and G for the sample invoices and list of suppliers from Korean domestic sources.

⁸⁰ See Bongsan's Rebuttal Brief at 32-33.

C. Korean Government's Involvement in the Electricity Market

Petitioner's Comments

- Record information indicates that the electricity tariffs charged by the Korea Electric Corporation (KEPCO) are regulated and approved by the Government of Korea (GOK). As a result, Commerce has found that electricity prices in Korea are distorted due to government involvement and contribute to a PMS.⁸¹
- Record data show that Korean industrial electricity prices were 188 percent below the average industrial electricity price for Japan, Italy, and New Zealand.⁸² To account for this price discrepancy in the final results, Commerce should increase Bongsan's COM by an amount calculated as follows: $(188\% \times \text{Bongsan's reported electricity/COM})$.⁸³
- Record information indicates that KEPCO reported significant losses in 2018, indicating that the company continues to sell electricity at prices that do not cover its costs.⁸⁴
- Pricing data indicate that KEPCO's electricity prices for large industrial consumers are lower than those in such comparable countries, such as New Zealand and Italy.⁸⁵
- Excerpts from CVD petitions filed prior to 2018 contain information on KEPCO's alleged distortive pricing practices.⁸⁶
- In prior AD proceedings, Commerce has found a PMS exists in the Korean electricity market.⁸⁷
- Commerce should find a PMS in Korean electricity market regardless of whether it determines that a PMS exists in the Korean copper market.⁸⁸

Bongsan's Rebuttal Comments

- The petitioner repeats the arguments made prior to Commerce's issuance of the Post Preliminary Analysis Memorandum alleging that "electricity prices in Korea are distorted due to government involvement," and contending that Korean industrial electricity prices are 188 percent below average industrial electricity prices in Japan, Italy and New Zealand.⁸⁹
- The petitioner continues to propose a PMS adjustment for electricity calculated by multiplying 188 percent and the ratio of Bongsan's reported electricity in its COM.⁹⁰
- In other Korean AD proceedings, Commerce has found the existence of a PMS based on the totality of four factors of which one involved an alleged distortion in the Korean electricity market. To date, Commerce has not made an affirmative PMS finding in a Korean case where alleged distortions in the domestic electricity market by KEPCO constituted the sole basis for an affirmative PMS finding.⁹¹

⁸¹ See Petitioner's Case Brief at 22; *see also* PMS Allegation at Attachment 11, Exhibit 3.

⁸² See Petitioner's Case Brief at 23; *see also* PMS Allegation at Attachment 11, Exhibit 25 (Table 3.5).

⁸³ See Petitioner's Case Brief at 23 (citing Bongsan's BCDQR at Exhibit D-17).

⁸⁴ See Petitioner's Case Brief at 22.

⁸⁵ See Petitioner's Case Brief at 23.

⁸⁶ *Id.* at 22.

⁸⁷ *Id.*

⁸⁸ See Petitioner's Case Brief at 22 and 24.

⁸⁹ See Bongsan's Rebuttal brief at 33-34 (citing Petitioner's Case Brief at 22 and 24).

⁹⁰ *Id.* at 34 (citing Petitioner's Case Brief at 23).

⁹¹ *Id.* at 33-34.

- Nothing on the record suggests that electricity prices during the POR were aberrant or that any GOK involvement in the domestic electricity market is different than any sovereign country's regulation of its own energy markets.⁹²
- Using surrogate electricity costs from third countries is unreasonable and is inconsistent with Commerce's CVD regulations that state that Commerce's benchmarks shall be limited to prices available in the country in question. The preamble to Commerce's CVD regulations further confirms that external prices are not reasonable benchmarks when evaluating the provision of electricity.⁹³
- Commerce should maintain its post-preliminary determination and reject the petitioner's proposal to use these third-country electricity costs in any PMS analysis because they are not reflective of prices that Korean industrial consumers pay for electricity.⁹⁴

Commerce's Position: In the Post Preliminary Analysis Memorandum, Commerce found that the record did not support an affirmative finding with respect to the petitioner's cost-based PMS allegation regarding Korean copper prices. Specifically, we found that: (1) Korea's PPS, the government entity that sold copper in the Korean market, has a very small share of the domestic Korean copper market; (2) the PPS sold copper at prices above the LME price during the POR; (3) record evidence indicates that during the POR, the PPS exclusively sold pure copper, and (4) Bongsan did not buy pure copper during the POR. Therefore, we found no evidence to conclude that distorted prices existed in the Korean copper market during the POR as alleged by the petitioner.⁹⁵

Concerning the alleged PMS on Korean electricity, we preliminarily determined that, while Commerce may have found in prior determinations that the GOK's involvement in the electricity market contributed to a PMS along with other factors (*i.e.*, subsidization and U.S. countervailing duties imposed on material inputs), no other factors existed here, including the distortion of Korean copper prices cited by the petitioner. Therefore, based on the totality of the circumstances, in the Post Preliminary Analysis Memorandum, we found that a cost-based PMS did not exist during the POR.⁹⁶ In these final results, based on the totality of the circumstances, we continue to find that a PMS did not exist during the POR in Korea with respect to copper and electricity. We find that the petitioner's arguments provide no basis to reverse our preliminary finding that a PMS did not exist in the Korean copper market.⁹⁷

We disagree with the petitioner's claim that it is irrelevant whether the PPS sold copper at prices above the LME's prices. In making this point, the petitioner notes that the PPS bases its copper prices on the LME price plus a premium that reflects transportation, insurance, and a profit

⁹² *Id* at 35.

⁹³ *Id* at 35-37 (citing *Countervailing Duties; Final Rule*, 63 FR 65347, 65377 (November 25, 1998)).

⁹⁴ *Id* at 38.

⁹⁵ See Post Preliminary Analysis Memorandum at 7-8.

⁹⁶ *Id* at 8.

⁹⁷ See Petitioner's Case Brief at 1 and 11-21; see also Bongsan's Rebuttal Brief at 2, and 24-33.

margin).⁹⁸ The petitioner further claims that all copper is sold “at a world market price (*e.g.*, LME), plus a premium”⁹⁹ In its Response to PMS Deficiency Questionnaire, Bongsan states that the PPS sets its selling price based on the prior day’s LME closing price in U.S. dollars per ton, plus a premium to reflect transportation, insurance, and a profit margin.¹⁰⁰ We find that Bongsan’s statement is fully in sync with the petitioner’s statement that “{c}opper is sold on an “LME plus” basis, meaning the LME price plus a premium.¹⁰¹ Furthermore, the charts in Attachment B of Bongsan’s Response to PMS Deficiency Questionnaire demonstrate that Korean PPS pricing for copper generally exceeded the LME average (*i.e.*, the world market price for copper) and mirrored trends in LME copper pricing almost perfectly throughout both the POI and POR.¹⁰² We find that these charts further support Bongsan’s assertion that Korean’s PPS pricing setting policy for copper closely ties to the LME copper price policy.

We also find the petitioner’s argument implies the following: (1) LME prices merely reflect base prices; (2) LME prices lack a premium price component and do reflect total, actual prices; and (3) it is not meaningful to compare LME prices, which are merely base prices, to PPS prices, which reflect an LME base price plus a premium price. We find there is insufficient evidence to conclude that the LME prices on the record do not reflect total, actual prices, and we instead find that information on the record demonstrates otherwise. For example, information in Bongsan’s SQR2 contains information from the LME that describes its prices as actual prices.¹⁰³ Further, we find that the PPS’s addition of a premium to the LME price does not render the PPS and LME prices incomparable or make the comparison of their prices irrelevant. Rather, we find that the PPS’s pricing structure reflects its decision to charge a price that adds a premium to the actual prices charged by the LME. Therefore, we continue to find that a comparison of copper prices charged by the PPS and the LME informs our decision, and we conclude that the PPS’s sale of copper at prices above the LME price during the POR undercuts the petitioner’s allegation that the PPS’s sale of copper distorted the Korean copper market.

Furthermore, regardless of whether the PPS sold copper at prices above the LME price during the POR, the petitioner does not dispute that the PPS’s sales of copper accounted for a minimal share of the copper market. We continue to find that the PPS’s minimal share of the Korean copper market severely restricted its ability to potentially distort copper prices in Korea. Further, while the petitioner argues that *any* potential intervention by the PPS necessarily leads to a price distortion, it provided no evidence or quantitative analysis to support such an assertion.¹⁰⁴ Further, the petitioner’s allegation of a PMS hinges on its claim that the increase in Bongsan’s

⁹⁸ See Petitioner’s Case Brief at 19-20; *see also* Petitioner’s Letter, “Phosphor Copper from the Republic of Korea: Petitioner’s Pre-Preliminary Determination Comments,” dated May 17, 2019 (Petitioner’s Pre-Preliminary Results Comments), at 13-14 (citing Bongsan’s Response to PMS Deficiency Questionnaire at 3-4).

⁹⁹ See Petitioner’s Case Brief at 19-20; and Petitioner’s Pre-Preliminary Results Comments at 13; *see also* Bongsan’s Response to PMS Deficiency Questionnaire at 3-4 and Attachment B.

¹⁰⁰ See Bongsan’s Response to PMS Deficiency Questionnaire at 3-4.

¹⁰¹ See Petitioner’s Case Brief at 20.

¹⁰² See Bongsan’s Response to PMS Deficiency Questionnaire at Attachment B. In these charts, Bongsan provides comparison of PPS copper pricing to LME copper pricing and prices of Bongsan’s actual purchases during the POI and the POR

¹⁰³ See SQR2 at Exhibit S2-2, which contains LME price information.

¹⁰⁴ See Petitioner’s Case Brief at 19.

copper input costs from the POI to the POR was less than the increase in LME prices during the same period and that the relative difference in price increases demonstrates that Bongsan purchased copper inputs at distorted prices.¹⁰⁵ However, the petitioner does not adequately account for the fact that Bongsan did not purchase pure copper during the POR.¹⁰⁶ Rather, during the POR, Bongsan only purchased non-pure copper, which according to record evidence, sells at a discount relative to the pure copper prices tracked by the LME.¹⁰⁷ Thus, based on this information, we find it is not reasonable to conclude that the differences in relative price increases of Bongsan's non-pure copper costs and LME prices for pure copper during the POR are due to the existence of a PMS in the Korean copper market.

Additionally, while we may have found in prior determinations that the GOK's involvement in the electricity market contributed to a PMS along with other factors,¹⁰⁸ no other factors existed here, including the factors in the AD proceedings cited by the petitioner (*i.e.*, subsidization and U.S. CVD duties imposed on material inputs, production overcapacity of material inputs, and strategic alliances within the domestic industry).

Accordingly, based on the totality of the circumstances, in these final results we continue to find that a PMS did not exist in Korea during the POR with respect to copper and electricity. Based on this finding, the petitioner's argument that Commerce should adjust Bongsan's COM to account for the impact of PMS is moot.¹⁰⁹

Comment 3: Bongsan's Costs on a Quarterly-Average Basis

Bongsan's Comments

- In the *Preliminary Results*, Commerce applied its standard methodology of using POR-average costs because it determined, without quantitative analysis, that Bongsan's reported COP data did not warrant using a quarterly cost methodology.¹¹⁰
- Bongsan's submitted quarterly cost data demonstrate the following three significant fluctuations in Bongsan's primary raw material costs during the cost reporting period: (1) copper prices at the end of the POR (March 2018) were 44 percent higher than at the beginning of the POR (October 2016); (2) the difference between the lowest price month (October 2016) and the highest priced month (January 2018) was 50 percent; (3) for three of the four reported control numbers (CONNUMs), the difference in variable COM between the low and high quarters was 25 percent or greater; and (4) there is a linkage between cost changes and the sales prices during the POR.¹¹¹

¹⁰⁵ See Petitioner's Case Brief at 17-19; *see also* Post Preliminary Analysis Memorandum at 7-8.

¹⁰⁶ See Petitioner's Case Brief at 20; *see also* Post Preliminary Analysis Memorandum at 6 and 8.

¹⁰⁷ See Bongsan Response to PMS Deficiency Questionnaire at 2-7 at Attachments B, D, E, F, G, and H; *see also* Post Preliminary Analysis Memorandum at 6 and 8.

¹⁰⁸ See Bongsan's Case Brief at 2.

¹⁰⁹ See Petitioner's Case Brief at 21; *see also* Final Sales and Cost Calculation Memorandum for further details.

¹¹⁰ See Bongsan's Case Brief at 1.

¹¹¹ *Id.* at 3-4; *see also* Bongsan's BCDQR at Exhibit D-2 and Bongsan's submitted quarterly database bongsancop_qtr_01.sas7bdat.

- Commerce has a well-established practice of using a quarterly cost-averaging methodology, rather than POR-average costs, where the changes in costs during the POR are significant.¹¹² In this review, Bongsan has demonstrated that its raw material prices fluctuated significantly during the POR, which had a distortive effect on Bongsan's COM. Therefore, Commerce should be consistent with its practice and calculate Bongsan's margin based on a quarterly cost methodology.¹¹³
- Prior to the *Preliminary Results*, the petitioner urged Commerce to consider a 37.5 percent threshold, rather than a 25 percent threshold, given the longer period of review.¹¹⁴
- Until recently, and then only in some situations, Commerce has consistently applied a 25 percent threshold without inflating the thresholds in cases where the POR exceeds a one-year period.¹¹⁵
- In declining to apply the quarterly-cost methodology in the *Preliminary Results*, Commerce appears to have determined that Bongsan's cost deviation was insufficient for each of the CONNUMs referenced above based on the use of 37.5 percent threshold.¹¹⁶ If Commerce applied a threshold higher than 25 percent, such a threshold does not reasonably reflect whether changes in COM are sufficient to warrant applying quarterly costs.
- Because Bongsan experienced significant cost increases during the POR, as well as a reasonable linkage with the variable COMs in the same quarters, the use of POR-average costs creates a mismatch between sales and costs, which distorts the comparison between U.S. price and normal value. This, in turn, could artificially increase the normal value and inflate the resulting dumping margin. Therefore, Commerce should rely on quarterly cost averaging periods when calculating Bongsan's weighted-average dumping margin in the final results of this review.¹¹⁷

Petitioner's Rebuttal Comments

- Commerce's normal methodology is to calculate weighted-average costs for the POR, but that it may deviate from this approach and rely on a shorter cost-averaging period if two criteria are met: (1) there has been a significant change in cost during the POR; and (2) a linkage between the costs and sales prices during the shorter averaging periods can be demonstrated.¹¹⁸
- Bongsan asserts in its case brief that it has demonstrated that both of these criteria have been met and thus the use of quarterly costs is appropriate.¹¹⁹ However, Bongsan has failed to

¹¹² See Bongsan's Case Brief at 2-3 (citing *Certain Steel Nails from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014–2016*, 83 FR 4028 (January 29, 2018) (*Steel Nails from Korea*), and accompanying IDM at Comment 5 (in order to evaluate whether the change in COM was significant during the POR, which covered 18 months, the Department evaluated whether there was a 25 percent change in the COM from the highest cost to the lowest cost quarter when determining if it should apply quarterly costs or POR-average costs)).

¹¹³ See Bongsan's Case Brief at 3-4.

¹¹⁴ *Id.* at 4 (citing Petitioner's Letter, "Phosphor Copper from the Republic of Korea: Petitioner's Response to Bongsan's Pre-Preliminary Determination Comments," dated June 3, 2019, at 11).

¹¹⁵ See Bongsan's Case Brief at 3.

¹¹⁶ *Id.* at 4-5.

¹¹⁷ *Id.* at 5-6.

¹¹⁸ See Petitioner's Rebuttal Brief at 2.

¹¹⁹ *Id.* at 2.

demonstrate that its costs have significantly changed based on Commerce’s methodology and has not provided any basis for Commerce to deviate from its methodology here.¹²⁰

- Commerce defines a significant change as a greater than 25 percent change in the COM between the high and low quarters during a 12-month POI or POR. Where a review period exceeds one year, such as in *HRS from Korea*,¹²¹ Commerce’s significance analysis also considers the equivalent changes relative to the extended cost reporting period (*i.e.*, 25 percent for one year, plus 6.25 percent for every additional quarter within the POR).¹²²
- This approach is in line with International Accounting Standard 29 (defining inflation of 100 percent over a three-year period as approximately 25 percent inflation per year) from which Commerce drew guidance in establishing its 25 percent significance threshold for cost changes within a 12-month period.¹²³
- Accordingly, where the POR is 18 months, as it is here, Commerce has used a threshold of 37.5 percent for determining what constitutes a significant cost change.¹²⁴ As Bongsan has not demonstrated that its costs changed by more than 37.5 percent for any CONNUM, Bongsan has not demonstrated that there was a significant change in its costs.¹²⁵
- In its case brief, Bongsan only points to one case (*Steel Nails from Korea*) in which Commerce relied on a 25 percent threshold when examining a POR longer than 12 months.¹²⁶
- Bongsan’s reliance on this case is misplaced because in that proceeding, the respondent’s cost changes did not even meet the 25 percent threshold, and thus whether Commerce used a 25 percent or 37.5 percent threshold was moot. Furthermore, Commerce subsequently explained that it relied on the improper threshold in that case and reiterated that the correct threshold for an 18-month POR is 37.5 percent. Thus, there is no basis for Bongsan’s claim that the 37.5 percent threshold should not be used because it is “new” and allegedly only applied sometimes.¹²⁷
- Bongsan also argues that the use of a higher threshold for a longer POR “makes no sense” because it assumes that there should be a direct correlation between time and cost changes.¹²⁸ Commerce has explained that it established the 25 percent threshold based on the International Accounting Standard’s definition of inflation, *i.e.*, the change in cost over time. Thus, the threshold set is intended to differentiate between typical changes over time and those deemed to be significant.¹²⁹
- Commerce should reject Bongsan’s argument and not rely on a quarterly cost-averaging methodology to calculate Bongsan’s dumping margin. Bongsan has not demonstrated that the change in its COM during the POR has been significant under Commerce’s practice.

¹²⁰ *Id.* at 2.

¹²¹ *Id.* at 2 (citing *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 32720 (July 9, 2019) (*HRS from Korea*), and accompanying IDM at 70).

¹²² *Id.*

¹²³ See Petitioner’s Rebuttal Brief at 3.

¹²⁴ See *Certain Corrosion-Resistant Steel Products from Taiwan: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 64527 (December 17, 2018) (*CORE from Taiwan*), and accompanying IDM at 7-8.

¹²⁵ See Petitioner’s Rebuttal Brief at 3.

¹²⁶ *Id.* at 3.

¹²⁷ See *CORE from Taiwan* IDM at 7-8; see also *HRS from Korea* IDM at 70-71.

¹²⁸ See Petitioner’s Rebuttal Brief at 4.

¹²⁹ *Id.*

Moreover, even if Bongsan had made such a demonstration, the facts of this proceeding show that relying on quarterly costs would not be reasonable here.¹³⁰

Commerce's Position: We disagree with Bongsan that the use of quarterly cost averaging periods is warranted in this review. Our normal practice is to calculate weighted-average costs based on data corresponding to the POI or POR.¹³¹ However, Commerce recognizes that possible distortions may result if our normal POR- or POI-average cost methodology is used during a period of significant cost changes. In determining whether it is appropriate to deviate from our normal methodology and rely on shorter cost averaging periods, Commerce has established two criteria that must be met, *i.e.*, significance of cost changes and linkage between the costs and sales prices during the shorter averaging periods.¹³²

A significant change in cost for this purpose is defined as a greater than 25 percent change in the total cost of manufacturing (TOTCOM), by CONNUM, between the high and low quarters during a 12-month POI or POR.¹³³ Where a review period exceeds one year, the significance analysis must take into account the equivalent changes relative to the extended cost reporting period (*i.e.*, 25 percent for one year, plus 6.25 percent for every quarter within the POR). This approach is in line with International Accounting Standard 29 (defining inflation 100 percent over a three-year period as approximately 25 percent inflation per year) from which Commerce drew guidance in establishing its 25 percent significance threshold for cost changes within a 12-month period.¹³⁴

The significance threshold established by Commerce does consider the change in TOTCOM over the entire POI or POR, regardless of the number of quarters, between the quarter with the highest average TOTCOM and the quarter with the lowest average TOTCOM. Specifically, to determine whether a respondent experienced significant cost change, Commerce evaluates for the top CONNUMs (by sales volume) the magnitude of change between the POI or POR quarters with the highest and lowest TOTCOM. Where an administrative review period exceeds one year, Commerce defines the POR quarters in the same way it does for a 12-month reporting period (*i.e.*, where the first three months comprise the first quarter), regardless of whether the POR quarters conform to the calendar year quarters or to the respondent's fiscal year quarters. Defining the quarters in this manner provides a predictable and consistent approach for evaluating whether it is appropriate to depart from the normal methodology of relying on annual average costs.

¹³⁰ See Petitioner's Rebuttal Brief at 4; *see also* Final Sales and Cost Calculation Memorandum for the petitioner's BPI arguments.

¹³¹ *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review of Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006) (*Wire Rod from Canada*), and accompanying IDM at Comment 5 (explaining Commerce's practice of computing a single weighted-average cost for the entire period); *see also Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 78 FR 35248 (June 12, 2013) (*Circular Welded Non-Alloy Pipe from Korea*), and accompanying IDM at Comment 6.

¹³² *See, e.g., Steel Concrete Reinforcing Bar from Taiwan: Final Determination of Sales at Less Than Fair Value*, 82 FR 34925 (July 27, 2017) (*Rebar from Taiwan*), and accompanying IDM at Comment 2.

¹³³ *Id.*

¹³⁴ *See CORE from Taiwan* IDM at 7-8.

In the instant review, because the POR is 18 months and there are only a small number of CONNUMs reported, we have evaluated the significance of cost changes for all reported CONNUMs using the threshold of 37.5 percent, which equates to the annual threshold of 25 percent plus 12.5 percent for the additional two quarters, in accordance with our normal practice.¹³⁵ Based on our analysis of the quarterly cost data submitted by Bongsan, we do not find Bongsan's cost changes during the POR to be significant.¹³⁶ Accordingly, we have continued to apply the standard methodology of using POR-average costs in the final results.

Comment 4: Bongsan's Financial Expense Ratio

Petitioner's Comments

- Consistent with its normal practice, Commerce should adjust Bongsan's financial expense ratio to exclude the following items: (1) "gains on disposal of financial assets at fair value through profit"; and (2) the portion of "gains and losses on derivative transactions" that are related to investment activities.¹³⁷
- In its BCDQR, Bongsan includes in its financial expense ratio "gains on disposal of financial assets at fair value through profit," which are related to investment activities.¹³⁸ In its SQR1, Bongsan explained that this item is related to Bongsan's investments account.¹³⁹ Based on the description provided, the line item for "gains on disposal of financial assets" appears to result from an investment and is unrelated to Bongsan's normal operations. Therefore, this item should be excluded from the financial expense ratio calculation.¹⁴⁰
- In its BCDQR, Bongsan also includes the line item "gains and losses on derivative transactions" in the financial expense ratio.¹⁴¹ In its SQR1, Bongsan considers this line item as investment related activity, including a small amount from investment in certain raw material price exposure.¹⁴² In addition, Bongsan's financial expense ratio worksheet designates a line item that relates to gains and losses on certain raw material price exposure. Therefore, the

¹³⁵ See *CORE from Taiwan* IDM at 7-8.

¹³⁶ See Final Sales and Cost Calculation Memorandum for further details.

¹³⁷ See Petitioner's Case Brief at 26.

¹³⁸ *Id.*

¹³⁹ See SQR1 at S-30 and Exhibits S-6, S-26 and S-27. The information presented in Exhibits D-11, S-6, S-26, and S-27 are identical with only two exceptions. The first exception is that all account headings in Exhibits D-11 and S-6 are designated as public information (*e.g.*, Gains/Losses on Disposal of Trading Securities; Gains/Losses on Foreign Currency Transactions; Gains/Losses on Foreign Currency Translation; Gains/Losses on Derivative Transactions; Gain on Disposal of Financial Assets at Fair Value through Profit, and; Losses on Sale of Trade Receivable). However, in SQR1, all account headings in Exhibits S-26 and S-27 are designated as BPI. The second exception is that Exhibit S-27 has added "Reconciliation" information for the net gains and losses on an account for "Net Gains and Losses on Derivatives Transactions," which is absent in Exhibits D-11, S-6, and S-26; *see also* Final Sales and Cost Calculation Memorandum for further details.

¹⁴⁰ See Petitioner's Case Brief at 26; *see also* BCDQR at Exhibits D-10 and D-11, and SQR1 at S-30, Exhibits S-6, S-26, and S-27.

¹⁴¹ See Petitioner's Case Brief at 26-27 (citing BCDQR at Exhibits D-10 and D-11). In its SQR1 at S-30, Bongsan explained that the line item for "gains and losses on derivative transactions" resulted mostly from Bongsan's investments in foreign currency price exposure. *See* Final Sales and Cost Calculation Memorandum for further details.

¹⁴² See Petitioner's Case Brief at 26-27 (citing SQR1 at page S-30).

record information indicates that Bongsan considers “gains and losses on derivative transactions” as investment related activity.¹⁴³

- Consistent with Commerce’s prior determination, gains and losses from hedging mechanisms to protect from raw material fluctuations should continue to be included in the financial expense ratio,¹⁴⁴ but Bongsan’s reported “gains and losses on derivative transactions” should be excluded as investment-related activity.¹⁴⁵

Bongsan’s Rebuttal Comments

- Commerce’s practice is to exclude investment-related gains or losses from the calculation of COP because such activities are a separate profit-making activity. However, Commerce views foreign exchange gains and losses as associated with a company’s cash management and how an entity as a whole manages its foreign currency exposure.¹⁴⁶
- Consistent with its practice in the *Phosphor Copper LTFV Final Determination*,¹⁴⁷ Commerce should accept Bongsan’s reported financial expense ratio and decline to exclude gains and losses from foreign currency transactions because these transactions were part of Bongsan’s normal cash management and management of foreign currency exposure. Nothing on the record supports the petitioner’s speculation that Bongsan’s reported gains and losses from foreign currency transactions stem from investment activities.¹⁴⁸
- With respect to Bongsan’s line item for “gain on disposal of financial assets at fair value through profit,” the petitioner claims that these gains and losses must have resulted from an investment, are unrelated to Bongsan’s normal operations, and therefore should be excluded from the financial expense ratio simply because Bongsan described this line item as related to an investment account.”¹⁴⁹ However, nothing on the record demonstrates that this line item is derived from investment-related activity. Bongsan’s audited financial statements reported this line item as current income on Bongsan’s income statement.¹⁵⁰
- The petitioner claims that the line item for “gains and losses on derivative transactions” should be excluded from Bongsan’s reported financial expense ratio as investment-related activity.¹⁵¹ The petitioner ignores Bongsan’s use of the term “investments”, as applied to raw material

¹⁴³ *Id.*

¹⁴⁴ See *Phosphor Copper from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 82 FR 12433 (March 3, 2017) (*Phosphor Copper LTFV Final Determination*), and accompanying IDM at 11-12.

¹⁴⁵ See Petitioner’s Case Brief at 26-29.

¹⁴⁶ See *Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 49,950 (July 29, 2016) (*Cold-Rolled Steel from Russia*), and accompanying IDM at 39.

¹⁴⁷ See *Phosphor Copper LTFV Final Determination* IDM at 11-12.

¹⁴⁸ See Bongsan’s Rebuttal Brief at 2.

¹⁴⁹ See Bongsan’s Rebuttal Brief at 44 (citing Petitioner’s Case Brief at 27); see also the Final Sales and Cost Calculation Memorandum for further details.

¹⁵⁰ See Bongsan’s Rebuttal Brief at 44; see also AQR at Exhibit A-13.

¹⁵¹ See Bongsan’s Rebuttal Brief at 44 (citing Petitioner’s Case Brief at 27-28); see also Final Sales and Cost Calculation Memorandum for further details.

price exposure, which the petitioner concedes should continue to be included in Bongsan's financial expense ratio.¹⁵²

- Commerce found that accounts reflecting derivative gains and losses should be included in Bongsan's financial expense ratio because they represent a cost management mechanism that is "reasonably associated with the company's cash management and how the entity as a whole manages its primary raw material input price exposure."¹⁵³
- Furthermore, Commerce found that the daily fluctuation in the price of metal makes engaging in price hedging practices to be expected. There is no reason to think that Bongsan, a company engaged in trade with customers in export markets, would not likewise seek to manage the risk associated with fluctuating currency values through foreign currency price exposure.¹⁵⁴ The petitioner has provided no factual or legal basis to treat these two accounts differently.
- The petitioner speculates that the scale of the line item for "gains and losses on derivative transactions" suggests that Bongsan treats the line item as an investment and not part of its overall cash-flow management is unfounded.¹⁵⁵
- In *Cold-Rolled Steel from Russia*, Commerce explained that it changed its practice regarding the treatment of foreign exchange gains and losses to normally include all foreign exchange gains and losses from the respondent's financial statements, irrespective of its source, in the financial expense ratio calculation.¹⁵⁶ Commerce further stated that the controlling factor in analyzing the amount to include in costs of production is not the source of the foreign exchange gain or loss, but rather, how the entity as a whole manages its foreign currency exposure.¹⁵⁷
- As the record does not support excluding the line item for "gains and losses on derivative transactions" from Bongsan's reported financial expense ratio, Commerce should accept Bongsan's reported financial expense ratio.

Commerce's Position: We agree with the petitioner that Commerce should adjust Bongsan's financial expense ratio, in part. Specifically, we agree with the petitioner that the line item for "gains on disposal of financial assets at fair value through profit" should be excluded from the financial expense ratio calculation, but we have continued to include the entire amount of the line item for "gains and losses on derivative transactions," including the portion which the petitioner claims relates to investment activities, in the calculation of the financial expense ratio.¹⁵⁸

¹⁵² See Bongsan's Rebuttal Brief at 45; see also Petitioner's Case Brief at 28; and Final Sales and Cost Calculation Memorandum for further details.

¹⁵³ See Bongsan's Rebuttal Brief at 45 (citing *Phosphor Copper LTFV Final Determination* IDM at 11-12).

¹⁵⁴ *Id.*

¹⁵⁵ See Bongsan's Rebuttal Brief at 46.

¹⁵⁶ See Bongsan's Rebuttal Brief at 46 (citing *Cold-Rolled Steel from Russia* IDM at 37).

¹⁵⁷ *Id.*

¹⁵⁸ See Petitioner's Case Brief at 26.

A. Gains and Losses on Derivative Transactions

Commerce's practice is to include gains and losses attributable to derivative transactions related to a company's overall cash management in the calculation of financial expenses.¹⁵⁹ In *CORE from Korea*, Commerce determined that certain derivative losses associated with interest rate swaps, currency swaps, and currency future swaps (*i.e.*, monetary asset or liability related), should be included in financial expenses because they relate to a company's overall cash management.¹⁶⁰ It is not unexpected that the company would engage in hedging mechanisms to protect itself from the risk associated with fluctuating interest rates. To disregard Bongsan's cash management mechanisms used in its normal operations would lead to distortions, because we would be ignoring the fact that Bongsan proactively attempts to minimize its cost of acquiring capital. Therefore, we find that it is reasonable to include the amount of such gains and losses in Bongsan's financial expense rate calculations.

We disagree with the petitioner's contention that a portion of the line item for "gains and losses on derivative transactions" represents investment activity. While it is Commerce's practice to exclude only investment-related gains or losses from the calculation of COP,¹⁶¹ we disagree with the view that Bongsan's activity that generated these gains and losses is a separate profit-making investment activity not related to a company's normal operations. We find that the capital management mechanisms practiced by Bongsan by way of these particular derivative transactions are reasonably associated with the company's cost of borrowing.

For the foregoing reasons, we have made no changes to our *Preliminary Results* and continue to include the entire "gains and losses on derivative transactions" in the calculation of Bongsan's financial expense ratio for the final results.

B. Gains on Disposal of Financial Assets at Fair Value through Profit

In its BCDQR at Exhibits D-10 and D-11, Bongsan includes the line item for "gains on disposal of financial assets at fair value through profit" in its financial expense ratio calculation.¹⁶² In its SQR1, Bongsan explains that this line item resulted from Bongsan's certain investments.¹⁶³ Based on the description provided in Bongsan's SQR1, we determine that the line item for "gains on disposal of financial assets at fair value through profit" is related to investment activities and

¹⁵⁹ See *Phosphor Copper LTFV Final Determination* IDM at Comment 2 (explaining that certain derivative transactions are a cost management mechanism); see also *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Sixteenth Administrative Review*, 76 FR 15291 (March 21, 2011) (*CORE from Korea*), and accompanying IDM at Comment 19.

¹⁶⁰ See *CORE from Korea* IDM at Comment 19.

¹⁶¹ See, e.g., *Cold-Rolled Steel from Russia* IDM at Comment 6; see also *Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 53428 (August 12, 2016), and accompanying IDM at Comment 8; and *Notice of Final Results of Antidumping Duty Administrative Review, and Final Determination to Revoke the Order In Part: Individually Quick Frozen Red Raspberries from Chile*, 72 FR 6524 (February 12, 2007) (*Raspberries from Chile*), and accompanying IDM at Comment 6.

¹⁶² See Petitioner's Case Brief at 26; see also BCDQR at Exhibits D-10 and D-11.

¹⁶³ See Petitioner's Case Brief at 26; see also SQR1 at S-30 and Exhibits S-6, S-26, and S-27.

is unrelated to Bongsan's normal operations.¹⁶⁴ Therefore, consistent with Commerce's practice, we have excluded the line item for "gains on disposal of financial assets at fair value through profit" from the calculation of financial expense ratio in these final results.¹⁶⁵

VII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of administrative review and the final weighted-average dumping margin in the *Federal Register*.

☒

☐

Agree

Disagree

12/13/2019

X 

Signed by: JEFFREY KESSLER