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Investigation  
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June 29, 2020

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

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

**SUBJECT:** Issues and Decision Memorandum for the Final Affirmative  
Determination in the Less-Than-Fair-Value Investigation of Utility  
Scale Wind Towers from the Republic of Korea

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## I. SUMMARY

The Department of Commerce (Commerce) finds that utility scale wind towers (wind towers) from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2018 through June 30, 2019.

After analyzing the comments submitted by interested parties, and based on our findings at verification, we have made certain changes to the *Preliminary Determination*.<sup>1</sup> We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

- Comment 1: Whether to Apply Total Adverse Facts Available (AFA) to Dongkuk S&C Co., Ltd. (Dongkuk)
- Comment 2: Using Constructed Value (CV) as the Basis for Normal Value (NV)
- Comment 3: Treatment of Additional Revenues for U.S. Sales
- Comment 4: Treatment of Other Revenues for U.S. Sales
- Comment 5: Exclusion of Pre-POI Third Country Shipment
- Comment 6: Proposed Revisions to the Critical Circumstances Analysis
- Comment 7: Steel Plate Cost Adjustment
- Comment 8: Calculation of CV Profit and Selling Expenses

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<sup>1</sup> See *Utility Scale Wind Towers from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances*, 84 FR 8560 (February 14, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).



Comment 9: Calculation of the General and Administrative (G&A) and Indirect Selling Expense Ratios  
Comment 10: Treatment of Scrap Offset

## II. BACKGROUND

On February 14, 2020, Commerce published the *Preliminary Determination* in this LTFV investigation. Also in February 2020, we conducted verification of the cost of production (COP) data reported by the respondent in this investigation, Dongkuk, in accordance with section 782(i) of the Act.<sup>2</sup> In April and May 2020, we received case and rebuttal briefs from the petitioner (*i.e.*, the Wind Tower Trade Coalition) and Dongkuk.<sup>3</sup> On May 27, 2020, and June 4, 2020, we held *ex parte* meetings with the petitioner and Dongkuk, respectively.<sup>4</sup>

Based on our analysis of the comments received, as well as our verification findings, we have made changes from our *Preliminary Determination*.

## III. SCOPE OF THE INVESTIGATION

For the scope language, *see* the scope in Appendix I of the accompanying *Federal Register* notice.

## IV. MARGIN CALCULATIONS

We calculated export price (EP), NV, and COP for Dongkuk using the methodology stated in the *Preliminary Determination*, except as follows:<sup>5</sup>

1. We included certain additional sales revenues as part of the calculation of U.S. price. *See* Comment 3.

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<sup>2</sup> For discussion of our verification findings, *see* Memorandum, “Verification of Cost Response of Dongkuk S&C CO., Ltd. in the Antidumping Duty Investigation of Utility Wind Towers from Republic of Korea,” dated April 17, 2020 (Dongkuk Cost Verification Report); *see also* Memorandum, “Antidumping Duty Investigations of Utility Scale Wind Towers from the Republic of Korea: Early Conclusion of Verification,” dated March 27, 2020 (Early Conclusion of Verification Memorandum) (referencing cancelling the sales verification).

<sup>3</sup> *See* Petitioner’s Letter, “Utility Scale Wind Towers from South Korea: Case Brief,” dated April 29, 2020 (Petitioner’s Case Brief); *see also* Dongkuk’s Letter, “Utility Scale Wind Towers from the Republic of Korea - Case Brief,” dated April 29, 2020 (Dongkuk’s Case Brief); Petitioner’s Letter, “Utility Scale Wind Towers from the Republic of Korea: Rebuttal Brief,” dated May 8, 2020 (Petitioner’s Rebuttal Brief); and Dongkuk’s Letter, “Utility Scale Wind Towers from the Republic of Korea – Rebuttal Brief,” dated May 8, 2020 (Dongkuk’s Rebuttal Brief).

<sup>4</sup> *See* Memorandum, “Ex-Parte Conference Call with Counsel for the Wind Tower Trade Coalition,” dated May 27, 2020; *see also* Memorandum, “Ex-Parte Conference Call with Counsel for Dongkuk S&C Co., Ltd.,” dated June 5, 2020.

<sup>5</sup> *See* Memorandum, “Calculations for the Final Determination,” dated June 29, 2020 (Dongkuk Final Sales Calculation Memorandum); *see also* Memorandum, “Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Dongkuk S&C Co., Ltd.,” dated June 29, 2020 (Dongkuk’s Final Cost Calculation Memorandum); and Dongkuk Cost Verification Report.

2. We revised Dongkuk's G&A and indirect selling expense ratios to account for our reclassification and allocation of the expenses between G&A and selling expenses. *See* Comment 9.

## V. FINAL AFFIRMATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES

On December 13, 2019, the petitioner alleged that critical circumstances exist with regard to Korea under 773(e)(1)(A) of the Act.<sup>6</sup> In the *Preliminary Determination*, Commerce found that critical circumstances exist for Dongkuk and “all other” producers and exporters in this investigation.<sup>7</sup> Specifically, we found that the criteria under section 733(e)(1)(A)(i) of the Act – that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise – were met.<sup>8</sup>

In addition, we found that the volume of U.S. imports increased by at least 15 percent from the base to the comparison period.<sup>9</sup> Therefore, we found Dongkuk's imports to be massive under section 733(e)(1)(B) of the Act and 19 CFR 351.206(h). We based the “massive” finding for the non-individually investigated companies in the *Preliminary Determination* on the experience of Dongkuk.<sup>10</sup> Accordingly, we found the imports of the companies covered by the “all others” rate to be massive, as well.

The bases for our *Preliminary Determination* finding of critical circumstances are unchanged in the final determination. Therefore, we continue to find that critical circumstances exist for Dongkuk and the companies covered by the “all others” rate. *See also* Comment 6.

## VI. DISCUSSION OF THE ISSUES

### Comment 1: Whether to Apply Total AFA to Dongkuk

#### *Petitioner's Case Brief*

- Dongkuk provided flawed and contradictory information throughout the investigation. As a result, the record contains unusable sales and cost databases, which prevents Commerce from calculating an accurate margin. Dongkuk's failure to cooperate fully to provide Commerce with the required information warrants the application of AFA for the final determination.<sup>11</sup>

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<sup>6</sup> *See* Petitioner's Letter, “Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Critical Circumstances Allegations,” dated December 13, 2019.

<sup>7</sup> *See Preliminary Determination*, 85 FR at 8561, and PDM at 4-6.

<sup>8</sup> *See* PDM at 5.

<sup>9</sup> *Id.* at 6; *see also* Memorandum, “Utility Scale Wind Towers from Korea: Critical Circumstances Analysis,” dated February 4, 2020.

<sup>10</sup> *See* PDM at 6.

<sup>11</sup> *See* Petitioner's Case Brief at 3-5 (citing *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Switzerland: Final Determination of Sales at Less Than Fair Value*, 83 FR 16293 (April 16, 2018) (*Tubing from Switzerland*), and accompanying Issues and Decision Memorandum (IDM) at 19; Statement of Administrative Action Accompanying the Uruguay Round Agreement Act, H.R. Doc. 103-316, Vol 1 (1944) (SAA), at 868 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4198; *Maverick Tube Corp. v. United States*, 857 F.3d 1353, 1360 (Fed. Cir.

- Dongkuk repeatedly mischaracterized its sales practices and failed to cooperate with Commerce by failing to report the appropriate date of sale for its third country and U.S. sales. Dongkuk reported its sales based on the earlier of shipment or invoice date; however, the record evidence demonstrates that the essential terms of sale were fixed as of the contract date.
- The record evidence shows that Dongkuk's sales involve lengthy negotiations that result in the execution of a sales contract that establishes the date of sale. Dongkuk's support for its claim that shipment date is the appropriate date of sale contradicts the record and demonstrates that Dongkuk failed to cooperate to the best of its ability.<sup>12</sup>
- The changes to the terms of Dongkuk's sale after the initial agreement were minor and not material changes. In similar circumstances, Commerce has concluded that such minor amendments do not alter the fact that the essential terms of sale were fixed in the initial sales agreement.<sup>13</sup> As a result of Dongkuk's misreporting of its date of sale, Commerce should apply AFA.
- Dongkuk also excluded its home market tolling transactions, thereby distorting the home market viability analysis and preventing Commerce from considering Dongkuk's home market as the basis for NV.
- Specifically, Dongkuk avoided reporting certain home market transactions by selectively claiming that it only provided processing services for these sales. However, contrary to Dongkuk's claims, these transactions reflect sales of wind towers. Dongkuk's distorted

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2017) (quoting *F.lli De Cecco Di Filippo Fara S. Martin S.p.A.v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000)); *Nan Ya Plastics Corp. v. United States*, 810 F.3d 1333, 1348 (Fed. Cir. 2016); *ArcelorMittal USA LLC v. United States*, Consol. Ct. No. 16-00168, Slip Op. 18-121, at 20 (CIT 2018); *Polyethylene Terephthalate Resin from Pakistan: Final Determination of Sales at Less Than Fair Value*, 83 FR 48281 (September 24, 2018), and accompanying IDM at Comment 1; and *Large Power Transformers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017–2018*, 85 FR 21827 (April 20, 2020), and accompanying IDM at 3-4).

<sup>12</sup> *Id.* at 6-14 (citing Dongkuk's September 23, 2019 Supplemental Questionnaire Response (Dongkuk September 23, 2019 SQR) at A-18 and Exhibit A-11; see also Dongkuk's October 15, 2019 Sections B, C, and D Questionnaire Responses (Dongkuk October 15, 2019 BCDQR) at B-21, C-16, and C-31; Dongkuk's October 29, 2019 Supplemental Questionnaire Response (Dongkuk October 29, 2019 SQR) at S-2, S-5, and S-6; Dongkuk's December 9, 2019 Supplemental Sales Questionnaire Response (Dongkuk December 9, 2019 Sales SQR) at Exhibit S2-24; *Certain Fabricated Structural Steel from Canada: Preliminary Negative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 84 FR 47481 (September 10, 2019) (*FSS from Canada Prelim*), and accompanying PDM at 8; *Certain Fabricated Structural Steel From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 84 FR 47491 (September 10, 2019), and accompanying PDM at 25; *Certain Fabricated Structural Steel from Mexico: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 84 FR 47487 (September 10, 2019) (*FSS from Mexico Prelim*), and accompanying PDM at 13; *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan*, 61 FR 38139, 38159 (July 23, 1996); and *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany* 61 FR 38182, 38166 (July 23, 1996) (*LNPPs from Germany Final*)).

<sup>13</sup> *Id.* at 15-18 (citing *LNPPs from Germany Final*, 61 FR at 38182; *Certain Fabricated Structural Steel from Mexico: Final Determination of Sales at Less Than Fair Value*, 85 FR 5390 (January 30, 2020) (*FSS from Mexico*), and accompanying IDM at 40-41; *Large Power Transformers from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015*, 81 FR 60672, and accompanying PDM at 7-8; and *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan*, 61 FR 14064 (March 29, 1996), and accompanying IDM at Comment 1).

reporting impeded the investigation by preventing Commerce from accurately assessing Dongkuk's home market viability and therefore warrants the application of AFA.<sup>14</sup>

- In addition, Dongkuk failed to report "additional revenue" in an accurate and timely manner. Dongkuk's selective and inaccurate reporting of these revenues in its U.S. sales database distorts Commerce's analysis and warrants the application of AFA.<sup>15</sup>
- Moreover, because Dongkuk's descriptions of the additional revenue services show that these items are more accurately characterized as selling expenses, these amounts should be deducted from U.S. price, rather than added to it, as Dongkuk asserts.<sup>16</sup>
- Finally, Dongkuk failed to provide accurate theoretical weights for its products, thereby preventing Commerce from making accurate price-to-price comparisons. Although Dongkuk provided a conversion factor to account for differences between the weights listed in the cost database (which do not include internal tower components) and the sales databases (which do include these components), discrepancies in this conversion factor and Dongkuk's inadequate explanations of its theoretical weight reporting methodology represent further evidence of Dongkuk's failure to cooperate fully in this investigation.<sup>17</sup>

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<sup>14</sup> *Id.* at 18-24 (citing Dongkuk's Letter, "Utility Sale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Comments on Product Characteristics and Model Match Methodology," dated August 19, 2019 at 2-6; Dongkuk September 23, 2019 SQR at Exhibit A-23; Dongkuk Cost Verification Report at 7, 10 and Exhibit 17; *Taiwan Semiconductor Mfg. Co. v. United States*, No. 98-05-02184, Slip. Op. 00-48 (CIT 2000); and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003-2004 Administrative Review and Partial Rescission of Review*, 71 FR 2517 (January 17, 2006), and accompanying IDM at 4).

<sup>14</sup> *Id.* at 18-24 (citing Dongkuk's Letter, "Utility Sale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Comments on Product Characteristics and Model Match Methodology," dated August 19, 2019 at 2-6; Dongkuk September 23, 2019 SQR at Exhibit A-23; Dongkuk Cost Verification Report at 7, 10 and Exhibit 17; *Taiwan Semiconductor Mfg. Co. v. United States*, No. 98-05-02184, Slip. Op. 00-48 (CIT 2000); and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003-2004 Administrative Review and Partial Rescission of Review*, 71 FR 2517 (January 17, 2006), and accompanying IDM at 4).

<sup>16</sup> *Id.* at 24-28 (citing *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 13432 (March 13, 2017), and accompanying IDM at 4, 17; *Hyundai Heavy Indus., Co. v. United States*, 332 F. Supp. 3d 1331 (CIT 2018); *Large Power Transformers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 11679 (March 16, 2018), and accompanying IDM at 14; *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017* 84 FR 16461 (April 19, 2019) (*LPT from Korea 2016-2017 Final*), and accompanying IDM at 4; Dongkuk's December 9, 2019 Supplemental Section D Questionnaire Response (Dongkuk December 9, 2019 Section D SQR) at SD-25; Dongkuk October 15, 2019 BCDQRs at C-29, C-46; Petitioner's Letter, "Utility Scale Wind Towers from Korea: Comments on Dongkuk's Supplemental Section C and D Questionnaire Response," dated February 24, 2020 at Exhibit 2; Petitioner's Letter, "Utility Scale Wind Towers from the Republic of Korea: Response to Dongkuk Notification of Reporting Issues," dated September 10, 2019 at Exhibit 2; Dongkuk September 23, 2019 SQR at Exhibits A-11-A-14; Dongkuk Cost Verification Report at 16; and Dongkuk's February 14, 2020 Supplemental Questionnaire Response (Dongkuk February 14, 2020 SQR) at S7-1, S7-2, S7-4).

<sup>17</sup> *Id.* at 30-34 and Attachment 2 (citing Dongkuk December 9, 2019 Section D SQR at S-1, SD-3; Dongkuk Cost Verification Report at 16; *Tubing from Switzerland* and accompanying IDM at 19-20; *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 77 FR 75984 (December 17, 2012), and accompanying IDM at 31; Commerce's Letter, "Antidumping Duty Less Than Fair Value Investigation of Utility Scale Wind Towers from the Republic of Korea," dated November 20, 2019 at 3; *Certain Steel Nails from Malaysia: Final Determination of Sales at Less Than Fair Value*, 80 FR 28969 (May 20, 2015) (*Nails from Malaysia*), and accompanying IDM; *Fresh Tomatoes from Mexico: Final Determination of Sales at Less Than Fair Value*, 84 FR 57401 (October 25, 2019), and accompanying IDM at 24, Comment 6; Commerce

- Commerce utilized Dongkuk's per-piece databases for its *Preliminary Determination* margin calculations, but these calculations are inherently flawed. Tower or section weight is a key physical characteristic for matching purposes, and by switching to per-piece calculations, Commerce applied difference in merchandise (DIFMER) adjustments to a COP database containing wind towers reported on an inconsistent and incomparable basis. The switch from per-unit theoretical weight calculations to per piece calculations has introduced a systemic and categorical flaw that prevents Commerce from making accurate comparisons for normal value.
- Thus, Dongkuk's failure to provide accurate information for the key product characteristic of theoretical weight provides a further basis for Commerce to apply AFA to Dongkuk.

### *Dongkuk's Rebuttal Brief*

- The application of AFA to Dongkuk is unwarranted because Dongkuk has cooperated to the best of its ability throughout this investigation. The petitioner's proposed application of AFA to Dongkuk does not meet the legal standard because, contrary to the petitioner's claims, Dongkuk provided complete, accurate, and reliable data for Commerce to calculate an accurate margin.<sup>18</sup>
- Dongkuk reported the date of sale for its Japanese and U.S. sales consistent with Commerce's specific instructions to report the earlier of shipment date or commercial invoice date as the date of sale.<sup>19</sup>
- In the PDM, Commerce stated that this methodology was consistent with its longstanding practice to use the earlier of the invoice date or the shipment date as the date of sale.<sup>20</sup>
- The petitioner mischaracterizes the record regarding the nature of Dongkuk's sales process. The sales contract date does not reflect the date on which the material terms of sale are established. While the petitioner may disagree with Commerce's date of sale methodology, its characterization of the issue as Dongkuk's failure to cooperate is disingenuous and reckless.<sup>21</sup>
- Dongkuk notified Commerce in a timely manner regarding the nature of its home market sales transactions, including the tolling services it provided. After considering this information, Commerce determined that Dongkuk's home market was not viable and instructed Dongkuk to report third country sales to Japan.<sup>22</sup>

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Product Characteristics Letter at 8; and *Fagersta Stainless AB v. United States*, 577 F. Supp. 2d 1270, 1277 (CIT 2008)).

<sup>18</sup> See Dongkuk's Rebuttal Brief at 3-7 (citing sections 776(a) and (b) of the Act; *Hand Trucks and Certain Parts Thereof from the People's Republic of China*; *Final Results of 2005-2006 Administrative Review*, 73 FR 43684 (July 28, 2008), and accompanying IDM at Comment 1; *Stainless Steel Bar from Germany: Final Results of Antidumping Duty Administrative Review*, 71 FR 42802 (July 28, 2006), and accompanying IDM at Comment 2; *Mukand, Ltd. V. United States*, 767 F.3d 1300, 1305, 1308 (Fed. Cir. 2014); and *Monsanto Co. v. United States*, 698 F. Supp. 275, 281, 284 (CIT 1988)).

<sup>19</sup> *Id.* at 7 (citing Commerce's Letter, "Antidumping Duty Investigation of Utility Scale Wind Towers from the Republic of Korea," dated December 19, 2020).

<sup>20</sup> *Id.* (citing PDM at 9).

<sup>21</sup> *Id.* at 7-9 (citing Dongkuk September 23, 2019 SQR at A-20).

<sup>22</sup> *Id.* at 9-11 (citing Dongkuk's Letter, "Notification of Reporting Issues," dated September 6, 2019 (Dongkuk September 6, 2019 Letter), at 1-2; Commerce's Letter, "Antidumping Duty Investigation of Utility Scale Wind

- Nevertheless, Commerce verified that Dongkuk correctly reported its toll processing services as sales of services, not goods. Further, Dongkuk demonstrated that, even if Commerce included sales of processing services, its Korean sales would not meet the five percent viability threshold.<sup>23</sup> The petitioner mischaracterizes Dongkuk's reporting to turn a disagreement over methodology into a failure to cooperate; however, the record demonstrates that there is no basis to apply AFA to Dongkuk in this regard.<sup>24</sup>
- Moreover, Dongkuk correctly reported the additional revenues associated with the production and sale of wind towers. Dongkuk demonstrated that these revenues are directly associated with the production of subject merchandise and the expenses related to these revenues were reported as part of Dongkuk's cost of manufacturing (COM).<sup>25</sup>
- The additional revenue amounts do not represent post-sale services, but additional work the customer requested after the original order to complete the wind tower to the customer's specifications. Because Dongkuk fully cooperated and responded to Commerce's information requests regarding these amounts, AFA is not warranted.<sup>26</sup>
- Finally, Dongkuk correctly reported theoretical weight in accordance with Commerce's instructions. Contrary to the petitioner's claim, Dongkuk not only accurately reported its theoretical weights maintained in the ordinary course of business, but also provided clear and concise explanations of any changes to its reported theoretical weight data in response to Commerce's requests.<sup>27</sup>
- The petitioner misunderstands Commerce's reporting instructions and Dongkuk's reported data. There is no basis to conclude that Dongkuk failed to cooperate in its reporting of theoretical weight.<sup>28</sup>

### Commerce's Position:

Section 776(a) of the Act list provides the following circumstances under which Commerce will apply the facts available (FA) in making a determination:

- If— (1) necessary information is not available on the record, or  
 (2) an interested party or any other person—  
     (A) withholds information that has been requested by  
     the administering authority or the Commission under this title,  
     (B) fails to provide such information by the deadlines for  
     submission of the information or in the form and manner  
     requested, subject to subsections (c)(1) and (e) of section 782,

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Towers from the Republic of Korea,” dated September 25, 2019; and Dongkuk's Section A Response at A-33 and Exhibit A-1).

<sup>23</sup> *Id.* (citing Dongkuk September 23, 2019 SQR at A-33 and Exhibit A-1).

<sup>24</sup> *Id.* at 11-12 (citing Dongkuk Cost Verification Report at Exhibit 17; and Dongkuk's Section A Response at A-33 and Exhibit A-1).

<sup>25</sup> *Id.* at 13-16 (citing Dongkuk October 15, 2019 BCDQR at C-29-C-32, D-8, D-3, and Exhibits B-5, C-5, and D-5; and Dongkuk February 14, 2020 Supplemental Response at S7-1 to S7-5 and Exhibits S7-1 to S7-12).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 16 -17 (citing Dongkuk October 15, 2019 BCDQR at B-5, C-5, D-8, D-33 and Exhibit D-5; and Dongkuk's December 9, 2019 Section D SQR at S-1-2, SD-3-4).

<sup>28</sup> *Id.* at 17-19 (citing *Nails from Malaysia* IDM at Comment 1; and Dongkuk Cost Verification Report at 15 and Exhibit 16).

(C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Moreover, section 776(b) of the Act provides for the application of AFA under the following circumstances:

- (1) If the administering authority or the Commission (as the case may be) finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this title—
- (A) may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available

In reviewing the evidence on the record of this investigation as it relates to Dongkuk's reported date of sale, home market viability, additional revenues, and theoretical weight, we do not find that the statutory requirements for either the application of FA or AFA have been met. In fact, as discussed for each of these items in turn below, we determine that necessary information is not missing from the record. In addition, we find that Dongkuk acted to the best of its ability in timely complying with Commerce's requests for information in this investigation.

Regarding Dongkuk's reporting of its date of sale, we find that Dongkuk reported its date of sale consistent with Commerce's instructions. Dongkuk initially reported the earlier of shipment date or weighted-average payment invoice date as the date of sale.<sup>29</sup> On December 19, 2019, we issued a supplemental questionnaire to Dongkuk, instructing it to report its date of sale as follows: (1) in the comparison market using the date of the commercial invoice; and (2) in the United States using the earlier of the date of the commercial invoice or shipment as the date of sale. Dongkuk timely responded to our supplemental questionnaire and reported its sales consistent with our instructions.<sup>30</sup> Based on our analysis of the information on the record, we stated in the *Preliminary Determination* that we based the date of sale for all comparison market and U.S. sales on the earlier of invoice or shipment date, in accordance with Commerce's longstanding practice.<sup>31</sup> Accordingly, Dongkuk reported the requested information, and moreover, Dongkuk's reporting of its date of sale reflects its cooperation in this investigation; thus, we find no basis to apply FA (or AFA) to Dongkuk for its reporting of this data.

Similarly, with respect to Dongkuk's reporting of its home market tolling transactions for the determination of home market viability, we find no record evidence of that Dongkuk misrepresented or manipulated this data. Dongkuk informed Commerce of its sales of tolling

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<sup>29</sup> See Dongkuk October 15, 2019 BCDQR.

<sup>30</sup> See Dongkuk's January 6, 2020 Supplemental Questionnaire Response (Dongkuk January 6, 2020 SQR) at Exhibit S5-1.

<sup>31</sup> See PDM at 9.

services in the home market at an early stage in the investigation.<sup>32</sup> On September 13, 2019, we requested more information about these tolling services, to which Dongkuk timely responded.<sup>33</sup> In its response, Dongkuk demonstrated that even if including its sales of processing services, its sales in the home market remained under the five percent viability threshold.<sup>34</sup> Therefore, based on our analysis of this information, we instructed Dongkuk to report its third country sales to Japan.<sup>35</sup> Thus, we find that Dongkuk's reporting of third country sales as the basis for NV were in response to Commerce's specific instructions to do so. Accordingly, there is no basis to apply FA (or AFA) to Dongkuk based on either the information it provided regarding its home market tolling transactions or its reporting of third country sales.

Moreover, we do not find that Dongkuk reported its additional revenues inaccurately or in a manner that would warrant the application of FA (or AFA). In the course of this investigation, we requested further information from Dongkuk regarding its additional revenues, and Dongkuk complied with these requests.<sup>36</sup> Accordingly, Dongkuk's reporting of additional revenue provides the necessary information Commerce requested, and further reflects its cooperation with Commerce in this investigation.

Regarding theoretical weight, Dongkuk reported this information pursuant to Commerce's explicit instructions.<sup>37</sup> We find no failure on Dongkuk's part to report its product weight accurately, either in response to the initial or supplemental questionnaires.<sup>38</sup> Accordingly, once again we find no basis to apply FA (or AFA) to Dongkuk based on its reporting of theoretical weight.<sup>39</sup>

Consequently, for the reasons set forth above, we find no basis to apply FA or AFA to Dongkuk in the final determination. Instead, we find that necessary information was provided, as requested, and moreover, Dongkuk acted to the best of its ability in timely complying with Commerce's requests for information in this investigation. Accordingly, we have relied on this information in our margin calculations for the final determination.

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<sup>32</sup> See Dongkuk's September 6, 2019 Letter at 1-2.

<sup>33</sup> See Dongkuk September 23, 2019 SQR at A-31 to A-33 and Exhibits A-1, A-10, and A-23.

<sup>34</sup> *Id.* at A-33 and Exhibit A-1.

<sup>35</sup> See Commerce's Letter, "Antidumping Duty Investigation of Utility Scale Wind Towers from the Republic of Korea," dated September 25, 2019.

<sup>36</sup> See Dongkuk October 29, 2019 SQR at S-1 – S-2, and S-6 – S-8; *see also* Dongkuk December 9, 2019 Sales SQR at Vol. I, S-11 and S-13 and Exhibit S2-11; and Dongkuk February 14, 2020 SQR at S7-1 - S7-9, and Exhibits S7-1 to S7-14).

<sup>37</sup> See Commerce's Letter, "Antidumping Duty Questionnaire," dated August 23, 2019; *see also* Commerce's Letter, "Antidumping Duty Less Than Fair Value Investigation of Utility Wind Towers from the Republic of Korea," dated November 20, 2019.

<sup>38</sup> See Dongkuk October 15, 2019 BCDQR at D-8, D-33, and Exhibit D-5; *see also* Dongkuk December 9, 2019 Section D SQR at S-1-2, SD-3-4.

<sup>39</sup> In any event, we note that because all of Dongkuk's third country sales continued to fail the cost test in our final determination margin calculations, we based NV on CV; thus, we did not make price-to-price comparisons.

## Comment 2: CV as the Basis for NV

### *Petitioner's Case Brief*

- In the event that Commerce does not apply AFA to Dongkuk in the final determination, the systemic flaws in Dongkuk's reporting (*see* Comment 1) demonstrate that Commerce cannot accurately calculate NV using Dongkuk's reported third country sales or its flawed theoretical weight reporting. Commerce therefore must use CV as the basis for NV.
- While Commerce normally prefers to rely on third country sales to calculate NV,<sup>40</sup> Commerce's reliance on comparison market data is contingent on "adequate information {being} available and verifiable." Because Commerce could not verify Dongkuk's sales data, the only avenue available to calculate NV that does not result in distortive and manipulative matches is CV.
- Any reliance on unverified information that may contribute to negative findings in this investigation would be unlawful, pursuant to section 782(i) of the Act, and would substantially prejudice the petitioner.
- Under the statute, Commerce has the discretion to switch to an alternative methodology if the home market or third country sales may not be compared. Commerce followed this model in *Tomatoes from Canada*,<sup>41</sup> using CV when it could not find identical matches in the home market. Most recently, Commerce found CV to be the appropriate NV calculation methodology in the investigations of fabricated structural steel (FSS) from Canada and Mexico.<sup>42</sup>

### *Dongkuk's Rebuttal Brief*

- Commerce should make price-to-price comparisons using Dongkuk's reported third country sales in the final determination because the petitioner presented no factual or legal basis for Commerce to reject Dongkuk's third country sales.
- The petitioner's argument regarding the viability or usability of Dongkuk's third country market is untimely because the deadline for such allegations was 10 days after the submission of Dongkuk's questionnaire response, and should be rejected on that basis alone.
- No "systemic flaws" exist in Dongkuk's data. Dongkuk correctly reported that it does not have a viable home market, and has not reported any data selectively or incorrectly.
- Commerce was unable to conduct a sales verification due to no fault of Dongkuk's; thus, Commerce must rely on the information submitted on the record. Commerce emphasized that its decision to cancel the sales verification was not a reflection on the submitted data

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<sup>40</sup> See Petitioner's Case Brief at 36 (citing 19 CFR 351.404(f)).

<sup>41</sup> *Id.* at 37 (citing *Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes from Canada*, 67 FR 8781 (February 26, 2002) (*Tomatoes from Canada*), and accompanying IDM at Comment 6).

<sup>42</sup> *Id.* at 38 (citing *Certain Fabricated Structural Steel from Canada: Final Determination of Sales at Less Than Fair Value*, 85 FR 5373, January 30, 2020 (*FSS from Canada*), and accompanying IDM at Comment 14; *see also FSS from Mexico* IDM at Comment 2).

and did not arise from any perceived deficiencies at the cost verification.<sup>43</sup> Therefore, although Commerce did not verify Dongkuk's sales data, that does not mean the data were not verifiable.

- The facts in *Tomatoes from Canada* are distinguishable from the instant investigation. In *Tomatoes from Canada*, Commerce determined that it could not calculate the difference-in-merchandise (DIFMER) adjustment for comparisons of similar merchandise because the respondents were unable to distinguish costs by grade, size, or color in their normal accounting records. Those facts do not exist here – Commerce verified that Dongkuk correctly assigned the CONNUM characteristics for wind towers sold in Japan and the United States, and that Dongkuk correctly reported its costs on a CONNUM-specific basis.<sup>44</sup>

### Commerce's Position:

Section 782(i) of the Act requires that Commerce “verify all information relied upon in making . . . a final determination in an investigation.”<sup>45</sup> The Court of Appeals for the Federal Circuit (Federal Circuit) has held that Commerce's verification is a “spot check and not intended to be an exhaustive examination of the respondent's business.”<sup>46</sup> The Federal Circuit also held that Commerce is not required to verify “every number of a response,” but instead that a “representative sample is sufficient.”<sup>47</sup> Here, Commerce completed a five-day verification of Dongkuk's cost of production data.<sup>48</sup> Thus, Commerce has satisfied the statutory requirement of section 782(i) of the Act. As a result, we consider Dongkuk's data to be verified to the extent practicable.

Further, as we explained in the Early Conclusion of Verification Memo, our decision not to verify Dongkuk's reported sales data was “not a reflection on the submitted data by Dongkuk, and did not arise from any perceived deficiencies or failures at the cost verification.”<sup>49</sup> Instead, it was Commerce's intention to complete the verification of Dongkuk's sales data after completing the verification of the cost data; however, due to travel restrictions instituted as a result of extenuating circumstances, Commerce was unable to conduct the sales verification of Dongkuk.<sup>50</sup> Under these particular circumstances, we have determined that it is reasonable to

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<sup>43</sup> See Dongkuk's Rebuttal Brief at 20 (citing Memorandum, “Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from the Republic of Korea: Postponing Sales Verification of Dongkuk S&C Co., Ltd.,” dated February 19, 2020; and Memorandum, “Antidumping Duty Investigation of Utility Scale Wind Towers from the Republic of Korea: Early Conclusion of Verification,” dated March 26, 2020 (Early Conclusion of Verification Memorandum)).

<sup>44</sup> *Id.* at 22 (citing Dongkuk Cost Verification Report at 13-15).

<sup>45</sup> See section 782(i) of the Act.

<sup>46</sup> See *Micron Tech. v. United States*, 117 F. 3d 1386, 1396 (1997) (citing *Monsanto Co. v. United States*, 12 C.I.T. 937, 698 F. Supp. 275, 281 (1988)).

<sup>47</sup> *Id.*

<sup>48</sup> See Dongkuk Cost Verification Report.

<sup>49</sup> See Early Conclusion of Verification Memorandum; see also Memorandum, “Antidumping Duty Investigations of Utility Scale Wind Towers from the Republic of Korea: Postponing Sales Verification of Dongkuk S&C Co., Ltd.,” dated February 19, 2020.

<sup>50</sup> *Id.*

rely on Dongkuk's submitted sales information as facts available for the final determination.<sup>51</sup> As discussed in Comment 1, above, there is no evidence of "systematic flaws" in Dongkuk's reporting. Therefore, we continued to include Dongkuk's third country sales in our margin calculations for the final determination.

Additionally, we disagree with the petitioner's reliance on *Tomatoes from Canada* and the FSS from Canada and Mexico investigations as support for disregarding Dongkuk's comparison market sales. In *Tomatoes from Canada*, respondents were unable to distinguish costs based on the product's physical characteristics in their normal accounting records.<sup>52</sup> There is no evidence of a similar issue with Dongkuk's reported costs in the instant investigation. In the investigations of FSS from Canada and Mexico, in accordance with section 773 of the Act, Commerce based NV on CV for all respondents because we determined that the unique, custom-built nature of each FSS project did not permit proper price-to-price comparisons.<sup>53</sup> We made no such determination in this investigation. Thus, we find that *Tomatoes from Canada*, *FSS from Canada*, and *FSS from Mexico* provide no basis for us to disregard Dongkuk's third country sales here.

Finally, section 773(b)(1) of the Act provides when Commerce may disregard comparison market sales:

Whenever the administering authority has reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of normal value have been made at prices which represent less than the cost of production of that product, the administering authority shall determine whether, in fact, such sales were made at less than the cost of production. If the administering authority determines that sales made at less than the cost of production—

- (A) have been made within an extended period of time in substantial quantities, and
- (B) were not at prices which permit recovery of all costs within a reasonable period of time,

such sales may be disregarded in the determination of normal value. Whenever such sales are disregarded, normal value shall be based on the remaining sales of the foreign like product in the ordinary course of trade. If no sales made in the ordinary course of trade remain, the normal value shall be based on the constructed value of the merchandise.

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<sup>51</sup> See *Certain Collated Steel Staples from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstances Determination*, 85 FR 33623 (June 2, 2020), and accompany IDM at Comment 5.

<sup>52</sup> See *Tomatoes from Canada* IDM at Comment 6.

<sup>53</sup> See *FSS from Canada Prelim PDM* at 9, unchanged in *FSS from Canada Final*; see also *FSS from Mexico* IDM at 14.

Thus, Commerce shall base NV on CV if it finds that all comparison market sales are outside of the ordinary course of trade.

In the *Preliminary Determination*, we determined that all of Dongkuk's third country sales were made at less than COP and were outside of the ordinary course of trade.<sup>54</sup> Therefore, we disregarded Dongkuk's comparison market sales and based NV on CV, in accordance with section 773(b)(1) of the Act. In the final determination, because Dongkuk's third country sales continued to be below COP, we continued to base NV on CV on this basis.<sup>55</sup>

### **Comment 3: Treatment of Additional Revenues for U.S. Sales**

#### *Dongkuk's Case Brief*

- Dongkuk reported additional revenue amounts associated with additional parts it procured, or services it performed, related to the production of completed wind towers for certain U.S. sales. Commerce did not include these revenue amounts in the *Preliminary Determination* because Commerce stated that Dongkuk did not describe fully the nature of these revenues or to which expenses they relate.<sup>56</sup>
- In response to Commerce's request, Dongkuk provided additional information subsequent to the *Preliminary Determination* that demonstrates why Commerce must include the additional revenues in the final determination margin calculations.<sup>57</sup>
- Dongkuk's customers made additional requests after the initial purchase order and Dongkuk issued separate invoices for each such circumstance. Dongkuk reported separately all components of the overall revenue, based on the nature of the price component and the currency in which it was incurred. Dongkuk's reporting permitted Commerce to trace each aspect of the additional revenue reported.<sup>58</sup>
- The additional revenues relate not to expenses reported in the U.S. sales database, but rather to COM reported in the COP database. Dongkuk identified the accounts to which Dongkuk both recorded the sales revenue and the costs associated with providing the parts or services.<sup>59</sup> Dongkuk objects to the petitioner's claim that Dongkuk engaged in "selective reporting" of the revenue data.<sup>60</sup> Rather, Dongkuk undertook painstaking efforts to ensure that it captured each expense and revenue associated with its reported projects, including all additional revenues that it earned to complete each wind tower project.

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<sup>54</sup> See PDM at 19.

<sup>55</sup> See Dongkuk Final Sales Calculation Memorandum.

<sup>56</sup> See Dongkuk's Case Brief at 35-36 (citing PDM at 10).

<sup>57</sup> *Id.* at 36 (citing Dongkuk February 14, 2020 SQR).

<sup>58</sup> *Id.* at 36-39 (citing Dongkuk's September 23, 2019 SQR at A-20, and Exhibit A-12; Dongkuk's October 15, 2019, Sections B, C, and D Questionnaire Response (Dongkuk's October 15, 2019 BCDQR), at C-29 – C-32 and Exhibit C-10; and Dongkuk October 29, 2019 SQR, at S-1 – S-2, and S-6 – S-8).

<sup>59</sup> *Id.* at 39-44 (citing Dongkuk December 9, 2019 Sales SQR at Vol. I, S-11 and S-13 and Exhibit S2-11; and Dongkuk's February 14, 2020 SQR at S7-1 - S7-9, and Exhibits S7-1 to S7-14).

<sup>60</sup> *Id.* at 45 (citing Petitioner's Letter, "Utility Scale Wind Towers from the Republic of Korea: Comments on Dongkuk's Supplemental Section C and D Questionnaire Response," dated February 24, 2020).

### *Petitioner's Rebuttal Brief*

- As a mandatory respondent, Dongkuk is responsible for ensuring that its questionnaire responses are complete and accurate the first time it responds to Commerce. However, Dongkuk incompletely and improperly reported the additional revenue items at issue in this investigation. These items actually represent conversion costs that should be excluded from U.S. price.<sup>61</sup>
- Because of Dongkuk's selective and improper reporting of additional revenue, Commerce should assign Dongkuk a rate based on AFA.<sup>62</sup>
- If it does not apply total AFA, Commerce should treat Dongkuk's reported additional revenue as a selling expense (due to the nature of the services Dongkuk provided) and deduct these amounts from U.S. price.<sup>63</sup>
- Alternatively, Commerce should exclude the additional revenue amounts from its margin calculations, as it did in the *Preliminary Determination*.

### **Commerce's Position:**

In the *Preliminary Determination*, we did not include the additional revenue amounts in our margin calculation because we found that Dongkuk did not describe fully the nature of these revenues.<sup>64</sup> However, we also noted that we intended to request additional information from Dongkuk regarding these additional revenues.<sup>65</sup> Dongkuk responded to our request for additional information in the Dongkuk February 14, 2020 SQR. The information in that submission demonstrates that the additional revenue amounts Dongkuk reported represent charges to its customers for materials and production processes associated with the reported U.S. sales, the costs for which Dongkuk reported as part of the COM.<sup>66</sup> Specifically, information on the record demonstrates that Dongkuk posts: (1) the additional revenues earned to the associated wind tower project sales accounts; and (2) the costs incurred corresponding to these revenues to the wind tower project cost accounts.<sup>67</sup>

Moreover, in examining information, we determined that certain of Dongkuk's reported additional revenues appear to be associated with the cost of packing materials and packing-related services incurred to ship the wind tower sections.<sup>68</sup> Although Dongkuk posted its

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<sup>61</sup> See Petitioner's Rebuttal Brief at 31-32 (citing *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 23272 (April 20, 2016), and accompanying IDM at Comment 1; Dongkuk's September 23, 2019 SQR at Exhibit A-11; and Dongkuk's February 14, 2020 SQR).

<sup>62</sup> *Id.* at 33; see also Comment 1, above.

<sup>63</sup> *Id.* at 33.

<sup>64</sup> See PDM at 10.

<sup>65</sup> *Id.*

<sup>66</sup> See Dongkuk October 15, 2019 BCDQR at C-29 – C-32 and Exhibit C-10; see also Dongkuk October 29, 2019 SQR at S-1 – S-2, and S-6 – S-8; and Dongkuk December 9, 2019 Sales SQR at Vol. I, S-11.

<sup>67</sup> See Dongkuk February 14, 2020 SQR at S7-5 – S7-6 and S7-9, and Exhibits S7-1A and S7-13; see also Dongkuk Cost Verification Report at Exhibits 2 and 17.

<sup>68</sup> *Id.* at S7-2 (for example, Dongkuk stated that, for one project, its customer "requested a change order for an extra door lock and the *packing* of DUDT frames..." (emphasis added)); *Id.* at S7-6, and S7-7. Moreover, for certain revenue items, the descriptions of the additional materials supplied are similar to the materials used in packing. For

packing costs to COM accounts in its accounting system,<sup>69</sup> in accordance with the directions in Commerce’s questionnaire, it: (1) excluded these packing costs from its reporting of COM in its COP database; and (2) reported packing costs separately in the sales databases.<sup>70</sup> Thus, the packing expenses are not included in the COM that corresponds to the sales price. Therefore, for the final determination, we included Dongkuk’s reported additional revenues as additions to U.S. price in our margin calculations, except for those additional revenue amounts associated with packing expenses, according to the description of these items in Dongkuk’s response.<sup>71</sup>

Finally, we find no basis on the record to support the petitioner’s claim that the additional revenue amounts represent selling expenses. As discussed above, these additional revenue amounts reflect charges for work required to complete the wind tower for delivery to the customer. As a result, we have not treated Dongkuk’s reported additional revenue amounts as deductions from U.S. price in our calculations for the final determination.

#### **Comment 4: Treatment of Other Revenues for U.S. Sales**

##### *Dongkuk’s Case Brief*

- Commerce erred in not including certain other revenues (in the field OTHREUVU) in the *Preliminary Determination* margin calculations.
- These amounts represent revenue associated with a cancelled order that Dongkuk tied directly to a reported U.S. sale. Commerce should correct its inadvertent omission of this field and include it in the final determination.<sup>72</sup>

##### *Petitioner’s Rebuttal Brief*

- Commerce properly excluded the OTHREUVU amounts because they represent “compensation for the opportunity cost” of a cancelled order and have no connection to the reported sale.<sup>73</sup>
- In *FSS from Mexico*, Commerce excluded other revenue earned from scrap sales from the margin calculation because these amounts did not relate to the sale of the subject merchandise.<sup>74</sup> Similarly, because the OTHREUVU amounts do not relate to the sale of the subject merchandise, Commerce should continue to exclude them in the final determination.

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example, compare the descriptions in Dongkuk February 14, 2020 SQR at S7-6 – S7-7 to the sample list of packing materials in Dongkuk’s October 15, 2019 BCDQR at Exhibit C-27); *Id.* at Exhibits S7-3 and S7-4.

<sup>69</sup> See Dongkuk October 15, 2019 BCDQR at Exhibit C-4.

<sup>70</sup> See Dongkuk October 15, 2019 BCDQR at 19-25; *see also* Dongkuk’s October 15, 2019 BCDQR at C-52 and Exhibit C-27; and Dongkuk Cost Verification Report at Exhibit 17.

<sup>71</sup> See Dongkuk Final Sales Calculation Memorandum for further discussion.

<sup>72</sup> See Dongkuk’s Case Brief at 28-29 (citing Dongkuk October 15, 2019 BCDQR at C-31 and Exhibit C-16; and Dongkuk December 9, 2019 Sales SQR at Vol. I, S-12 – S-13, and Exhibit S2-12).

<sup>73</sup> See Petitioner’s Rebuttal Brief at 33-34 (citing Dongkuk December 9, 2019 Sales SQR at Vol. I, S-12; and Dongkuk October 15, 2019 BCDQR at C-31).

<sup>74</sup> *Id.* at 34 (citing *FSS from Mexico* IDM at Comment 5).

## Commerce's Position:

We did not include the OTHREVU amounts in our final determination margin calculations because the revenue Dongkuk received is not associated with that sale. Dongkuk stated that it earned this additional revenue as compensation for the partial cancellation of the order, and treated the refund from the customer as compensation for the opportunity cost.<sup>75</sup> In its normal accounting records, Dongkuk recognized the amount received from the customer in its income statement as other income, not sales revenue.<sup>76</sup> Thus, while Dongkuk may attribute the income received for a cancelled order to a specific U.S. sale, that income does not reflect revenue earned for the sale.

This treatment stands in contrast with the additional revenue amounts Dongkuk reported, discussed in Comment 3, above. Those additional revenue amounts represent additional services and materials Dongkuk provided to its customers, for which it issued additional invoices and recognized the amounts received as sales income.<sup>77</sup> Therefore, we find no basis on the record to add the OTHREVU amounts to U.S. price in our final determination.<sup>78</sup>

## Comment 5: Exclusion of Pre-POI Third Country Sale

### *Dongkuk's Case Brief*

- Commerce erred in the *Preliminary Determination* by excluding one of Dongkuk's third country sales.
- Commerce excluded the sale because its first shipment was prior to the POI and Commerce used the earlier of shipment or invoice date as the date of sale.<sup>79</sup>
- However, the sale was part of a project consisting of four shipments and both the final shipment date and the commercial invoice date were within the POI. Thus, Commerce should consider the sale within the POI and include it in its calculations for the final determination.<sup>80</sup>

### *Petitioner's Case Brief*

- Commerce did not err when it excluded the third country sale at issue in the *Preliminary Determination*.

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<sup>75</sup> See Dongkuk's December 9, 2019 Sales SQR at Vol. I, S-12

<sup>76</sup> See Dongkuk's October 15, 2019 BCDQR at C-31; and Dongkuk December 9, 2019 Section D SQR, at SD-28 – SD-29 and Exhibit SD-13.

<sup>77</sup> See Dongkuk February 14, 2020 SQR, *passim*.

<sup>78</sup> However, we are recalculating Dongkuk's indirect selling expense ratio to include the OTHREVU amount as "other income," consistent with Dongkuk's treatment of this income in its financial statements. See Dongkuk Final Sales Calculation Memorandum; see also Comment 9, above.

<sup>79</sup> See Dongkuk's Case Brief at 27 (citing PDM at 9; and Memorandum, "Calculations for the Preliminary Results," dated February 4, 2020 at Attachment 3).

<sup>80</sup> *Id.* at 27-28 (citing Dongkuk January 6, 2020 SQR at Exhibit S5-1).

- Dongkuk provided no evidence for Commerce to deviate from its standard date of sale practice when that date best reflects the date on which the material terms of sale are established.<sup>81</sup>
- Therefore, consistent with the *Preliminary Determination*, Commerce should continue to exclude this pre-POI transaction in the final determination.<sup>82</sup>

### Commerce's Position:

For the final determination, we continued to rely on the earlier of invoice or shipment date as the date of sale in our calculations for the final determination, consistent with Commerce's longstanding practice.<sup>83</sup> Because the shipment date of the third country sale in question occurred prior to the POI, we continued to exclude it from our margin calculations in the final determination.

### Comment 6: Proposed Revisions to the Critical Circumstances Analysis

#### *Dongkuk's Case Brief*

- Commerce should reverse its affirmative finding of critical circumstances in the *Preliminary Determination*<sup>84</sup> and determine that critical circumstances do not exist because the evidence of massive imports is distorted. Because of the long lead times, in which shipments of subject merchandise frequently occur up to six or eight months after receiving a customer's order, most shipments during the POI resulted from agreements made before the petition was filed.<sup>85</sup>
- Commerce makes an affirmative critical circumstances determination if there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere, and there have been massive imports of the subject merchandise over a relatively short period of time. The established long lead times for Dongkuk's sales

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<sup>81</sup> *Id.* (citing *Seamless Refined Copper Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review*; 2012-2013, 80 FR 33482 (June 12, 2015), and accompanying IDM at Comment 1; *Purified Carboxymethylcellulose from the Netherlands: Preliminary Results of Antidumping Duty Administrative Review*; 2012-2013, 79 FR 49494 (August 21, 2014), and accompanying PDM at 6, unchanged in *Purified Carboxymethylcellulose from the Netherlands: Final Results of Antidumping Duty Administrative Review*; 2012-2013, 79 FR 78395 (December 30, 2014); *Purified Carboxymethylcellulose from Mexico: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 16359, 16360 (April 10, 2009), unchanged in *Purified Carboxymethylcellulose from Mexico: Final Results of Antidumping Duty Administrative Review*, 74 FR 52178 (October 9, 2009); *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying IDM at Comment 10; and *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2).

<sup>82</sup> *Id.* at 34-35 (citing PDM at 9).

<sup>83</sup> See PDM at 9.

<sup>84</sup> See Dongkuk's Case Brief at 46 (citing PDM at 4-5).

<sup>85</sup> *Id.* at 48-50 (citing section 735(b)(4)(A) of the Act).

support Commerce making a negative finding of critical circumstances because Dongkuk's imports cannot be considered sufficiently massive.<sup>86</sup>

### *Petitioner's Rebuttal Brief*

- In its *Preliminary Determination*, Commerce correctly found that critical circumstances exist. Korean wind tower producers were subject to an Australian antidumping order, showing a history of dumping Korean wind towers, and Commerce found in the *Preliminary Determination* that there were massive imports over a short period of time. Therefore, Commerce satisfied the statutory requirements for finding critical circumstances.<sup>87</sup>
- Commerce properly rejected Dongkuk's arguments that it should depart from the methodology for analyzing massive imports set forth in its regulations.<sup>88</sup> Under Dongkuk's reasoning, Commerce could never find massive imports of any product with long lead times and domestic producers could *never* obtain critical circumstances relief, undermining the remedial effect of impending antidumping orders.
- Commerce has previously rejected similar arguments to alter its analysis of massive imports, and should do the same in this investigation.<sup>89</sup>

### **Commerce's Position:**

We have not revised our preliminary determination that critical circumstances exist for Dongkuk and the companies covered by the all-others rate, based in part on our finding that Dongkuk's imports were massive, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(h).<sup>90</sup>

Dongkuk acknowledges that the volume of its subject merchandise imports met the 15 percent "massive imports" criterion, but argues that Commerce should ignore the data because those imports related to the fulfillment of previous purchase commitments and the long lead times for production and shipment, rather than a response to the filing of the petition.<sup>91</sup> Dongkuk offers no precedent or statutory exception to support its argument. Neither the statute nor Commerce's regulations include a provision to disregard monthly shipment data in the manner Dongkuk

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<sup>86</sup> *Id.* at 46-48 (citing 19 CFR 351.206(h)-(i); sections 733(e)(1)(A)(ii), 735(a)(3)(A), 735(a)(3)(A)(i), and 735(a)(3)(B) of the Act; *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); *Steel Concrete Reinforcing Bar from Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 79 FR 54965 (September 15, 2014); U.S. Department of Commerce, Enforcement and Compliance Antidumping Manual at Chapter 12, section III (A)(3)(b)).

<sup>87</sup> See Petitioner's Rebuttal Brief at 28 (citing PDM at 5-6).

<sup>88</sup> *Id.* at 28 (citing Dongkuk's Letter, "Utility Scale Wind Towers from the Republic of Korea; DKSC's Monthly Quantity and Value Shipment Data," dated December 30, 2019).

<sup>89</sup> *Id.* at 29-30 (citing section 735(a)(3) of the Act; *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) (*CTVs from China*), and accompanying IDM at Comment 3; and *Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Final Affirmative Determinations of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014), and accompanying IDM at Comment 2).

<sup>90</sup> See PDM at 4-6.

<sup>91</sup> See Dongkuk's Case Brief at 49.

proposes. Further, Commerce has previously rejected similar arguments with respect to sales made pursuant to long-term contracts, noting that “respondents have the flexibility to increase shipments prior to the suspension of liquidation, thereby circumventing the imposition of antidumping duties.”<sup>92</sup> Therefore, we did not revise our massive imports analysis for Dongkuk in the final determination.

### **Comment 7: Steel Plate Cost Adjustment**

Dongkuk reported steel plate costs that were significantly different between control numbers (CONNUMs) sold in the Japanese comparison market and those sold in the U.S. market. In the *Preliminary Determination*, we analyzed the data and determined that the differences in steel plate costs between CONNUMs did not appear to be related to differences in the physical characteristics of the products. Therefore, to mitigate the cost differences unrelated to the product physical characteristics, we weight averaged the reported steel plate costs for all reported CONNUMs (also referred to as “smoothing”) for the *Preliminary Determination*.<sup>93</sup>

#### *Dongkuk’s Case Brief*

- Commerce’s preliminary methodology presumed that steel plate costs did not vary for any project in any market, but substantial record evidence demonstrates that Dongkuk correctly and accurately reported its steel plate costs for the POI on a project-specific basis.<sup>94</sup>
- Dongkuk followed Commerce’s instruction to report cost and sales data on a project specific basis for all products sold during the POI, regardless of when these costs were incurred. Therefore, Dongkuk reported certain direct material costs that were incurred outside the POI but were associated with wind tower projects that were sold during the POI.<sup>95</sup>
- As a consequence of Dongkuk’s reporting methodology, cost differences can exist between CONNUMs such as the physical differences in the raw materials, timing of purchases, *etc.*
- Because of the fluctuating raw material prices, which is the inherent nature of the steel business, the timing of the raw material purchases for Dongkuk’s reported CONNUMs sold in Japan reflected different plate costs from the CONNUMs sold in the U.S. market.
- Steel plate costs also varied because the Japanese projects predominantly used lower yield strength plates, which resulted in lower costs.
- The design of a wind tower is determined by turbine type, capacity, and various design factors. As a result, stress is a critical design factor that determines which steel plates must be used. Because the stress that a wind tower must tolerate varies by project, these factors result in differences in steel plate thicknesses, widths, tower heights, *etc.* Thus, a direct correlation exists between the dimensions of a wind tower and the steel plates used to produce that wind tower.

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<sup>92</sup> See *CTVs from China* IDM at Comment 3.

<sup>93</sup> See Memorandum, “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Dongkuk S&C Co., Ltd.,” dated February 4, 2020 (Preliminary Cost Calculation Memorandum).

<sup>94</sup> *Id.*

<sup>95</sup> See Dongkuk’s Case Brief at 7-8 (citing Dongkuk September 6, 2019 Letter at 2-3).

- If Commerce continues to assign the same steel plate costs to all the different products produced, Commerce should alternatively revise its weight averaging by accounting for wind tower height as a part of its weight averaging group because it has a direct correlation to the steel plate costs.

#### *Petitioner's Case Brief*

- Cost smoothing for steel plate costs is required to correct for the systemic flaw in Dongkuk's cost reporting methodology. For example, in *Nails from Korea*, Commerce found that "...the costs reported for similar CONNUMs are substantially different based on factors unrelated to the physical characteristics of the products themselves. Therefore, the cost differences are not driven by differences in the CONNUMs physical characteristics."<sup>96</sup>
- The cost verification report noted the long lead times for ordering raw materials. Dongkuk's explanation indicates that plate for the Japanese sales were ordered eleven months in advance, while plate for the U.S. sales were ordered during the POI. The timing difference of more than one year resulted in large changes in pricing that introduce cost distortions in Dongkuk's reported COP database.
- Commerce should adjust the cost smoothing factor calculations to use gross, not net, steel plate costs (*i.e.*, steel plate cost less the scrap offset), because Dongkuk's normal business practices of neither tracking the scrap generated nor allocating the scrap loss to specific projects indicates that it is more appropriate to calculate the cost smoothing factors on a gross steel plate basis.

#### *Dongkuk's Rebuttal Brief*

- Commerce should not make an adjustment to Dongkuk's reported steel plate costs because the reporting of its actual steel plate costs is explicit and correct. Specifically, the steel plate costs are directly related to differences in the physical characteristics of the product.
- Substantial verified record evidence demonstrates that Dongkuk directly assigns steel plate costs to each individual project, and Dongkuk traces the steel plate purchases to finished projects through inventory records.

#### *Petitioner's Rebuttal Brief*

- The purchases of raw materials directly for a project simply affects the relative timing of purchases but does not affect the physical similarities in the plate itself.
- Plate is fungible and can be used on any project, provided it is equivalent.
- Dongkuk has not provided any evidence that premiums were charged for different yield strengths or plate thicknesses. The differences reported in the plate costs for each project reflect timing differences, not differences in physical characteristics.

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<sup>96</sup> See Petitioner's Case Brief at 39 (citing *Certain Steel Nails from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 4770 (February 19, 2019) (*Nails from Korea*), and accompanying IDM at Comment 2).

- Dongkuk’s dumping margin should not depend on when the steel is purchased for the wind towers it produced.<sup>97</sup>
- Commerce should not take wind tower height into account when weight averaging plate costs because the height of the wind tower is a characteristic of the finished good, not the input plate. Further, if wind tower height is accounted for in the weight averaged plate costs, only certain U.S. CONNUMs have heights that overlap with other projects; the Japanese project costs would not change.

### Commerce’s Position:

We agree with the petitioner that, to mitigate the significant steel plate cost differences between CONNUMs that are unrelated to the product physical characteristics, we have continued to weight average the reported steel plate costs for all reported CONNUMs, as we did in the *Preliminary Determination*.<sup>98</sup>

When Commerce must evaluate a respondent’s reported costs, section 773(f)(1)(A) of the Act advises that costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise.

Accordingly, Commerce will customarily rely on a company’s normal books and records if two conditions are met: (1) the books are kept in accordance with the home country’s GAAP; and (2) the books reasonably reflect the cost to produce and sell the merchandise. In cases where the costs reported according to a company’s normal books are unreasonable (*e.g.*, if cost differences among products do not represent differences in physical characteristics), Commerce may revise such costs.<sup>99</sup> Here, the record is clear that the reported costs are derived from Dongkuk’s normal books and records and that those books are kept in accordance with Korean GAAP. Hence, the question facing Commerce is whether the reported steel plate costs from Dongkuk’s normal books and records reasonably reflect the cost to produce the subject merchandise based on the physical characteristics identified by Commerce.

In this investigation, Commerce identified the physical characteristics that are the most significant in differentiating the costs between products.<sup>100</sup> These are the physical characteristics that define the unique products, *i.e.*, CONNUMs, for sales comparison purposes and the level of detail within each physical characteristic (*e.g.*, thickness, width or height, *etc.*) that reflect the importance Commerce places on comparing the most similar products in price-to-price comparisons. Thus, under sections 773(f)(1)(A) and 773(a)(6)(c)(ii) and (iii) of the Act, a respondent’s reported costs should reflect meaningful cost differences attributable to these

<sup>97</sup> See Petitioner’s Rebuttal Brief at 10-13 (citing *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) (*CTL Plate from Korea*), and accompanying IDM at Comment 1).

<sup>98</sup> See Preliminary Cost Calculation Memorandum; *see also* PDM at 18.

<sup>99</sup> See *CTL Plate from Korea* IDM at Comment 1; *see also* *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 82 FR 49179 (October 24, 2017) (*Standard Pipe from Turkey*), and accompanying IDM at Comment 2).

<sup>100</sup> See Commerce’s Letter, “Product Characteristics for the Antidumping Duty Investigation of Utility Scale Wind Towers from the Republic of Korea (Korea),” dated September 17, 2019 at Attachment I.

different physical characteristics. This approach ensures that the product-specific costs we use for the sales-below-cost test, CV, and DIFMER adjustments accurately reflect the physical characteristics of the products used in Commerce's margin calculations.

Using the physical characteristics as our guidepost, we analyzed the steel plate costs by grouping CONNUMs by the related height and weight physical characteristics, and the steel plate cost differences between steel grades and dimensions (*i.e.*, thickness, width or height) within the same time period. Based on this analysis, we determined that record evidence shows that timing is the significant factor driving the resulting steel plate cost differences between products, which is unrelated to differences in the physical characteristics of products.<sup>101</sup> Specifically, when we compared the steel plate costs between a project produced for the Japanese comparison market and a project produced for the U.S. market, both of which were purchased within the same month, the costs were virtually the same regardless of the grade, thickness, width, or height.<sup>102</sup> Consequently, the overwhelming factor that caused the differences in the steel plate costs was the timing of the steel plate purchases, rather than the physical characteristics of the merchandise. In such situations, Commerce's normal practice is to adjust costs to address distortions when such cost differences are attributable to factors beyond the physical characteristics.<sup>103</sup> Therefore, for the final determination, we continue to weight average the reported steel plate costs for all reported CONNUMs because the record demonstrates that the primary factor driving the plate cost differences is due to the timing of the raw material purchases, not the physical differences of the input (*i.e.*, grade and dimensions).<sup>104</sup>

Finally, we disagree with the petitioner's argument that the adjustment factor used to mitigate the steel plate cost distortion should not include Dongkuk's reported scrap offset because the scrap offset is associated with scrap sold, not scrap generated, and it is not allocated to specific projects in the normal course of business. As explained in Comment 10 below, record evidence shows that Dongkuk's claimed scrap offset, based on the amount of scrap sold, was related to the production of the merchandise under consideration and did not exceed the amount of scrap that could have been generated based on the calculated yield losses.<sup>105</sup> Thus, we have not revised the adjustment factor in the manner suggested by the petitioner for purposes of the final determination.

## **Comment 8: Calculation of CV Profit and Selling Expenses**

### *Dongkuk's Case Brief*

- Commerce used CV as the basis for NV in the *Preliminary Determination* because there were no above-cost sales of the foreign like product in the comparison market.<sup>106</sup> Dongkuk asserts that none of the sources for CV profit and selling expenses that the

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<sup>101</sup> See Dongkuk Cost Verification Report at Exhibits 5, 9, 10, and 12; *see also* Dongkuk's Final Cost Calculation Memorandum.

<sup>102</sup> *Id.*

<sup>103</sup> See *CTL Plate from Korea* IDM at Comment 1; *see also* *Standard Pipe from Turkey* IDM at Comment 2.

<sup>104</sup> *Id.*

<sup>105</sup> See Dongkuk Cost Verification Report at Exhibits 13 and 17.

<sup>106</sup> See PDM at 19.

petitioner submitted satisfy Commerce's selection criteria because they are not comparable to wind towers and, in some instances, were not publicly available.

- Commerce should calculate CV profit based on Dongkuk's audited financial data and then calculate the foreign indirect selling expense ratio using the financial statements Dongkuk submitted (*i.e.*, those of TSJV Steel Fabrication and Galvanizing (India) Limited (TSJV); Ganges International Private Limited (Ganges); ISGEC Heavy Engineering Limited (ISGEC); TMK IPSCO (TMK); and Borusan Mannesmann (Borusan)).<sup>107</sup>
- If Commerce continues to rely on CV for NV, it should use SeAH Steel Corporation's audited unconsolidated financial statements to calculate CV profit and selling expenses, rather than SeAH Steel Holdings Corporation's consolidated financial statements used in the *Preliminary Determination*. SeAH Steel Corporation's consolidated financial statements include selling expenses and profit information unrelated to steel manufacturing.<sup>108</sup>
- Alternatively, Commerce should use TSJV, Ganges, ISGEC, TMK, and Borusan's financial statements to derive CV profit and selling expenses. While these financial data are from non-Korean producers, they are nevertheless more comparable than SeAH Steel Holdings Corporation's consolidated financial data, which are reflective of many non-steel activities.<sup>109</sup>

#### *Petitioner's Rebuttal Brief*

- The Corey S.A. de C.V. (Corey) financial data, which Commerce relied on in the Mexican FSS investigation, represents the best available information for determining CV profit and selling expenses. FSS is a comparable product to wind towers because producing FSS requires forming and welding cut-to-length steel plate and hot-rolled coil into component parts for larger structures. While Corey's financial statements are not publicly available, Commerce has already determined a combined selling expense and profit ratio from them that is public.<sup>110</sup>
- Alternatively, Commerce should use the Grupo Carso, Ternium, and Tenaris' financial statements that the petitioner submitted as the source of CV profit and selling expenses.<sup>111</sup>
- If Commerce determines that the sources the petitioner provided are not reliable, Commerce should continue to rely on the consolidated financial statements of SeAH Steel Holding Corporation as the basis for CV profit and selling expenses, as it did in the *Preliminary Determination*, because the financial data is contemporaneous with the POI and the company is a Korean producer of comparable merchandise.

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<sup>107</sup> See Dongkuk's Case Brief at 35 (citing Dongkuk's Submission of CV Profit and Selling Expense Comments and Information (Dongkuk's CV Profit Submission), dated February 26, 2020 at Exhibits CV-2, 3, 4, 5, and 7).

<sup>108</sup> *Id.* at 32-34 (citing Preliminary Cost Calculation Memorandum; and Dongkuk's CV Profit Submission at Exhibit CV-6).

<sup>109</sup> *Id.*

<sup>110</sup> See Petitioner's Rebuttal Brief at 9-16 (citing *FSS from Mexico Prelim* and accompanying PDM at 13, unchanged in *FSS from Mexico*; see also Petitioner's Submission of Constructed Value Profit and Selling Expense Comments and Information (Petitioner's CV Profit Submission), dated January 6, 2020 at Exhibit 2).

<sup>111</sup> *Id.* at 14-16 (citing Petitioner's CV Profit Submission at Exhibit 2,3,4, and 5).

- SeAH Steel Corporation’s unconsolidated financial statements are not a reasonable basis for calculating CV profit and selling expenses because the financial statement data only reflects one quarter of results (*i.e.*, September 1, 2018, to December 31, 2018).
- Commerce should reject the additional financial statements Dongkuk provided because these companies produce a diverse array of products such that they are not reliable surrogates and do not constitute the best available information on the record.

### Commerce’s Position:

In accordance with section 773(a)(4) of the Act, we used CV as the basis for NV in the *Preliminary Determination* because there were no above-cost sales of the foreign like product in the comparison market. In the final determination, we continue to find that there are no above-cost sales of the foreign like product in the comparison market and we continue to compare EP sales in the United States to CV, pursuant to section 773(e) of the Act. Section 773(e) of the Act directs that we calculate CV based on the sum of the cost of materials and fabrication employed in producing the subject merchandise, plus amounts for selling, general, and administrative (SG&A) expenses, interest expenses, U.S. packing expenses, and profit. Accordingly, consistent with the *Preliminary Determination*, we calculated the cost of materials and fabrication, G&A expenses, interest expenses and packing expenses based on information submitted by Dongkuk in its original and supplemental questionnaire responses, except in instances where we determined that the information was not valued properly.<sup>112</sup>

In the absence of comparison market sales made in the ordinary course of trade for calculating CV profit and selling expenses, we are unable to use the “preferred method” to calculate these amounts and must instead rely on one of the three alternatives outlined in sections 773(e)(2)(B)(i) through (iii) of the Act. Those alternatives are: (i) the use of the actual amounts incurred and realized by the specific exporter or producer in connection with the production and sale of merchandise that is in the same general category of products as the subject merchandise; (ii) the use of the weighted average of the actual amounts incurred and realized by exporters or producers (other than the respondent) that are subject to the investigation or review; or (iii) based on any other reasonable method, except that the amount for profit may not exceed the amount realized by exporters or producers (other than the respondent) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise (*i.e.*, the “profit cap”).

The statute does not establish a hierarchy for selecting among the alternatives for calculating CV profit.<sup>113</sup> Moreover, as noted in the SAA, “the selection of an alternative will be made on a case-by-case basis, and will depend, to an extent, on available data.”<sup>114</sup> Thus, Commerce has discretion to select from any of the three alternative methods, depending on the information available on the record.

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<sup>112</sup> See Dongkuk’s Final Cost Calculation Memorandum.

<sup>113</sup> See SAA at 840 (“At the outset, it should be emphasized, consistent with the Antidumping Agreement, new section 773(e)(2)(B) does not establish a hierarchy or preference among these alternative methods. Further, no one approach is necessarily appropriate for use in all cases.”)

<sup>114</sup> *Id.*

Here, the first statutory alternative provided in section 773(e)(2)(B) of the Act is not possible because we do not have information on the record representing the same general category of product as the subject merchandise sold by Dongkuk. The second alternative for determining CV profit is not available in this case because there are no other exporters or producers subject to the investigation. Therefore, we calculated CV profit and CV selling expenses in accordance with section 773(e)(2)(B)(iii) of the Act (*i.e.*, based on “any other reasonable method”). Interested parties submitted audited financial statements for ten companies and a public version of the cost calculation memorandum (*i.e.*, number (6) below) as possible sources for calculating CV profit and selling expenses under section 773(e)(2)(B)(iii) of the Act, as identified below:

- (1) the financial statements of TJSV, an Indian producer of fabricated steel;<sup>115</sup>
- (2) the financial statements of Ganges, an Indian producer of solar solutions, galvanized transmission line towers, cold rolled form sections, and fabrication services;<sup>116</sup>
- (3) the financial statements of ISGEC, an Indian producer of various process equipment, including high pressure vessels;<sup>117</sup>
- (4) the financial statements of TMK, a Russian integrated producer of a wide range of steel pipes used in the oil and gas sector (*i.e.*, oil country tubular goods (OCTG)), chemical and petrochemical industries, energy and machine-building, construction, agriculture and other economic sectors;<sup>118</sup>
- (5) the financial statements of Borusan, a Turkish producer of steel pipe;<sup>119</sup>
- (6) the public version of the cost calculation memorandum from FSS from Mexico for Corey, a Mexican producer of fabricated structural steel;<sup>120</sup>
- (7) the financial statements of Grupo Carso, a conglomerate based in Mexico with global operations;<sup>121</sup>
- (8) the financial statements of Ternium, a Mexican integrated producer of flat steel;<sup>122</sup>
- (9) the financial statements of Tenaris, a global producer of both welded and seamless OCTG products;<sup>123</sup>
- (10) the unconsolidated financial statements of SeAH Steel Corporation, a Korean producer of steel pipe;<sup>124</sup> and
- (11) the consolidated financial statements of SeAH Steel Holdings Corporation, a Korean producer of steel pipe.<sup>125</sup>

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<sup>115</sup> See Dongkuk’s CV Profit Submission at Exhibit CV-2.

<sup>116</sup> *Id.* at Exhibit CV-3.

<sup>117</sup> *Id.* at Exhibit CV-4.

<sup>118</sup> *Id.* at Exhibit CV-5.

<sup>119</sup> *Id.* at Exhibit CV-7.

<sup>120</sup> See Petitioner’s CV Profit Submission at Exhibit 2.

<sup>121</sup> *Id.* at Exhibit 3.

<sup>122</sup> *Id.* at Exhibit 4.

<sup>123</sup> *Id.* at Exhibit 5.

<sup>124</sup> See Petitioner’s Letter, “Petitions for the Imposition of Antidumping and Countervailing Duties on Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam,” dated July 9, 2019 (the Petitions) Volume IV at 21 and Exhibit IV-21; *see also* Petitioner’s Letter, “Responses to First Supplemental Questions on Korea Volume IV of the Petition (Korea Petition Supplement), dated July 19, 2019 at Exhibit IV-Supp-15; and Dongkuk’s CV Profit Submission at Exhibits CV-6.

<sup>125</sup> *Id.*

In evaluating the different alternatives under subsection (iii), we followed the analysis established in *Pure Magnesium from Israel*.<sup>126</sup> In *Pure Magnesium from Israel*, Commerce set out three criteria for choosing among surrogate data under section 772(e)(2)(B)(iii) of the Act: (1) the similarity of the potential surrogate companies' business operations and products to the respondent's business operations and products; (2) the extent to which the financial data of the surrogate company reflects sales in the home market and does not reflect sales to the United States; and, (3) the contemporaneity of the data to the POI. In *CTVs from Malaysia*, Commerce added a fourth criterion, the extent to which the customer base of the surrogate and the respondent were similar.<sup>127</sup> Commerce has applied these four criteria in subsequent cases to assess the appropriateness of using various financial statements on the record of a given case under subsection (iii).<sup>128</sup>

Based on these criteria and Commerce's practice regarding completeness (*i.e.*, having complete and fully translated audited financial statements and accompanying notes on the record),<sup>129</sup> we find the financial data from all companies except SeAH Steel Holdings Corporation fail to meet the necessary criteria. First, with respect to Corey, the financial statements are not on the record because the petitioner submitted only information from the public version of the cost calculation memorandum from *FSS from Mexico*.<sup>130</sup>

Grupo Carso, Tenaris, TMK, ISGEC, and Ternium do not meet our criteria because these companies produce and sell products that are not comparable to wind towers. Grupo Carso is a large conglomerate with global operations in the restaurant business, infrastructure and construction (*i.e.*, tunnels, wells, *etc.*), cables, transformers, precision steel pipes, *etc.*<sup>131</sup> Tenaris and TMK are predominately producers of OCTG, a specialized premium pipe product that is not comparable to wind towers.<sup>132</sup> Ternium is an integrated mining and steel producer.<sup>133</sup> ISGEC is a producer of high-pressure vessels and construction of factories for railways, material handling systems, and air pollution control systems.<sup>134</sup> Based on our analysis of TJSV's financial statements, its profit appears to be derived only from its sales of services.<sup>135</sup>

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<sup>126</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel*, 66 FR 49349 (September 27, 2001) (*Pure Magnesium from Israel*), and accompanying IDM at Comment 8; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Color Television Receivers from Malaysia*, 69 FR 20592 (April 16, 2004) (*CTVs from Malaysia*), and accompanying IDM at Comment 26.

<sup>127</sup> See *Pure Magnesium from Israel*, and accompanying IDM at Comment 8; see also *CTVs from Malaysia*, and accompanying IDM at Comment 26.

<sup>128</sup> See, *e.g.*, *Certain Steel Nails from the Sultanate of Oman: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 58231 (November 19, 2018), and accompanying IDM at Comment 1.

<sup>129</sup> See Commerce's Letter, "Request for Constructed Value Profit and Selling Expense Comments and Information," dated February 5, 2020.

<sup>130</sup> See Petitioner's CV Profit Submission at Exhibit 2.

<sup>131</sup> *Id.* at Exhibit 3.

<sup>132</sup> *Id.* at Exhibit 5; see also Dongkuk's CV Profit Submission at Exhibit CV-5.

<sup>133</sup> See Petitioner's CV Profit Submission at Exhibit 4.

<sup>134</sup> See Dongkuk's CV Profit Submission at Exhibit CV-4.

<sup>135</sup> *Id.* at Exhibit CV-2.

We are unable to determine whether Ganges actually produces and sells wind towers.<sup>136</sup> Nevertheless, even if it were to produce wind towers, its financial statements indicate that Ganges' predominant business operations are in other areas, such as solar solutions, galvanized transmission line towers, cold rolled form sections, and fabrication services. In addition, Ganges has no production or sales in the Korean market. While Borusan is a producer of comparable merchandise, it has no production or sales in the Korean market.<sup>137</sup> SeAH Steel Corporation is a producer of comparable merchandise; however, its unconsolidated financial statements do not reflect a full year of financial results (*i.e.* the results only reflect four months of financial data).<sup>138</sup> SeAH Steel Holdings Corporation's consolidated financial statements reflect profits for comparable merchandise in the Korean market, but also include the results of other business operations.

In evaluating the financial statement data on the record, we continue to find that SeAH Steel Holdings Corporation's consolidated financial statement results constitute the best information available on the record.<sup>139</sup> While the consolidated financial results include activities from business operations other than comparable merchandise, we find that the data represents the best option from among the sources on the record. Specifically, it is the only option on the record that includes 12 months of financial data, and reflects profits on the production and sale of comparable merchandise that is produced and sold in the Korean market.<sup>140</sup>

Further, we are unable to calculate the amount realized by exporters or producers in connection with the sale, for consumption in the foreign country, of the merchandise in the same general category of products as the subject merchandise (*i.e.*, the "profit cap"), in accordance with section 773(e)(2)(B)(iii) of the Act, because the record does not contain any information for making such a calculation. However, the SAA makes clear that Commerce might have to apply alternative (iii) on the basis of facts available.<sup>141</sup> Therefore, we conclude that the method used to calculate CV profit serves as a reasonable profit cap for the *Final Determination*.

Finally, with respect to indirect selling expenses, because Dongkuk's third country sales were not made in the ordinary course of trade (*i.e.*, all of the reported sales were made at prices below COP), Commerce likewise does not have comparison market selling expenses to use in its calculations as directed by section 773(e) of the Act. Therefore, as in the *Preliminary Determination*, we calculated selling expenses in accordance with section 773(e)(2)(B)(iii) of the Act using the financial statement data of SeAH Steel Holdings Corporation.<sup>142</sup>

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<sup>136</sup> *Id.* at Exhibit CV-3.

<sup>137</sup> *Id.* at Exhibit CV-7.

<sup>138</sup> See Volume IV of the Petitions, at 21 and Exhibit IV-21; and the Korea Petition Supplement, at Exhibit IV-Supp-15; see also Dongkuk's CV Profit Submission at Exhibits CV-6.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> See SAA, at 840.

<sup>142</sup> See Volume IV of the Petitions, at 21 and Exhibit IV-21; and the Korea Petition Supplement, at Exhibit IV-Supp-15.

## Comment 9: Calculation of the G&A and Indirect Selling Expense Ratios

### *Dongkuk's Case Brief*

- Commerce should apply the indirect selling and G&A expense ratios consistent with how Dongkuk reported these ratios in its questionnaire responses, incorporating the minor revisions pointed out in its case brief.<sup>143</sup>
- Commerce's methodology in the *Preliminary Determination* to attribute a majority of the reported SG&A expenses to only G&A was unreasonable because the SG&A expenses are common expenses that benefited both the sales and administrative teams.<sup>144</sup>
- Dongkuk's allocation between G&A and indirect selling expenses was based on the reasonable assumption that there is realistic and practical alignment between employee-related costs and the expenses that those employees incur in the course of their work on the sales and administrative teams.

### *Petitioner's Rebuttal Brief*

- Commerce properly revised Dongkuk's allocation of SG&A expenses in the *Preliminary Determination* and should continue these revisions in the final determination because Dongkuk failed to classify these expenses correctly.
- Dongkuk's calculation of the factor used to allocate the SG&A expenses between selling and G&A includes certain business proprietary expenses that should be reclassified and included as part of the G&A team labor costs, as opposed being included in the sales team labor costs.<sup>145</sup>
- Several items were clearly selling expenses or G&A expenses based on their nature and should not have been allocated partially to both. Dongkuk's failure to classify these line items correctly suggest that Dongkuk's G&A and indirect selling expense ratios are flawed and Commerce cannot rely on them.<sup>146</sup>

### **Commerce's Position:**

We agree, in part, with the petitioner that certain labor costs should be reclassified for purposes of allocating G&A and indirect selling expenses. In addition, although we disagree with the calculation of the allocation basis Dongkuk submitted, we agree, in part, with Dongkuk's methodology used to allocate certain expenses between G&A and indirect selling.

Dongkuk's SG&A expenses and other operating income and expenses were allocated between G&A and indirect selling expenses based on the SG&A direct labor costs incurred by the company's sales and administrative teams. In the *Preliminary Determination*, based on our review of the nature of the expenses, we determined that this allocation basis was not appropriate.<sup>147</sup> Dongkuk asserts that Commerce should reconsider its decision in the

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<sup>143</sup> See Dongkuk's Case Brief at Attachment.

<sup>144</sup> See Preliminary Cost Calculation Memorandum.

<sup>145</sup> See Petitioner's Rebuttal Brief at 36-37 (citing Dongkuk's Cost Verification Report at Exhibit 18).

<sup>146</sup> *Id.*

<sup>147</sup> See Preliminary Cost Calculation Memorandum.

*Preliminary Determination* to apportion 100 percent of the remaining expenses (*i.e.*, after certain direct assignments to selling expenses) to G&A expenses rather than allocating the expenses based on the direct labor costs.<sup>148</sup>

To determine whether an allocation method is reasonable, Commerce's practice is to look to the relationship (*i.e.*, cost driver) between the cost pool being allocated and the allocation factor or base.<sup>149</sup> The stronger the association between the expenses in the cost pool and the allocation factor, the more reasonable the method. In the instant case, while we agree with Dongkuk that, for certain expenses such as welfare benefit costs or training expenses, it would be appropriate to allocate these cost line items based on the labor cost of the sales and administrative teams, we disagree with Dongkuk that it is appropriate to allocate all the expense line items in question using this allocation methodology. As an example, it is not appropriate to apportion expenses such as consumables and depreciation expenses based on the same proportion as the relative sales and administrative team labor costs because consumables and depreciation expenses are G&A expenses in nature. Consequently, for the final determination, we reviewed the nature of each of the reported cost line items in question and used Dongkuk's allocation methodology where appropriate; otherwise, we included the total expense in G&A expenses because the burden of providing the appropriate allocation basis for all expenses lies with the respondent.

As a result, for the final determination, we revised Dongkuk's labor cost allocation to reclassify expenses from the sales team labor cost amount to the G&A labor cost amount in determining the allocation factor. Specifically, we determined that the expenses in question are more related to the general operations of the company as whole rather than specifically related to the sales team.<sup>150</sup>

## **Comment 10: Treatment of Scrap Offset**

### *Petitioner's Case Brief*

- Dongkuk does not qualify for a scrap offset because it does not track the amount of scrap generated in the normal course of business.
- Dongkuk does not record a scrap offset to its manufacturing or raw material costs in the normal course of business, nor has it provided any calculation to demonstrate that the reported scrap offset reflects scrap generated during the POI.
- Because Dongkuk's scrap allocation calculation is unreasonable, Commerce should deny the scrap offset for the final determination.

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<sup>148</sup> *Id.*

<sup>149</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 68 FR 52741 (September 5, 2003), and accompanying IDM at Comment 14; see also *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine from Canada*, 70 FR 12181 (March 11, 2005), and accompanying IDM at Comment 19; and *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Thailand*, 73 FR 55043 (September 24, 2008), and accompanying IDM at Comment 2.

<sup>150</sup> See Dongkuk's Final Cost Calculation Memorandum; see also Dongkuk Final Sales Calculation Memorandum for further discussion of the recalculation of indirect selling expenses based on the G&A expense recalculation.

### *Dongkuk's Rebuttal Brief*

- In the *Preliminary Determination*, Commerce correctly accepted Dongkuk's reported scrap offset. In addition, Commerce's verification demonstrated Dongkuk's entitlement to a scrap offset.
- Commerce not only adjusted Dongkuk's steel plate costs for a scrap offset, but also included the scrap revenue as an offset to the cost of goods sold denominator used to calculate the G&A expense ratio.
- Scrap revenue represents an insignificant portion of Dongkuk's total reported COP. While Dongkuk does not measure the weight of scrap generated at the time of production, Dongkuk treats the revenue from sales of scrap generated during the steel cutting process as a separate line item in its financial statements. Contrary to the petitioner's assertion, Dongkuk offsets its COM with scrap revenue in its normal accounting records.
- Furthermore, no party suggested that Dongkuk does not generate steel scrap in the production of merchandise under consideration, nor that the volume of such scrap generated and sold is anything other than normal and realistic. Therefore, unlike the respondent in *LPT from Korea 2016-2017 Final*,<sup>151</sup> Dongkuk provided a reasonable, product-specific COM offset for the scrap generated from the production of merchandise under consideration.
- Commerce verified the quantities and values of scrap revenue that were related to the production of merchandise under consideration at the cost verification.<sup>152</sup>
- The petitioner did not claim that the verified reported scrap offset was incorrect, nor did it identify any errors with it. Therefore, there is no basis for Commerce to reject Dongkuk's reported scrap offset.

### **Commerce's Position:**

Commerce's normal practice is to allow for a scrap offset related to the quantity of scrap generated during the POI.<sup>153</sup> When the scrap quantity sold exceeds the scrap quantity generated, we limit the scrap offset to the quantity of scrap generated during production because it would be unreasonable to offset the POI costs for scrap produced prior to the POI.<sup>154</sup>

Dongkuk does not track the quantity of scrap generated on a project-specific basis during wind tower production. Rather, Dongkuk measures scrap at the time it is sold. Thus, because Dongkuk is not able to determine the total quantity of scrap generated during the POI, we look to

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<sup>151</sup> See Dongkuk's Rebuttal Brief at 24-27 (citing *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 16461 (April 19, 2019) (*LPT from Korea 2016-2017 Final*), and accompanying IDM at Comment 8).

<sup>152</sup> See Dongkuk Cost Verification Report at Exhibit 13.

<sup>153</sup> See, e.g., *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Thirteenth Administrative Review*, 73 FR 14220 (March 17, 2008), and accompanying IDM at Comment 5; see also *Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman: Final Determination of Sale at Less Than Fair Value*, 77 FR 64480 (October 22, 2012) (*CWP From Oman*), and accompanying IDM at Comment 3; and *Mid Continent Nail Corp. v. United States*, 34 C.I.T. 498, 510-12 (CIT 2010) (affirming Commerce's practice concerning the scrap offset).

<sup>154</sup> See, e.g., *CWP from Oman* IDM at Comment 3.

the available record evidence in order to determine the total quantity of scrap that could have reasonably been generated during production, in accordance with our practice.<sup>155</sup> Based on our review of the record and verified data such as the calculation of yield loss ratios, we determine that Dongkuk's reported scrap offset was related to production of the merchandise under consideration, and Dongkuk could have reasonably generated more scrap than it sold during the POI.<sup>156</sup> Accordingly, we find Dongkuk's quantity of scrap sold during the POI to be a reasonable approximation of the quantity generated; thus, we allowed Dongkuk's full scrap offset for the final determination.

## VII. RECOMMENDATION

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

☒

\_\_\_\_\_  
Agree

☐

\_\_\_\_\_  
Disagree

**X**  
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\_\_\_\_\_  
Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

<sup>155</sup> See Dongkuk Cost Verification Report at Exhibit 13; see, e.g., CWP from Oman IDM at Comment 3.

<sup>156</sup> See Dongkuk Cost Verification Report at Exhibit 13; see also Dongkuk's Final Cost Calculation Memorandum.