

**FINAL RESULTS OF REDETERMINATION  
PURSUANT TO REMAND**

*United States Steel Corp. v. United States*  
Court No. 09-00156  
Slip Op. 11-19 (Ct. Int'l Trade Feb. 15, 2011)

**SUMMARY**

This remand redetermination, issued in accordance with the February 15, 2011, opinion of the U.S. Court of International Trade (“Court” or “CIT”) in Union States Steel Corp. v. United States, Court No. 09-00156, Slip Op. 11-19 (Ct. Int'l Trade February 15, 2011) (“Remand Order”), concerns the determination of the Department of Commerce (“the Department”) for Union Steel (“Union”) in the 14<sup>th</sup> administrative review of the antidumping duty order on certain corrosion resistant steel flat products (“CORE”) from Korea covering the period August 1, 2006, through July 31, 2007. See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fourteenth Administrative Review and Partial Rescission, 74 FR 11082 (March 16, 2009) (“Final Results”) (amended at 74 FR 19199).

Pursuant to the Court’s Remand Order, the Department has reviewed and reconsidered four issues on remand:

- 1) Whether to alter its methodology of applying the major input rule to value steel substrate obtained by Union from JFE Steel (“JFE”) through purchases from a trading company. See Remand Order at 8-11, 19.
  
- 2) Whether to apply the major input rule to Union’s purchases of steel substrate from Pohang Iron & Steel Co., Ltd. and Pohang Coated Steel Co., Ltd (“POCOS”) (collectively, the “POSCO Group” or “POSCO”). See Remand Order at 6-8, 19.

- 3) Whether to disregard potential adjustments to Union's steel substrate purchase costs as negligible. See Remand Order at 5-6, 19.
- 4) Whether to collapse Union and the POSCO Group for purposes of the 14<sup>th</sup> administrative review. See Remand Order at 14-19.

For the reasons set forth below, the Department determines that major input rule adjustments are warranted for purchases of steel substrate from JFE and the POSCO Group. Furthermore, we have made all adjustments for material purchases covered by the major input rule, regardless of magnitude. Finally, we will not collapse Union and the POSCO Group as noted in our discussion below. Therefore, the Department has recalculated Union's margin consistent with the above findings. In addition, we have recalculated Union's margin to account for revising the Department's physical characteristics classifications and subsequent model-match results to create a separate category for laminated CORE products, pursuant to the Court's February 15, 2011, opinion and order in Union Steel v. United States, Court No. 09-00130, Slip Op. 11-18 (Ct. Int'l Trade February 15, 2011) ("Union Steel"). See Remand Order at 18, n.4.

## **BACKGROUND**

On March 16, 2009, the Department published the final results of the 14<sup>th</sup> administrative review of the antidumping duty order on CORE from Korea covering the 2006-2007 period of review. See Final Results, and accompanying Issues and Decision Memorandum ("Decision Memo"). Having received information from Union concerning its purchases of steel substrates from affiliated parties, the Department determined that it would apply the major input rule to steel substrate obtained by Union from JFE, a Japanese company affiliated with Union, through DKC, one of its affiliated trading companies. See "Final Results in the 2006/2007

Administrative Review on Corrosion-Resistant Carbon Steel Flat Products from Korea: Calculation Memorandum for Union Steel Manufacturing Inc.,” from Jolanta Lawska to the File, dated March 9, 2009 at 6 (“Union’s Final Calculation Memo”). The Department also determined that it would apply the transactions disregarded rule instead of the major input rule to steel substrate purchases from the POSCO Group. See id. at 5-6. In applying the major input rule to steel substrate obtained by Union from JFE and the transactions disregarded rule to steel substrate purchases from the POSCO Group, the Department declined to make any adjustments accounting for market prices being in excess of transfer prices because it determined any such difference to be negligible. Id. at 7. Additionally, the Department determined not to treat Union and the POSCO Group as a single entity. See Decision Memo at 22-23; see also “Whether to Collapse the Antidumping Duty Order with Respect to Subject Merchandise Produced and Exported by Pohang Iron & Steel Co., Ltd. (POSCO) and Pohang Coated Steel Co., Ltd. (POCOS) (collectively, the POSCO Group); and Union Steel Manufacturing Co. Ltd. (Union),” from Victoria Cho to Melissa Skinner, dated September 2, 2008 at 2-4 (“Collapsing Memo”).

United States Steel Corporation (“U.S. Steel”) and Nucor Corporation (“Nucor”) challenged certain aspects of the Department’s Final Results to the CIT, which remanded the above four issues to the Department. The Court remanded the manner in which the Department applied the “major input rule” to steel substrate obtained by Union from JFE Steel through the trading company. The Court directed the Department to explain “why {it} did not seek to obtain production cost information from the producer rather than purchase cost information from the trading company and why it concluded that purchase cost information from the trading company would suffice for application of the major input rule.” Remand Order at 10. The Court also remanded the Department’s determination not to apply the major input rule to Union’s substrate

purchases from the POSCO Group because record evidence did not support the conclusion in the Final Results that Union purchased an insignificant percentage of its total substrate purchases from the POSCO Group. See id. at 7-8. The Court granted the Department's request for voluntary remand to reconsider whether certain adjustments to Union's substrate purchase costs should be considered negligible under 19 CFR 351.413. See id. at 5-6. Lastly, the Court remanded the Department's determination not to collapse Union and the POSCO Group. The Court held that "the Department erred in stating in the Decision Memorandum its finding that '{t}here is no evidence on the record of this proceeding which indicates that the POSCO Group and Union are engaged in any significant transactions during the {period of review}'." Id. at 17 (citing Decision Memo at 22). Additionally, because of "inconsistent" statements between a pre-decisional memorandum and the Decision Memo, the Court directed the Department to "revisit the question of whether the two companies have production facilities for manufacturing subject merchandise that would not require substantial retooling to restructure manufacturing priorities." Id. at 16-17.

On June 14, 2011, the Department disclosed the Draft Remand<sup>1</sup> to all parties for comment. On June 21, 2011, Nucor, U.S. Steel, the POSCO Group, and Union submitted their respective comments on the Draft Remand.

## ANALYSIS

In reconsidering its determination, the Department has carefully reevaluated the record evidence in light of the specific instructions of the Court and adjusted its margin calculations accordingly.

---

<sup>1</sup> See the Department's June 14, 2011, draft remand in United States Steel Corp. v. United States, Court No. 09-00156, Slip Op. 11-19 (Ct. Int'l Trade Feb. 15, 2011), entitled "DRAFT OF REDETERMINATION PURSUANT TO REMAND" ("Draft Remand").

1. Union's Purchases of Steel Substrate from JFE through Its Affiliated Company

When an input purchased from an affiliated party is considered a major input and the Department has reasonable grounds to believe that the price paid to the affiliated party is less than the cost of production, the Department may apply the major input rule. See section 773(f)(3) of the Tariff Act of 1930, as amended (“the Act”). Pursuant to the rule, the Department may value that input using the transfer price (which is the price paid to the affiliated party), the market price, or the cost of production, whichever is highest. Section 773(f)(3) of the Act grants the Department some discretion in applying the major input rule. Specifically, the Department “may determine the value of the major input on the basis of the information available regarding such cost of production . . . .” Id. (emphasis added); 19 CFR 351.407(b). Even if the input is not considered “major,” the Department may invoke the transactions disregarded rule. Under this provision, the Department may disregard the reported value of an input (i.e., the transfer price) in favor of the market price, if the Department determines that a transaction between affiliated parties “does not fairly reflect” the market value of the input. See section 773 (f)(2) of the Act.

We have determined pursuant to section 773(f)(3) of the Act, and in accordance 19 CFR 351.407(b), that Union's steel substrate purchases from JFE through DKC reached the status of being major inputs. See Decision Memo at Comment 7. The percent of steel substrate purchases from JFE as a percent of Union's cost of manufacturing (“COM”), based on record evidence, is calculated in Attachment 6 of “Cost of Production and Constructed Value Adjustments Memorandum for Draft Remand Redetermination – Union Steel,” from the CORE Team to Melissa Skinner, dated June 14, 2011 (“Draft Remand COP and CV Adjustment Memo”). During this administrative review, the Department requested and received Union's affiliated trading company's weighted-average purchase price from JFE, as well as the trading company's

selling, general, and administrative (“SG&A”) expenses. See Union’s July 16, 2008, supplemental questionnaire response at 57 and Exhibit D-34. Consistent with prior administrative reviews of the CORE order, Union reported that it could not provide JFE’s cost of production data, thus the Department did not request JFE’s cost of production data for the substrate input during the administrative proceeding. See Union’s rebuttal brief, dated October 17, 2008, at 20-21 (citing Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of Antidumping Duty Administrative Review, 71 FR 53370, 53375 (September 11, 2006) (“12<sup>th</sup> CORE Review Prelim”), unchanged in Notice of Final Results of the Twelfth Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 72 FR 13086 (March 20, 2007)).

As part of this remand proceeding, the Department requested that Union submit JFE’s cost of production (“COP”) for all steel substrate input obtained from its affiliated trading company, DKC, during the period of review (“POR”). See the Department’s April 5, 2011, questionnaire. Union responded that it was unable to comply with the Department’s request because JFE refused to provide such information claiming that its “corporate policy does not allow to disclose the cost information to any business partners.” See Union’s April 19, 2011, questionnaire response at Exhibit 3.

Based on the record of this case, we have concluded that Union was not in a position to compel its affiliate JFE to provide the COP information. We calculate JFE’s ownership in Union as shown in Attachment 8 of the Draft Remand COP and CV Adjustment Memo. The minor level of JFE’s ownership interest in Union is not significant enough to reach a reasonable conclusion that Union could have obtained the data. Due to the relatively minor degree of

affiliation, coupled with Union's documentation of JFE's refusal to provide its COP data, we conclude that Union acted to the best of its ability to obtain the requested information. Moreover, steel substrate is merely an input in the production of subject merchandise. Therefore, JFE is not a producer of subject merchandise at issue in this review and is not an interested party in this review. Thus, we have decided not to make an adverse inference against Union for not reporting the information. Furthermore, as there is no available record evidence as to JFE's COP, we have compared the transfer price from DKC to Union with the market price of the substrate in conducting our major input analysis.

This is consistent with our approach in a prior review of Union when Union was unable to obtain JFE's COP data. See Union's rebuttal brief, dated October 17, 2008, at 20-21 (citing 12<sup>th</sup> CORE Review Prelim, 71 FR at 53375). Our practice of not requiring the COP data for an input when the respondent is unable to compel an affiliate is consistent with other cases where the application of the major input rule was complicated by a low level of affiliation. In Certain Cut-To-Length Carbon Steel Plate From Brazil: Final Results of Antidumping Duty Administrative Review, 63 FR 12744, 12751 (March 16, 1998), the Department stated that:

{respondent} USIMINAS/COSIPA did attempt to obtain cost of production information from its affiliate, CVRD, and otherwise complied with the Department's information requests. Further, the Department has determined that, due to the nature of its affiliation with CVRD, USIMINAS/COSIPA could not compel CVRD to provide such information to the Department. Thus, the Department will not impute CVRD's refusal to provide the requested cost information to USIMINAS/COSIPA. . . . Public data on the record of the ... proceeding indicates that CVRD holds only 15 percent of USIMINAS' stock.

The Department further stated in that case:

Because USIMINAS/COSIPA did not provide CVRD's cost of production data, the Department has made a determination with respect to the appropriate value for iron ore on the basis of the facts available. Because the Department finds that USIMINAS/COSIPA has acted to the best of its ability in attempting to obtain the CVRD cost data, however, we will not make an adverse assumption in selecting from

the facts available. Therefore, because the transfer prices for iron ore are generally higher than the market prices for iron ore, and because the record contains no indication that the cost of production of the iron ore would be higher than the transfer prices for that input, we are using the reported transfer prices for this major input as facts available in these final results. Id.

Likewise, in Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea, 65 FR 16880 (March 30, 2000), and accompanying Issues and Decision Memorandum at Comment 6, Commerce stated that “{b}ecause Samyang is not a majority owner of Samnam, we cannot conclude that Samyang alone has the authority to compel its affiliate to cooperate. Furthermore, there is no evidence on the record that Samyang could force Samnam to comply with its requests for information. Given Samyang’s attempts to get the COP information from Samnam and, absent a controlling interest or influence over Samnam, we have no basis to conclude that Samyang has failed to act to the best of its ability in trying to obtain the COP data from its affiliate.” The Department further stated that, “In cases where we did not have COP data on the record, either from the respondents or from the petitioners, we have used the higher of the transfer price or the market price because there was no indication on the record that the COP would be higher than the transfer or market price. . . . Thus, the Department’s policy is clear that when COP is not provided, and the Department has determined that the respondent has acted to the best of its ability to obtain the information, the Department will look to the record to determine what information will replace the missing COP information. We will consider any information on the record indicating whether the affiliate’s major input COP was higher than the market or transfer price. Absent such information, we will choose between the higher of the market or transfer price.” Finally, the Department has looked at an affiliated party’s ability to control what an affiliated party can report to the Department. See, e.g., Ball Bearings and Parts Thereof From

France, Germany, Italy, Japan, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 67 FR 55780 (August 30, 2002), and accompanying Issues and Decision Memorandum at Comment 19. In this remand redetermination, we reached a similar conclusion that the affiliated party was not able to compel its affiliate, JFE, to provide COP information.

In addition to comparing the transfer price between DKC and Union to the market price of the substrate, we compared DKC's "purchase cost" (i.e., the transfer price between JFE and DKC, plus DKC's selling, general and administrative expenses) to the transfer price between DKC and Union. As an affiliated trading company, DKC performs a service on behalf of Union, thus we tested whether DKC charged Union an arm's-length or market price for the service. In the absence of the actual market price information for the service provided by DKC, we calculated a "market price" using DKC's cost information. Specifically, we requested and received DKC's weighted-average purchase price for coils from JFE (i.e., a transfer price), as well as the ratio of DKC's SG&A expenses to its cost of sale. See Union's July 16, 2008, supplemental questionnaire response at Exhibit D-34. By comparing DKC's purchase price, plus its SG&A expenses, to the transfer price between DKC and Union, it can be determined whether DKC recovered its costs. We found transactions where DKC's "purchase cost" was greater than the transfer price between DKC and Union, which indicates that the service was not provided at an arm's-length price. However, we note that the average market price of these substrate coils was greater than both the transfer price and the "purchase cost." Thus, we adjusted the transfer price between DKC and Union to reflect the market price for the coil. See Draft Remand COP and CV Adjustment Memo at 3. Thus, for those transactions we relied on the market price of the substrate.

For purposes of this remand redetermination, in summary, we found that although the transfer price was higher than DKC's purchase cost, the market price was still higher for the hot rolled coils purchased by Union from JFE through DKC. Thus, we adjusted hot-rolled coils purchased by Union from JFE through DKC to market price. Id. at 3. For the full-hard coils purchased by Union from JFE through DKC, we found that the transfer price was higher than both DKC's purchase cost and the market price. Thus, we did not adjust full-hard coils purchased by Union from JFE through DKC. Id. at 3. Finally, for the cold rolled coils purchased by Union from JFE through DKC, we found that the transfer price was lower than DKC's purchase cost, but that the market price was higher. Thus, we adjusted cold-rolled coils purchased by Union from JFE through DKC to market price. Id. at 3.

Parties did not submit comments on the draft remand for this issue.

2. Union's Purchases of Steel Substrate from the POSCO Group

On remand, the Department has reexamined its decision regarding the application of the major input rule to Union's purchases of steel substrate from the POSCO Group. In the Final Results, we did not apply the major input rule to Union's steel substrate purchases from the POSCO Group because we found that the POSCO Group's steel substrate accounted for an insignificant percentage of Union's total purchases of steel substrate. See Decision Memo at Comment 7. On remand, we have reviewed the record evidence and found that the POSCO Group's supplied steel substrate represents a substantial portion of Union raw material inputs during the POR. The percent of POSCO produced coils as a percent of COM during the POR is identified in Attachment 6 of the Draft Remand COP and CV Adjustment Memo. However, record evidence indicates that the POSCO Group did not become affiliated with Union until May

2, 2007, slightly less than three months before the end of the POR, when the POSCO Group acquired approximately 9.8 percent of Union. See Union's April 19, 2011, supplemental questionnaire response at page 1.

On remand, we requested that Union report the value and volume of Union's purchases of steel substrate from the POSCO Group on a monthly basis during the POR to determine whether a major input analysis is appropriate for the portion of the POR when the two companies were affiliated. We also requested the POSCO Group's COP data for all of Union's steel substrate purchases during the period when the two companies were affiliated. See the Department's April 5, 2011, questionnaire to Union. In response, Union reported the volume and value of its steel substrate purchases from the POSCO Group and other suppliers between May and July 2007, which corresponds to the portion of the POR when the two companies were affiliated. See Union's April 19, 2011, questionnaire response at 1 and Exhibit 1. On April 19, 2011, the POSCO Group, on behalf of Union, reported its COP data for the May-July period, which corresponds to the time of the POR during which the two companies were affiliated. See the POSCO Group's April 19, 2011, questionnaire response at Exhibit 1. In Attachment 6 of the Draft Remand COP and CV Adjustment Memo, the Department calculates Union's fourth quarter steel substrate purchases from POSCO as a percent of Union's COM for the POR, which we find reaches major input status.

Under the major input rule, when an input purchased from an affiliated party is considered a "major input" and the Department has reasonable grounds to believe that the price paid to the affiliated party is less than the cost of production, the Department, "may determine the value of the major input on the basis of the information available regarding such cost of production." See section 773(f)(3) of the Act. We evaluated record evidence regarding Union's

purchases from the POSCO Group during the May-July 2007 period when the two companies were affiliated to determine whether an adjustment to COM is warranted under section 773(f)(3) of the Act.

To value such purchases, the Department relied on the COP data submitted by the POSCO Group on April 19, 2011, and Union's supplemental section D questionnaire responses for the COP calculation. We treated Union's steel substrate purchases from POSCO before May 2007 as unaffiliated purchases. We initially compared the POSCO Group's COP for substrate input to the average transfer and market prices. In accordance with section 773(f)(3) of the Act, we used the highest of the market price, transfer price, or cost for the major-input valuation. The results of our analysis showed that an adjustment is warranted for both types of steel substrate that Union purchased after it became affiliated with POSCO. Specifically, we determined that, for both types of substrate, the market price exceeded the transfer price. See Draft Remand COP and CV Adjustment Memo at 2. Pursuant to section 773(f)(3) of the Act and 19 CFR 351.407(b), we have adjusted Union's substrate costs for its purchases from the POSCO Group for the portion of the POR when Union and the POSCO Group were affiliated.

Comments:

In its comments on the Draft Remand, Union argues that the Department improperly based POSCO's component of the hot-rolled coil material ("HCMAT") adjustment in its calculations on the difference between the average per-unit transfer price between POSCO and Union in the post-affiliation May through July 2007 period and the average per-unit price from Union's unaffiliated suppliers for the entire POR, including purchases from POSCO in the pre-affiliation August 2006 through April 2007 period. In comparison, the Department based the

DKC component of the HCMAT adjustment on the average per-unit transfer and average per-unit market price for the entire POR.

Therefore, Union contends that the Department made an apples-to-oranges comparison for the POSCO substrate purchases and overstated the HCMAT adjustment to Union's COP. Specifically, Union reasons that the annual average market price is overstated by the higher prices that prevailed in the pre-affiliation part of the POR. The transfer price in the post-affiliation period is based on the lower priced sales that prevailed in the May through July 2007 period of the POR.

Union contends that the Department's comparison between the average market price and the average transfer price should be based on the same time period. Union provided the Department with a calculation of the average market price based on Union's purchases from unaffiliated suppliers and a per unit average transfer price based on Union's purchases from POSCO during the post affiliation May through July 2007 period. See Exhibit 1 of Union's June 21, 2011, comments on the Draft Remand.

U.S. Steel comments that the Draft Remand is consistent with the Court's Remand Order with respect to the major input analysis.<sup>2</sup>

---

<sup>2</sup> Specifically, U.S. Steel agrees with the Department's decision to not consider adjustments negligible under the Department's major input rule. U.S. Steel also agrees with the Department's decision to apply the major input rule to the POSCO Group. Finally, U.S. Steel agrees with the Department's application of the major input rule with regards to purchases of steel substrate from Union's affiliate JFE. Nucor and POSCO did not comment on the Department's major input analysis in the Draft Remand.

Department's Position:

Upon consideration of comments upon issue 2 of the Draft Remand, the Department has changed its calculation for POSCO's major input adjustment to account for the average price for steel substrate in the post-affiliation period (i.e., May-July 2007). Therefore, the Department has compared the post-affiliation average market price to the post-affiliation transfer price. See Attachment 3(c) of "Cost of Production and Constructed Value Adjustments Memorandum for Final Remand Redetermination – Union Steel," from the CORE Team to Melissa Skinner, dated July 15, 2011 ("Final Remand COP and CV Adjustment Memo"). For certain steel substrate, where the POSCO Group made no purchases during the post-affiliation period, we continue to use the POR average market price to compare to the post-affiliation transfer price. See Attachment 3(b) of the Final Remand COP and CV Adjustment Memo.

3. Whether Adjustments Under the Major Input Rule are Negligible

In the Final Results, we indicated that we would not make adjustments for certain purchases because such adjustment would be negligible. See Union's Final Calculation Memo at 7. In supporting those statements, we made several clerical errors and understated the amounts of the adjustments involved, which prompted the Department to seek voluntary remand on this issue. See Remand Order at 5-6. For purposes of this remand redetermination, we have determined not to exercise the discretion provided under 19 CFR 351.413 to disregard insignificant adjustments. Instead, we have made all adjustments for material purchases covered by the major input rule regardless of magnitude because we recalculated the numbers and they turned out, in our opinion, to be significant. See Remand COP and CV Adjustment Memo.

Parties did not submit comments on the draft remand for this issue.

4. Whether to Collapse Union and the POSCO Group

The Department's regulations provide that the Department will collapse two affiliated producers if it makes the following two findings of fact: (1) the producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (2) there is a significant potential for the manipulation of price or production. See 19 CFR 351.401(f)(1).

On April 27, 2007, DSM purchased 9.8 percent of POCOS' shares, and on May 2, 2007, the POSCO Group purchased a 9.8 percent interest in Union from DSM. See the POSCO Group's February 4, 2008, section A response at A-13-14, Union's July 16, 2008 supplemental response at 5, and Union's April 19, 2011, supplemental questionnaire response at 1. The POSCO Group submitted a list of its affiliated companies through stock ownership, its ten largest shareholders, the purchase agreement between the POSCO Group and Union/DSM, and its Korean Securities and Exchange Commission ("KSEC") filing in regards to the stock transactions with DSM. See the POSCO Group's February 4, 2008, section A response at Exhibits A-4, A-5, and the POSCO Group's March 28, 2008, supplemental response at Exhibits S-4, S-5, respectively.

In our Final Results, we determined not to collapse Union and the POSCO Group because we found no significant potential for manipulation of price or production:

As previously stated in the preliminary results, the POSCO Group and Union's operations are not intertwined, such as through common ownership, sharing of board members, sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between affiliated producers. In addition, there is no evidence that the POSCO Group and Union share sales information, production and pricing decisions, facilities, or employees. There is no evidence on the record of this proceeding which indicates that the POSCO Group and Union are engaged in any significant transactions during the POR.

Decision Memo at Comment 8. The Court remanded the Department's collapsing finding on multiple grounds. First, the Court cited conflicting statements in a pre-decisional memorandum and the Decision Memo and ordered the Department to "revisit the question of whether the two companies have production facilities for manufacturing subject merchandise that would not require substantial retooling to restructure manufacturing priorities." *Id.* at 16-17. Second, the Court held that "the Department erred in stating in the Decision Memorandum its finding that '{t}here is no evidence on the record of this proceeding which indicates that the POSCO Group and Union are engaged in any significant transactions during the POR.'" *Id.* at 17 (citing Decision Memo at 22). After conducting our remand analysis, we continue to find that collapsing Union and the POSCO Group is not warranted.

*Whether the Producers Have Production Facilities for Similar or Identical Products that Would Not Require Substantial Retooling at Either Facility in Order to Restructure Manufacturing Priorities*

We acknowledge our previous lack of clarity regarding whether the POSCO Group and Union would need to retool their operations in order to restructure their manufacturing operations. In the Final Results, we failed to clearly reaffirm our finding in the preliminary analysis memo that the firms would not need to retool their operations in order to restructure their manufacturing priorities. See Collapsing Memo at 4; Decision Memo at Comment 8. Both firms are large producers of subject merchandise, so in the context of analyzing whether to collapse these parties, we recognize that substantial retooling of facilities would not be needed to restructure manufacturing priorities. See Collapsing Memo at 4. However, as discussed below, because of the nature of the operations of these entities, our collapsing analysis focuses on the second required criterion identified by 19 USC 351.401(f)(1), the potential for manipulation of price and production absent collapsing.

The Department examines the “totality of circumstances” in determining whether there is a significant potential for the manipulation of price or production and no one factor is dispositive. See Koyo Seiko Co., Ltd. v. United States, 516 F. Supp. 2d 1323, 1346 (Ct. Int’l Trade 2007). Therefore, collapsing “requires a finding of more than affiliation.” See Antidumping Duties; Countervailing Duties Part II, 62 FR 27296, 27345 (May 19, 1997) (“Preamble”). Among the factors that the Department may consider in determining whether there is a significant potential for manipulation are the level of common ownership, the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, and whether operations are intertwined. See 19 CFR 351.402(f)(2). In considering these factors below, we separate our discussion into two topics: A) the structure of the firms and their operations; and B) transactions between the parties during the POR.

A) The Structure of the Firms and Their Operations

In examining the factors enumerated by the regulations to determine the potential for manipulation of price or production, the Department could find only a “minimal” level of common ownership. Like CORE from Canada,<sup>3</sup> the POSCO Group and Union are large independent producers of CORE and other steel products and a “minimal” level of common ownership does not change the essential business of the companies. Moreover, other than the acquisition of minimal ownership shares, there have been no other significant material changes in the business relationship between the POSCO Group and Union during this POR to warrant reconsideration of collapsing the two entities. Minimal ownership in each other’s company was reported to the KSEC and no further action was required of the companies. See the POSCO

---

<sup>3</sup> See Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 53363, 53365 (September 11, 2006), unchanged in final results, 72 FR 12758 (March 19, 2007) (“CORE from Canada”).

Group's February 4, 2008, section A response at Exhibits A-4, A-5, and the POSCO Group's March 28, 2008, supplemental response at Exhibits S-4, S-5, respectively.

The POSCO Group and Union are both "exporter(s) and producer(s)" of subject merchandise, as defined by section 771(28) of the Act. There is no evidence indicating any overlap of individuals in management or corporate governance roles, nor evidence indicating any intertwining of business operations. See Collapsing Memo at 4; Decision Memo at Comment 8.

In addition, the POSCO Group and Union are publicly traded companies that are strictly monitored and audited by the KSEC. See the POSCO Group's February 4, 2008, section A response at Exhibits A-4, A-5, and Union's January 22, 2008, section A response at A-20. Since the Asian financial crisis, Korean companies are strictly monitored by the KSEC to prevent conglomerates from forming. See the POSCO Group's February 4, 2008, section A response at Exhibits A-4, A-5, and the POSCO Group's March 28, 2008, supplemental response at Exhibits S-4, S-5, respectively.

Therefore, with respect to the structure of the firms and their operations, we find nothing on the record indicating a significant potential for the manipulation of price or production.

B) Transactions between Union and the POSCO Group During the POR

The Department does recognize that it was inaccurate when it explained in the Final Results that the POSCO Group accounted for an insignificant portion of Union's material purchases. See Decision Memo at Comment 8. However, in considering the POSCO Group as an affiliated party with Union, we note that the acquisition of ownership interests took place in May 2007, which means that the parties were only affiliated for the last quarter of the POR and the parties were unaffiliated for three quarters of the POR. The fact that Union purchased a

significant quantity of material inputs from the POSCO Group both before and after they became affiliated does not fundamentally change our analysis or conclusions.

The majority of the POSCO Group's transactions were arm's-length, market based, and with unaffiliated parties. After the POSCO Groups' purchase of DSM's shares of Union, there is no indication of a change in the existing supply relationship, or indeed any commercial relationship, between the parties. See Union's April 19, 2011, supplemental questionnaire response at 5. Union did not purchase any finished steel products for resale without further processing from the POSCO Group. Union also continued to purchase other categories of inputs primarily, if not exclusively, from suppliers other than the POSCO Group. See Union's February 4, 2008, section D response at Exhibit 8. In addition, the POSCO Group does not purchase materials, finished products, or services from Union and operates one of the world's largest integrated steel mills, mass producing other major steel products. See the POSCO Group's February 4, 2008, section A response at A4-A15. Union has purchased hot-rolled steel from the POSCO Group historically in past administrative reviews of this order, which has been consistent and carefully verified as recent as the 13<sup>th</sup> administrative review. Nothing on the record indicates that Union changed its purchasing practices as a result of becoming affiliated with the POSCO Group.

Therefore, after separately examining the structure of the firms and their operations and the transactions between the parties during the POR, we find that the totality of circumstances and the pronounced absence of record evidence supports the conclusion that there is no significant potential for the POSCO Group and Union to manipulate the price or production of CORE exported to the United States.

Comments:

Nucor contends that the Department erroneously found that there was no potential for manipulation of price or production. Nucor suggests that there is significant potential for the manipulation of price and production in the absence of collapsing Union and the POSCO Group because Union purchased a substantial portion of its total substrate purchases during the POR from the POSCO Group to produce its subject merchandise. See Nucor's October 9, 2008, case brief at 4 and Nucor's June 21, 2011, comments on the Draft Remand at 2.

Nucor further states in its comments on the Draft Remand that the Department failed to discuss several key factors in weighing whether there is evidence of Union and the POSCO Group intertwining business operations. Nucor comments that, based upon a Memorandum of Understanding ("MOU") between the POSCO Group and DSM, there is evidence of a significant potential for manipulation if Union and the POSCO Group are not collapsed, specifically current and future sharing of sales, production, pricing, and technological information, and the potential for one entity to shift production to the other in order to avoid a high antidumping duty rate. Moreover, Nucor argues that the Department failed to address press releases and news reports detailing the share acquisitions of the POSCO Group and DSM, which Nucor claims documents the strengthening of future ties between the POSCO Group and Union in cold-rolled steel business.

Department's Position:

The Department disagrees that the record of this proceeding supports a determination that Union and the POSCO Group should be treated as a single entity.

The Department continues to find that Union's purchases from the POSCO Group do not justify treating Union and the POSCO Group as one entity in this case. Union has purchased from the POSCO Group since its inception and the POSCO Group is a significant domestic

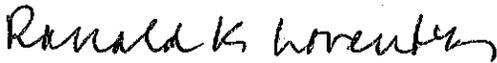
supplier of all Korean hot-rolled steel. See the POSCO Group's February 4, 2008, section A response at A4-A15. Union has purchased from the POSCO Group during this POR and in the past. The Department finds these facts support the finding that the purchases in question are nothing more than a continuation of a prior commercial relationship rather than a vehicle for manipulation in regards to dumping.

Furthermore, the Department concludes that Nucor's reliance upon certain language from the MOU to extrapolate a potential risk that the POSCO Group and Union could, sometime in the future, manipulate price and production is merely speculative and does not give rise to a significant potential for manipulation. See Union's July 16, 2008, supplemental questionnaire response at Exhibit A-36. Moreover, the MOU and media reports accompanying the share acquisition articulate only very general goals consistent with such a transaction. The Department finds this evidence to be consistent with its finding of affiliation, but insufficient to collapse. In weighing the totality of the circumstances, the Department finds that consideration of evidence cited by Nucor does not detract from the analysis of this issue in the Draft Remand such that the finding not to collapse is unsupported by substantial evidence. Accordingly, the Department continues to find that Union and the POSCO Group should not be collapsed. See id.; U.S. Steel's March 18, 2008, factual information submission at Volume 2, Exhibits A and B.

## CONCLUSION

Based on the forgoing analysis and discussion, the Department has decided, pursuant to the remand order of the Court, to correct our application of the major-input rule for Union's purchases from JFE and the POSCO Group and to make all such adjustments regardless of their magnitude.

Consistent with the Court's remand instructions, the Department has also made adjustments to Union's margin calculation to reflect new physical characteristics classifications and model-match results pursuant to the remand order in Union Steel. See Remand Order at 18, n.4. Accordingly, the Department has recalculated Union's margin from 7.56 percent in the Final Results to 7.45 percent.



Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

July 15, 2011  
Date