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

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

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

DATE: March 29, 2017

I. Summary

We analyzed the comments of the interested parties in the less-than-fair-value (LTFV) investigation of certain carbon and alloy steel cut-to-length plate (CTL plate) from Austria. As a result of our analysis and based on our findings at verification, we made changes to the margin calculations for voestalpine, the only mandatory respondent in this investigation.1 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: Product Characteristic and Model Matching Methodology  
Comment 2: Collapsing of Companies by Division  
Comment 3: Changes to the Level of Trade Analysis  
Comment 4: Use of Actual Weight Bases  
Comment 5: Adjustment to Home-Market Sales for Hub Fee  
Comment 6: Calculation of U.S. Indirect Selling Expenses for Non-Further-Manufactured Products

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1 In a Memorandum to Scot Fullerton, Director, Office VI, on the subject of the “Less Than Fair Value Investigation of Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria: Preliminary Affiliation and Collapsing Memorandum for voestalpine,” dated November 4, 2016 (Collapsing Memorandum), we preliminarily determined that the following companies were affiliated and should be treated as a single entity for purposes of the investigation, pursuant to section 771(33)(F) of the Act: voestalpine Grobblech and voestalpine Steel Service Center GmbH, which are producers of carbon plate; Bohler Edelstahl GmbH & Co KG and Bohler Bleche GmbH & Co KG, producers of alloy plate; and Bohler International GmbH, a home-market sales affiliate (collectively voestalpine). We refer to the collapsed entity as “voestalpine” throughout this memorandum.
Comment 7: Use of Revised Databases to Calculate Final Dumping Margin
Comment 8: Implementation of Verification Findings
   A. Reported Weight for a CEP Sale
   B. Cost Variances
Comment 9: BBG’s Purchases from Affiliated Suppliers
Comment 10: Grobblech and SSC’s Affiliated Supplier Purchases
Comment 11: Record-Keeping Based on Country of Origin
Comment 12: Differential Pricing

II. Background

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

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

In November 2016, December 2016, and January 2017, we conducted verification of the sales and cost of production (COP) data reported by voestalpine, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). In February 2017, we requested that voestalpine submit revised home-market sales, U.S. sales, and COP databases. We received these databases in the same month.

We invited parties to comment on the Preliminary Determination. The European Commission filed comments on the Preliminary Determination on December 23, 2016. In February 2017, SSAB Enterprises LLC (SSAB) and voestalpine submitted case and rebuttal briefs.

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2 See Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria: Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination, 81 FR 79416 (November 14, 2016) (Preliminary Determination), and accompanying Preliminary Decision Memorandum, “Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria” (Preliminary Decision Memorandum).

3 See Memorandum, “Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Final Scope Comments Decision Memorandum,” dated November 29, 2016 (Final Scope Memorandum).


5 See Letter, “Case Brief of voestalpine AG, voestalpine Grobblech GmbH, voestalpine Steel and Service Center GmbH, Bohler Edelstahl GmbH & Co KG, Bohler International GmbH, Bohler Bleche GmbH & Co KG, and
requested a hearing on December 14, 2016, however it untimely withdrew the request. As no other party requested a hearing, no hearing was held.

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

**IV. Critical Circumstances**

On September 7, 2016, the Department issued its Preliminary Determination of Critical Circumstances. Accordingly, based on trade data submitted through June 2016, the Department preliminarily determined that critical circumstances existed for voestalpine importers or exporters, but not for all other Austrian producers, imports, or exports. No party raised the issue of critical circumstances for this final determination; however, because critical circumstances were alleged in this case and because we made a preliminary determination, pursuant to section 735(a)(3) of the Act, and 19 CFR 351.210(c), we hereby make a final determination on the issue of critical circumstances.

In order to determine whether there is a history of dumping pursuant to section 735(a)(3)(A)(i) of the Act, the Department generally considers current or previous antidumping orders on subject merchandise from the country in question in the United States and current orders imposed by other countries with regard to imports of the same merchandise. The Department has not previously issued, nor are we aware of any other World Trade Organization (WTO) member issuing, antidumping orders on CTL plate from Austria. In determining whether importers knew or should have known that exporters were selling at less than fair value, the Department also considers the magnitude of dumping margins. The Department has found margins of 15 to 25 percent (depending on whether sales are export price sales or constructed export price sales) to be sufficient for this purpose. In this Final Determination, the Department found a dumping
margin of 53.72 percent. Therefore, we find that the importers knew, or should have known, that exporters in Austria were selling subject merchandise at less than fair value as enumerated under section 735(a)(3)(A)(ii) of the Act.

In determining whether there are “massive imports” over a “relatively short period,” pursuant to section 735(a)(3)(B) of the Act and 19 CFR 351.206(h), the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (i.e., the base period) to a comparable period of at least three months following the filing of the petition (i.e., the comparison period). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.  

On July 29, 2016, the Department requested that voestalpine report its monthly “quantity and value data for subject merchandise shipped to the United States beginning with August 2016, through the last day of the month of the publication of the Preliminary Determination of this investigation” (i.e., November 2016). As such, respondent reported all relevant shipment data available at the time, and necessarily updated with more recent monthly totals, as they became available during the proceeding.

Accordingly, for the Preliminary Determination of Critical Circumstances, the Department compared the total volume of shipments from January 2016 through March 2016 (the base period), to shipment data for April 2016, through June 2016 (the comparison period). For “all others,” the Department used Global Trade Atlas (“GTA”) data, and subtracted exports reported by voestalpine from the monthly GTA data.

With respect to the specific analysis, pursuant to our request for parties to report shipment data from August 2015 through the last day of the month of the publication of the preliminary determination of this investigation (i.e., November 2016), we note that the appropriate analysis now considers the eight-month comparison period of April 2016 through November 2016 to the eight-month base period of August 2015 through March 2016.

In evaluating import levels for “all others,” we compared GTA data for the period August 2015 through March 2016 with the preceding eight-month period of April 2016 through November 2015.

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See 19 CFR 351.206(h)(2).


Id.

Id.

The Preliminary Determination’s publication date of November 4, 2016, resulted in the Department’s prior request for information including shipment data through November 2016.
2016, adjusted to remove shipments made by the mandatory respondent, voestalpine. For “all other” producers and exporters, our critical circumstances determination demonstrates massive imports (i.e., an increase greater than or equal to 15 percent between the base and comparison periods). As such, and as a result of the affirmative finding that CTL plate is, or is likely to be, sold in the United States at LTFV, the Department finds that critical circumstances exist for “all other” producers and exporters for this final determination.

voestalpine submitted updated shipment data, through November 2016, as requested. Based on the information submitted by voestalpine (i.e., for the comparison period April 2016 through November 2016, with the base period of August 2015 through March 2016); we find massive imports for voestalpine (i.e., an increase greater than or equal to 15 percent between the base and comparison periods), and thus, we are making a positive finding of critical circumstances for voestalpine, for this final determination.

IV. Scope of the Investigation

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

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

(1) except where otherwise stated where the nominal and actual thickness or width measurements vary, a product from a given subject country is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above; and

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18 Id.
20 See Final Critical Circumstances Data Memo.
(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

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

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

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

1. products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances;

2. military grade armor plate certified to one of the following specifications or to a specification that references and incorporates one of the following specifications:

   - MIL-A-12560,
   - MIL-DTL-12560H,
   - MIL-DTL-12560J,
   - MIL-DTL-12560K,
   - MIL-DTL-32332,
   - MIL-A-46100D,
   - MIL-DTL-46100-E,
   - MIL-46177C,
   - MIL-S-16216K Grade HY80,
   - MIL-S-16216K Grade HY100,
   - MIL-S-24645A HSLA-80;
   - MIL-S-24645A HSLA-100,
   - T9074-BD-GIB-010/0300 Grade HY80,
   - T9074-BD-GIB-010/0300 Grade HY100,
   - T9074-BD-GIB-010/0300 Grade HSLA80,
   - T9074-BD-GIB-010/0300 Grade HSLA100, and
   - T9074-BD-GIB-010/0300 Mod. Grade HSLA115,
except that any cut-to-length plate certified to one of the above specifications, or to a military grade armor specification that references and incorporates one of the above specifications, will not be excluded from the scope if it is also dual- or multiple-certified to any other non-armor specification that otherwise would fall within the scope of this order;

(3) stainless steel plate, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(4) CTL plate meeting the requirements of ASTM A-829, Grade E4340 that are over 305 mm in actual thickness;

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

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

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

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

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

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

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 2 mm flat bottom hole;
Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

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

- Carbon 0.23-0.28,
- Silicon 0.05-0.15,
- Manganese 1.20-1.50,
- Nickel not greater than 0.4,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.20-1.50,
- Molybdenum 0.35-0.55,
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

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

(c) Having the following mechanical properties:

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

(ii) With a Brinell hardness not less than 240 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 90 ksi min and UTS 110 ksi or more, Elongation of 15% or more and Reduction of area 30% or more; having charpy V at -40 degrees F in the longitudinal direction equal or greater than 21 ft. lbs (single value) and equal or greater than 31 ft. lbs (average of 3 specimens);
(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

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

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

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

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

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

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

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

(e) Conforming to magnetic particle inspection in accordance with AMS 2301.
The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

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

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

V. **Scope Comments**

During the course of this investigation, the Department received numerous scope comments from interested parties. Prior to the Preliminary Determination, the Department modified the language of the scope to clarify the exclusion for stainless steel plate, correct two misidentified HTSUS item numbers, and modify language pertaining to existing steel plate and hot-rolled flat-rolled steel orders.\(^{21}\)

In October and November 2016, we received scope case and rebuttal briefs and scope rebuttal briefs. On November 29, 2016, we issued a final scope memorandum in response to these comments in which we did not change the scope of this investigation.\(^{22}\)

V. **Margin Calculations**

We calculated export price (EP), constructed export price (CEP), and normal value (NV) using the same methodology as stated in the Preliminary Determination,\(^{23}\) except as follows:

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\(^{21}\) See Memorandum, “Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People’s Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations,” dated September 6, 2016, and Memorandum t, “Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People’s Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Additional Scope Comments Preliminary Decision Memorandum and Extension of Deadlines for Scope Case Briefs and Scope Rebuttal Briefs,” dated October 13, 2016.

\(^{22}\) See Final Scope Memorandum.

\(^{23}\) See Preliminary Determination, and accompanying Preliminary Decision Memorandum, at 8 and 9.
1. We matched the EP sales to two home-market levels of trade. See Comment 3 below.

2. We used revised sales and further-manufacturing databases that reflect minor corrections and findings obtained at from the home-market and CEP sales verifications and the further-manufacturing cost verification. See Comments 7 and 8 below.

3. We made changes to adjustments concerning hub fees incurred by BIG, indirect selling expenses incurred on products that were not further-manufactured by BUC, and purchases BBG made from affiliated suppliers. See Comments 5, 6 and 9 below.

VI. Discussion of Issues

Comment 1: Product Characteristic and Model Matching Methodology

voestalpine Comments:

- voestalpine states the scope of the investigation covers both carbon CTL steel plate covered by prior antidumping and countervailing duty investigations and a wide range of specialty forged and other alloy steel products (high alloy specialty steel plate). voestalpine argues that the product characteristic and model matching methodology used by the Department in the Preliminary Determination does not adequately distinguish the various types of high alloy specialty steel plate products produced and sold by the Special Steel Division (SSD) from each other.24

- voestalpine argues that the QUALITY product characteristic treats all high alloy specialty steel plates to fall within a few broad categories as if they are identical, noting, as an example, that all grades of “tool steel” are identified under a single reporting code for purposes of identifying control numbers (CONNUMs), despite the differentiation among tool steel products with widely different sale prices and production costs, resulting in margin calculations that are distorted and inaccurate.25

- Specifically, voestalpine states that the variable cost of manufacturing (VCOM) for the lowest-cost and highest-cost high alloy specialty steel plate products within each CONNUM differ, on average, by 96 percent of the total cost of manufacturing (TOTCOM), and that the Department’s standard methodology would be to reject such products being compared as “similar” to one another, yet the Department’s flawed methodology considers them “identical” to one another.26

24 See voestalpine Case Brief at 3-5. voestalpine refers in various contexts to differences in the roles of different units of the SSD (e.g., BEG as a supplier of ingots to BBG, Id. at 8). For ease of reference, the more general SSD is typically used in the narrative for this issue, as the distinctions between the different units of SSD are generally not relevant to the factors pertaining to the issue. Exceptions to this include references to the BBG sales verification and exhibits from that verification, for which reference to the specific SSD unit (i.e., BBG) is used.

25 Id., at 4-5.

26 Id., at 5. voestalpine asserts that in cases such as Stainless Steel Bar from Brazil, the Department adopted coding that distinguishes based on grade to account for the vast differences in alloy costs. Id., at 10.
voestalpine states that these distorted results reflect grouping all high alloy specialty steel plate products in a few QUALITY product characteristic groupings, with no accounting for the enormous differences in alloy content or in the variation in production methods (including “specialized re-melting processes, cutting techniques, and the use of billets for producing finished goods that are produced by way of powder metallurgy (‘PM’) technology,” as well as ‘cross-rolling technology’) employed in the production of high alloy specialty steel plates.  

voestalpine argues that revising the CONNUM methodology to align it with those used in cases involving other high alloy specialty steel products, such as stainless steel bar will prevent such distortions.  

voestalpine notes it has identified two alternative methodologies:  one that replaces the QUALITY field with a GRADE field for high alloy specialty steel plate products, which would account for “the significant differences in material costs and prices that arise from differences in alloying content” across the numerous high alloy specialty steel plate grades (CONNUM2), and another that, in addition to replacing the QUALITY field with a GRADE field, also creates a PROCESS field to account for “the significant differences in costs and prices that arise from fundamental differences in the final processing method used” (CONNUM3).  

voestalpine states the latter alternative “is the most accurate matching option.”  

voestalpine states that it noted in questionnaire responses that the vast majority of the high alloy specialty steel plate products sold by SSD are for tooling applications, that such products are exposed to varying levels of pressure, sliding wear, and temperature, depending upon the material that is being formed, and that the different chemical properties of the individual products are driven by the end uses for which tool steels and other high alloy specialty steel plates are used.  

voestalpine asserts that “{a}s the work environment becomes more severe, the alloy content of the CTL plate used to produce the tool must be increased to withstand the environment,” and that “{t}he most important of the alloys in terms of the performance of the tool, and the price and cost of the plate are:  carbon (C); manganese (Mn);  

27 Id., at 5-6.  
28 Id., at 6, 10, and 17.  
29 Id., at 6.  voestalpine alludes to a field named BUPROC here, but that is an informational field only, and the actual field used in the construction of CONNUM3 is PROCESS.  voestalpine states inclusion of the PROCESS field in the construction of CONNUM3, to distinguish products based on three general types of liquid steel processing (EAF, EAF+remelt, and PM), is consistent with the Department’s methodology in Stainless Steel Bar from Brazil cases.  Id., at 13.  
30 Id., at 6.  voestalpine also notes it provided a detailed discussion of its proposal in its October 19, 2016, pre-preliminary comments (voestalpine Pre-Preliminary Comments), which it includes as Attachment 1 of its Case Brief, along with a minor revision to that analysis resulting from prior minor corrections to its submissions, included as Attachment 2 of its Case Brief.  
31 Id., at 7.
chromium (Cr); molybdenum (Mo); nickel (Ni); vanadium (V); tungsten (W); cobalt (Co), and aluminum (Al).

- voestalpine refers to a chart in which it claims it “calculated the cost of the most important alloys for each SSD grade of high alloy steel CTL plate” (Grade Chart), and that the chart indicates the difference in cost of the major alloys needed to make the “highest alloy” versus the “lowest alloy” grades of high speed steel and of tool steel are a few hundred percent and a few thousand percent, respectively.

- voestalpine states that SSD’s product mix falls into distinct specialty alloy steel product segments, namely tool steel (which it states is further sub-divided into cold-worked, hot-worked, plastic steel, and knife steel product segments), high-speed steel, and special materials, but that there are profound differences in costs and prices amongst specific grades of products based on the varying combinations and amounts of different alloying elements. voestalpine states that the Department examined and collected publicly available alloy price lists that were used to derive the proposed GRADE field reporting codes, reflected in Grade Chart, which uses such alloy pricing information to determine those reporting codes based on the relative costs of the alloying elements in each grade.

- voestalpine argues that the wide variation in per metric ton prices for sales products identified in the sales trace documents examined by the Department at the BBG verification, and relatively comparable differences in the manufacturing costs for the products in question, are additional evidence of the distortions generated by the Department’s reliance upon a QUALITY field that does not distinguish tool steel products from each other, or high-speed steel products from each other.

- voestalpine states the cost of the ingots SSD uses to produce its high alloy specialty steel plate products differs widely depending on the melting technology used. voestalpine claims that “as alloy content increases, more control is required in the melting, solidification, and production processes,” and that to achieve such control, SSD uses different production processes with significantly different costs, namely a) just an electric arc furnace (EAF) and the ladle refining process for basic grades; b) the EAF followed by electro slag remelting (ESR) or vacuum arc remelting (VAR), in which the ingot is melted a second time to increase the homogeneous distribution of carbon and alloying elements, increase toughness, and reduce inclusions (EAF+Remelt); and c) PM, “to

Id., at 7-8.
33 Id., at 8. voestalpine states the Grade Chart was first submitted in in its October 6, 2016, supplemental Section D and E questionnaire response (Supplemental Section DE Response) at Exhibit SQ D-3, and that it expanded the content of the Grade Chart in a version submitted in its October 13, 2016, supplemental Section B and C questionnaire response (Supplemental Section BC Response) at Exhibit SBC-3. The latter was also provided during the BBG sales verification, as sales verification exhibit 11. See BBG Sales Verification Exhibit 11, which appears in voestalpine’s December 23, 2016 submission entitled “Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria: BBG Sales Verification Exhibits.”

34 Id. at 9.
35 Id. at 9-10.
36 Id. at 8.
produce certain high alloy steel CTL plate that cannot be produced by either of the other
two options, because “the different melting temperatures of the alloys used in these
very high alloy grades would result in segregation during the solidification process if
conventional processes were used, which would not allow the required physical and
mechanical properties to be achieved.”

- voestalpine states that because of additional costs associated with the ingot remelting
  process (i.e., preparation of ingots for the remelting process, scrap loss during the
  remelting process, salaries to operate the ESR and VAR machinery, electricity to melt the
  steel, and depreciation of the ESR and VAR machinery and annealing furnaces), the
  TOTCOM of EAF+Remelt plates is significantly higher than the TOTCOM of EAF
  plates.

- voestalpine states that because of differences in the PM process (i.e., use of material
  inputs that are homogeneous alloyed compounds as opposed to less expensive scrap and
  other materials used in the EAF process, and additional direct labor costs and overhead
  costs (e.g., depreciation and energy) related to PM and so-called “hipping” units), the
  TOTCOM of PM plates is significantly higher than the TOTCOM of EAF+Remelt
  plates.

- voestalpine also states the costs of SSD’s end products vary based on the variety of
  rolling (i.e., specialized cross-rolling, reversible rolling, cold rolling, and hand rolling),
  specialized heat-treatments, finishing, and cutting operations performed by SSD.
  voestalpine states the Department verifiers observed such processes during verification of
  BBG, which “result in widely different production costs for the specialized finished
  products” that SSD produces and sells.

- After discussing claimed variation in TOTCOM due to processes distinguished by the
  PROCESS field and other processes (e.g., cross-rolling, etc.), voestalpine states it
  proposed CONNUM3 to distinguish between the possible ingot production methods
  reflected by that field (i.e., EAF versus EAF+Remelt versus PM).

- voestalpine provided data analysis it had submitted in its Pre-Preliminary Comments that
  is based on comparing individual grades that are grouped under the few relevant qualities
  (e.g., tool steel, etc.), which segregates CONNUM2s (for which GRADE replaces
  QUALITY as a product characteristic) under the corresponding CONNUMs (for which
  the original QUALITY product characteristic is maintained, with no product
  characteristic used for grades). This analysis forms the basis for the aforementioned

37 Id. at 11.
38 Id.
39 Id. at 11-12.
40 Id. at 8-9.
41 Id. at 12-13. Some of the specific processing methods are treated as proprietary in the BBG Sales Verification
Report, as cited by voestalpine. Id., at 12 (footnote 27).
42 Id. at 13.
claim that the variable COM (VCOM) for the lowest-cost and highest-cost products within each CONNUM differ, on average, by 96 percent. voestalpine asserts such variation in VCOMs demonstrate it cannot be reasonable to treat products within the individual CONNUMs as “identical,” which occurs as a result of use of the Department’s CONNUM methodology.

- voestalpine claims that the widely varying costs of manufacturing for specific products improperly treated as identical by the Department’s CONNUM methodology yielded the highly arbitrary weighted-average margin in the Preliminary Determination. voestalpine explains this is because there are “huge differences between {both} the direct materials costs…and the total cost of production (COP)” of different CONNUM2s reflected within individual CONNUMs, for the reasons discussed above. voestalpine states that because the COP for each CONNUM is based on an average of the COPs of each of the products consolidated into the CONNUM, home-market sales of those products with lower COPs, and lower prices, are unreasonably removed from the Department’s analysis as below cost because their prices are compared to unreasonably high CONNUM average COPs. voestalpine indicates this leaves only high priced home-market sales available for matching and comparison to U.S. sales, in turn resulting in unreasonably high margins. voestalpine provides examples of such analysis, and includes additional analysis in this regard that it had submitted in its Pre-Preliminary Comments.

- voestalpine claims it raised its objections to the Department’s model match methodology in a timely fashion, in its initial responses to the Sections B-D of the Department’s questionnaire, and in a meeting with Department immediately after those responses were filed. voestalpine notes “{i}t further discussed the issue with Department officials at the verification in Austria.

- voestalpine states that SSAB, in its own earlier comments filed with the Department, objected to voestalpine’s proposed CONNUM2 and CONNUM3 corrections to the Department’s flawed model match methodology, but have not refuted the fact that the Department’s methodology is flawed as it pertains to high alloy specialty steel plate. voestalpine states that petitioners remained silent on these issues until shortly before the Preliminary Determination, absurdly claiming there was not adequate time to consider voestalpine’s proposal.

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43 Id. at 14-15. voestalpine alludes to similar analysis comparing CONNUM to CONNUM3. Id. at 15 (footnote 33).
44 Id. at 15.
45 Id. at 15-17.
46 Id. at 18, referencing Memorandum, “Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria: Meeting with Respondent’s Counsel,” dated August 10, 2016.
47 Id.
48 Id., at 17-18.
49 Id., at 18.
SSAB Comments:

- SSAB notes voestalpine fails to acknowledge that after it requested four changes to the model match hierarchy initially proposed by the Department during the model match comments period, the Department adopted three of those requests: a) creating a separate QUALITY reporting code for tool steel, defined as requested by voestalpine rather than by Nucor; b) moving the QUALITY product characteristic to the top of the model match hierarchy; and c) adding a reporting code for “Quenched and Tempered” in the heat treatment product characteristic.50

- SSAB indicates that after the issuance of the final methodology, voestalpine submitted a second set of recommendations, followed by a third that would supersede the prior two. SSAB argues voestalpine should not be permitted to obtain a results-oriented revision to model match characteristics that no other respondent has reported.51 SSAB states voestalpine not only neglected to raise these comments until it was submitting its initial questionnaire responses, but also submitted them in opposition to their own earlier comments.52 SSAB states that voestalpine likely changed its mind after doing internal margin runs and proposed the CONNUM2 methodology, and then changed its mind again and proposed the CONNUM3 methodology.53

- SSAB also notes that voestalpine’s proposals amount to requesting a different methodology for voestalpine than for the respondents in the concurrent CTL plate antidumping investigations.54 SSAB cites a case in which the Department noted “[i]t is not the Department’s normal practice to allow companies to change the criteria to be used for model match purposes based on their own internal product coding system once such criteria have been established,” that “[a]ny such deviation leads to the possibility that the margins calculated for each company under investigation could be based on completely different product grouping criteria,” and that “allowing companies to deviate from the criteria may permit manipulation of the model matches…”55

- SSAB states that the Department recently noted in an administrative review, in response to a request that product characteristic model match methodology be changed, that the appropriate time to consider comments with respect to the physical characteristics and model match criteria is at the beginning of the proceeding.56 SSAB also cited

50 See SSAB Case Brief at 1-2.
51 Id., at 2.
52 Id., at 3.
53 Id., at 4-5.
54 Id., at 3.
55 Id., at 4 (footnote 11), citing Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Wire Rod from Korea, 63 FR 10825, 10828 (March 5, 1998), unchanged at Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea, 63 FR 40404 (July 29, 1998) and Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Stainless Steel Wire Rod from Korea, 63 FR 49331 (September 15, 1998).
56 Id., at 2-3, citing Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014, 81 FR 46647 (July 18, 2016) (WSSP from Korea), and
investigations in which the Department came to the same conclusion regarding the appropriate time for model match comments and establishment of the model match methodology.\textsuperscript{57}

- SSAB states that voestalpine has cited no cases in which the Department modified the model match criteria after the model match comment period at the outset of investigations.\textsuperscript{58} SSAB concludes that voestalpine’s proposals to change the model match methodology after it had been established by the Department were untimely, and that the Department “should not open the door to the chaos that would result from accepting parties’ results-driven requests to change model match criteria after the comment period.”\textsuperscript{59}

- With regard to voestalpine’s argument that petitioners remained silent on this issue for several months after it was raised by voestalpine in its questionnaire responses, SSAB argues “\textit{in all cases, an interested party wishing to change the model-match criteria established by the Department bears the burden of demonstrating in a timely fashion that a revision is warranted.}”\textsuperscript{60} SSAB states that it provided suggested questions for supplemental questionnaires on pertinent issues, but no comments from SSAB on voestalpine proposals regarding model methodology were needed because the proper time to address that methodology had been during the aforementioned comment period at the outset of the investigation. SSAB states the appropriate time for comments on voestalpine’s belated proposals was in advance of the \textit{Preliminary Determination}, when SSAB did submit such comments.\textsuperscript{61}

\textbf{Department’s Position:}

As an initial matter, we note that voestalpine’s proposals not only were made after the period set aside for model match and product characteristic comments and rebuttal comments, but contradict the positions voestalpine proposed during that comment period, as well as those of other parties that commented on the Department’s methodology. voestalpine’s proposals, if adopted, would not only amount to allowing that company to utilize a methodology different from that used for the respondents in the other concurrent AD CTL steel plate investigations (which would be contrary to the Department’s normal practice), but it could only be employed for a self-selected subset of the company’s total sales of merchandise under investigation, given accompanying Issues and Decision Memorandum (IDM) at 4-5 (where the Department refused to adopt changes suggested by the petitioners in that case).

\textsuperscript{57} \textit{Id.}, at 3-4, citing Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People’s Republic of China, 79 FR 29303 (May 22, 2006) and accompanying IDM at 20-22, and Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings from Italy, 65 FR 81830 (December 27, 2000) and accompanying IDM at Comment 9A.

\textsuperscript{58} \textit{Id.}, at 5.

\textsuperscript{59} Id., at 6. SSAB state that if the investigation goes to order, and if an administrative review is subsequently initiated, voestalpine may raise the issue of changing the model match criteria at the beginning of that proceeding, but asserts there is no precedent for making such a change following the initial determination of model match characteristics based on comments and rebuttal submitted by interested parties. \textit{Id.}

\textsuperscript{60} \textit{Id.}, at 5, quoting from WSSP from Korea and accompanying IDM at 5.

\textsuperscript{61} \textit{Id.}, at 5-6.
that voestalpine did not provide alternative control number data for products it does not consider high alloy specialty steel products. Furthermore, if the proposals are considered independent of those procedural objections, voestalpine’s methodology is flawed, both regarding Department policy for establishing CONNUMs and model matching and specific details of voestalpine’s analysis.

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

(A) The subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise.

(B) Merchandise (i) produced in the same country and by the same person as the subject merchandise, (ii) like that merchandise in component material or materials and in the purposes for which used, and (iii) approximately equal in commercial value to the subject merchandise.

(C) Merchandise (i) produced in the same country and by the same person and of the same general class or kind as the merchandise which is the subject of the investigation, (ii) like that merchandise in the purposes for which used, and (iii) which the administering authority determines may reasonably be compared with that merchandise.62

Pursuant to the statutory language, the Department must first look for identical merchandise with which to match the United States model to the comparable home-market or third country market model.63 The courts have recognized that the statute is silent with respect to the methodology that the Department must use to match a U.S. product with a suitable home-market product, and that this silence is an indication Congress afforded the Department considerable discretion in this regard.64 The courts have held that it is the Department’s responsibility to establish the model matching methodology, given reasonable minds may differ over what might be a complex task, and that interested parties might be expected to support an alternative advantageous to itself.65 The courts also have acknowledged that the Department constructs a methodology for identifying the “foreign like product” by devising a hierarchy of commercially significant

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62 See NSK v. United States, 217 F. Supp. 2d 1291, 1299-1300 (CIT 2002) (“Section 771(16) establishes a descending hierarchy of preferential modes that Commerce must select for matching purposes.”).
characteristics suitable to each class or kind of merchandise, and then utilizes these characteristics to compare United States sales to sales in the comparison market.  

The Department has a long-standing practice of developing product characteristics and a model-match methodology in the early stages of each proceeding, and in consultation with the interested parties. Consistent with that, the Department issued a proposed methodology on the record of all the concurrent antidumping CTL steel plate investigations, including the Austria investigation. That proposal included a QUALITY field as the third product characteristic in the overall hierarchy. Within that QUALITY field were included distinct numeric reporting codes for various proposed subcategories, including two that voestalpine characterizes as high alloy specialty steel (i.e., high speed steel and heat resisting steel). That field also contained instructions that respondents should “use additional number codes for each additional Quality you propose,” that they should “provide a detailed narrative description of each additional Quality you propose, and explain what differentiates each of those additional Qualities from the ones” identified by the Department, and that they should “explain why they have placed each additional Quality between its next closest neighbors (based on numerical code) for matching purposes.” The Department did not propose any fields for the types of distinctions associated with voestalpine’s later proposals involving GRADE or PROCESS fields.

In response to the Department’s Model Match Proposal, voestalpine did not object to the use of a QUALITY field, nor did it request a distinct GRADE field, whether in addition to or in place of the QUALITY field. In fact, voestalpine actively endorsed the QUALITY field, given it proposed revisions to that field affecting high alloy specialty steel plate products, which the Department in large part adopted in its final model match methodology. voestalpine suggested that the QUALITY field be moved to the top of the hierarchy, and the Department did so. voestalpine requested that a distinct QUALITY subcategory be created for tool steel, and the

66 See e.g. Fagersta Stainless AB v. United States, 577 F. Supp. 2d 1270, 1275-76 (CIT 2008), and SKF USA, Inc. v. United States, 537 F.3d 1373, 1379 (Fed. Cir. 2008).
67 See e.g. Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 2013-2014, 81 FR 46647 (July 18, 2016), and accompanying IDM at Issue 1; Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea, 71 FR 29310 (May 22, 2006) and accompanying IDM at Comment 1; Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review, 66 FR 14889 (March 14, 2001) and accompanying IDM at Comment 9; Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings from Italy, 65 FR 81830 (December 27, 2000) and accompanying IDM at Comment 9A; and Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review, 65 FR 13943 (March 15, 2000) and accompanying IDM at Comment 12.
68 See Letter to All Interested Parties dated May 19, 2016 (Model Match Proposal).
69 Id.
71 See voestalpine Model Match Comments, at 4. See also Letter from Acting Program Manager Edythe Artman to David Bond, of White & Case LLP, counsel to voestalpine, “Product Characteristics for the Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria,” dated June 10, 2016, at Attachment I (Final Model Match Methodology), which contains the final list of product characteristics, subcategories, and reporting codes adopted by the Department after consideration of all comments and rebuttal comments submitted by interested parties.
Department added such a subcategory, defined as requested by voestalpine. voestalpine also requested a distinct QUALITY subcategory for chipper knife steel, and although the Department did not include such a subcategory in its final model match methodology, the Department did add a chromium content field which, in conjunction with the pre-existing carbon content field, helps differentiate chipper knife steel products from many other higher alloy steel plate products. Furthermore, voestalpine requested that a “quenched and tempered” subcategory be added to the heat treatment field that the Department had proposed, noting that “[s]ome tool steels are supplied as quenched and tempered, and this distinction should be made in the heat treatment” field, and the Department added that subcategory in its final model match methodology. voestalpine reiterated these proposals in its model match rebuttal comments, adding an additional suggestion regarding the high alloy specialty steel “mold steel” subcategory suggested by Nucor, i.e., that it be clarified to apply only for mold steels not classifiable as tool steels, a proposal also adopted by the Department.

In short, the QUALITY field adopted in the Final Model Match Methodology was virtually identical to what voestalpine had proposed. No interested party objected to the QUALITY field in model match comments or rebuttal comments, and others (i.e., Nucor, a German producer, and a French producer) each supported the addition of a single tool steel QUALITY subcategory. Furthermore, neither voestalpine nor any other interested party suggested in their model match comments that a field distinguishing various liquid steel processing methods from each other, such as suggested later by voestalpine with its proposed PROCESS field.

From a procedural standpoint, the methodology was established with the issuance of the Final Model Match Methodology to the various respondents, including voestalpine. The courts have upheld the Department’s discretion to reject model matching proposals from interested parties after the Department has requested that respondents submit data conforming to model match the Department has established. voestalpine has provided no legal or Department precedent for allowing a single respondent to alter the physical model matching characteristics for itself after those characteristics were established for all respondents at the outset of current investigations,

72 See voestalpine Model Match Comments, at 4, and Final Model Match Methodology, at Attachment I, pages 8-9. The Department also added a field to account for minimum specified nickel content. Id., at 9.
73 See voestalpine Model Match Comments, at 6, and Final Model Match Methodology, at Attachment I, page 13.
74 See Letter, “Rebuttal Comments Regarding Product Characteristics,” dated June 8, 2016 (voestalpine Rebuttal Model Match Comments) at 2-4. voestalpine suggested some changes to the Proposed Model Match that it indicated involved high alloy specialty steel products in addition to those discussed above (i.e., elimination of the PAINT and minimum specified yield strength fields as irrelevant, and changes to the reporting of thickness and width information), but none involved distinctions associated with voestalpine’s proposals involving its later-proposed GRADE and PROCESS fields. See voestalpine Model Match Comments at 4-7, and voestalpine Rebuttal Model Match Comments at 3.
76 See Maverick Tube Corp. v. United States, 107 F. Supp. 3d 1318, 1330 (CIT 2015), citing JTEKT Corp. v. United States, 37 F. Supp. 3d 1326, 1336 (CIT 2014) (“The court has upheld Commerce’s decision not to revise model-matching criteria when the request was made ‘at a time that did not allow Commerce to distribute to the various respondents initial questionnaires that would solicit the necessary information to adopt’ the model-matching criteria changes,” and concluding the “arguments were thus untimely and Commerce’s decision not to revise the model-matching method was reasonable.”)
nor is the Department aware of any such precedents that involve only an explicit subset of a single respondent’s own sales.

Even if the Department were to ignore certain procedural problems associated with voestalpine’s proposals (i.e., the belated nature of voestalpine’s proposals, and the inappropriateness of devising a specific methodology for one respondent amongst the many in various concurrent CTL steel plate antidumping investigations, and which applies to only some of its sales of merchandise under investigation and not others), those proposals would still be inappropriate for additional reasons, as discussed below.

In its initial proposal to replace the QUALITY field with the GRADE field, voestalpine stated that the resulting new control numbers (CONNUM2s) “accurately reflect the significant differences in physical characteristics, prices, and costs of production that arise from differences in the grade and processing of high alloy, Special Steel plate.” voestalpine clarified the “differences in processing” in question are, “in particular, the remelting and powder metallurgy processes,” which the company states “result in products that differ significantly in terms of physical characteristics, costs of production, and prices.” However, over two months later, voestalpine proposed yet another change, adding the PROCESS field and generating new control numbers (CONNUM3s), to reflect differences in costs and physical properties it now claimed were the result of those very processes (i.e., remelting and PM) it had previously claimed could be accounted for by the GRADE field alone. voestalpine provided no adequate explanation why it, at first, believed that differentiation by grade would be satisfactory, and then later argued that would not be the case, just as it had provided no adequate explanation previously why QUALITY subcategories appeared appropriate during the model match comment stage of the investigation, but were no longer so by the time voestalpine submitted its first questionnaire responses. voestalpine did issue a statement criticizing the methodology it had endorsed in its Model Match Comments and Model Match Rebuttal Comments, and arguing that the Department’s methodology results in “wildly divergent sales prices and costs of production,”

77 See voestalpine’s “Response to Sections B, C, and D of the Questionnaire,” dated July 15, 2016 (Section BCD Response) at B-21.
78 Id.
79 See voestalpine’s “Response to First Supplemental Questionnaire Regarding Sections D & E” (“Supplemental Section DE Response”), dated October 6, 2016, at 13-17.
80 voestalpine cannot plead ignorance for its failure to reference in its Model Match Comments the different liquid steel processing methods, such as remelting and PM, given it argues those processes are so important from the standpoint of differentiating models from each other. voestalpine was presumably familiar with its product lines at the outset of the investigation, and when alerting interested parties that they would have an opportunity to comment on product characteristics and product comparison methodology, the Department noted it would “base product-comparison criteria on meaningful commercial differences among products.” See Initiation Notice at 27091. Furthermore, the Stainless Steel Bar administrative review questionnaire cited by voestalpine for its references to product characteristics covering both such processes and grades is dated April 22, 2016, which is less than two weeks before the publication of the initiation of this investigation, which in turn was four weeks prior to the ultimate deadline for model match comments in this investigation. See Letter, “Pre-Preliminary Determination Comments, dated October 19, 2016 (voestalpine Pre-Preliminary Comments) at 4 (footnote 7), 7 (footnote 12), 9 (footnote 20) and Exhibit 4 (excerpts from Stainless Steel Bar questionnaire). In other words, voestalpine (and its counsel, which also are identified in the cited excerpts as the counsel for the respondent in the Stainless Steel Bar review) had opportunity prior to and during the CTL steel plate model match comment period to consider the methodology used in Stainless Steel Bar, rather than to wait a few months to raise that precedent.
and “lead[s] to a highly arbitrary dumping margin calculation.”

However, that statement accompanied its initial proposal for use of CONNUM2s, and explains neither voestalpine’s support for the Department’s QUALITY field in the company’s Model Match Comments and Rebuttal Model Match Comments, nor its failure to identify what it later claimed was an important distinction requiring yet a different methodology (i.e., that involving CONNUM3s) until months later.

Although voestalpine alluded to differences in physical properties and pricing associated with its ultimate CONNUM3 proposal, reflecting as it does both a GRADE field and a PROCESS field (as discussed in greater detail below), its proposal is based upon analysis of claimed variations in production costs for products of different grades and variations in production costs associated with certain liquid steel processing methods (i.e., EAF versus EAF+remelt versus PM). With regard to the proposed GRADE field, voestalpine’s assignment of numeric reporting codes for individual grades, which determine how similar the grades are to each other according to relative numeric differences between each code, is based on the relative differences in the cumulative estimated costs of all alloying elements for each grade.

With regard to the PROCESS field, voestalpine’s emphasis on variations in costs is evident in voestalpine’s lengthy discussions of the importance of differences in the costs of EAF processing alone, versus EAF processing supplemented by remelting versus PM processing. We find that voestalpine’s reliance upon differences in production costs as a justification for devising product characteristics, subcategories, and model matching methodology, is unreasonable, based upon the Department’s analysis in prior cases. The Department has repeatedly determined that differences in costs, in and of themselves, are not the basis for defining CONNUMs or matching sales of non-identical products. Section 771(16)(A) of the Act requires the Department to base its model-match criteria on “physical characteristics.”

Furthermore, while significant

81 See Section BCD Response at B-13 to B-14.
82 See e.g., Supplemental Section DE Response at 12-17 and Exhibit SQ D-3.
83 See e.g., Supplemental Section DE Response at 14-17, and voestalpine Pre-Preliminary Comments, at 8-9 and Exhibit 1. Furthermore, the PROCESS field adds no additional relevant information not already reflected in voestalpine’s GRADE field, as discussed below.
84 As noted, voestalpine argues that the Department’s methodology is flawed because the VCOM for the lowest-cost and highest-cost high alloy specialty steel plate products within each CONNUM differ, on average, by 96 percent of the TOTCOM, and that the Department’s standard methodology would be to reject such products being compared as “similar” to one another and, therefore, they cannot be reasonably considered to be identical to each other. As discussed below, such a company- and period-specific analysis of relative costs is not relevant in determination of what is reasonable with regard to establishment of appropriate product characteristics and CONNUMs. In any case, voestalpine’s calculation of such an average ignores not only the many high alloy specialty steel plate CONNUMs seemingly unaffected by what voestalpine has characterized as the Department’s flawed methodology, but also the many other CONNUMs reported in its sales databases (i.e, those voestalpine indicates are not high alloy specialty steel plates). Furthermore, voestalpine does not appear to have provided a calculation of the 96 percent figure. See e.g. voestalpine Case Brief at Exhibit 5, which contains data for specific CONNUMs, CONNUM2s, and CONNUM3s, but no reference to 96 percent. Even if one were to assume that figure could be derived from all of the detail presented by voestalpine, and to ignore the fact that it is based on a relatively small subset of voestalpine’s total sales, the figure itself would be exaggerated, in that voestalpine in each calculation of the difference voestalpine uses the smaller of the two TOTCOMs in question as the denominator, thereby assuring as high a possible percent difference as possible. Id.
85 See NSK v. United States, 217 F. Supp. 2d 1291, 1299-1300 (CIT 2002) (“Section 771(16) establishes a
differences in costs between products may sometimes point to commercially significant variations in physical characteristics, numerous precedents confirm that significant differences in physical characteristics should be considered regardless of possible differences or similarities in costs.86

The results of voestalpine’s application of its cost-based approach demonstrate the flaws in such a methodological approach. The grade reporting codes generated by that methodology result in different grades of what voestalpine acknowledges are “distinct specialty alloy steel product segments” (e.g., different grades of tool steel, tool steel being distinguished as a distinct QUALITY subcategory) being considered more dissimilar to each other than they are to grades of other “distinct specialty alloy steel product segments” (e.g., high-speed steel, high-speed steel also distinguished as a distinct QUALITY subcategory). The methodology proposed by voestalpine also results in numerous grades with sharply different levels of specific alloying elements being classified as very similar, including those for which the Department’s methodology contains fields lower in the product characteristic hierarchy (i.e., minimum chromium content (CHROMIUM) and minimum nickel content (NICKEL)). Those lower level fields in the product characteristics hierarchy, in conjunction with the QUALITY field, provided some differentiation between products, which voestalpine has failed to acknowledge properly.

voestalpine’s GRADE field replacement for QUALITY also results in the failure to account for descending hierarchy of preferential modes that Commerce must select for matching purposes.”).

86 See e.g. Certain Cold-Rolled Steel Flat Products from the United Kingdom: Final Determination of Sales at Less Than Fair Value, 81 FR 49929 (July 29, 2016), and accompanying IDM at Comment 5 (“With respect to cost differences, while we may consider cost differences attributable to significant differences in physical characteristics in determining whether to accept proposed respondent-specific code categories, cost differences alone are not dispositive as to whether to create additional categories. There may be other factors that explain differences in costs between different products besides differences in physical characteristics, such as differences in production quantities, differences in the timing of production, etc.”); Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review: 2012-2013, 79 FR 71087 (December 1, 2014), and accompanying IDM at General Issues Comment 1; Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 77 FR 32531, 32534 (June 1, 2012), unchanged at Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, 77 FR 64480 (October 22, 2012) (“The goal of the product characteristic hierarchy is to identify the best possible matches with respect to the characteristics of the merchandise. While variations in cost may suggest the existence of variation in product characteristics, such variations do not constitute differences in products in and of themselves. Furthermore, the magnitude of variations in cost may differ from company to company, and even for a given company over time, and therefore do not, in and of themselves, provide a reliable basis for identifying the relative importance of different product characteristics.”); Stainless Steel Wire Rod from Sweden: Final Results of Antidumping Duty Administrative Review, 73 FR 12950 (March 11, 2008), and accompanying IDM at Comment 1 (“Cost variations are not the determining factor in assigning product characteristics for model-matching purposes.”); Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey, 65 FR 15123 (March 21, 2000), and accompanying IDM at Model Match Comment 1 (“...the Department focuses its selection of model match characteristics on unique measurable physical characteristics that the product can possess... “ and “...differences in price or cost, standing alone, are not sufficient to warrant inclusion in the Department's model-match of characteristics which a respondent claims to be the cause of such differences....”); and Certain Hot-Rolled Lead and Bismuth Carbon Steel Flat Products From the United Kingdom; Final Results of Antidumping Duty Administrative Review, 63 FR 18879 (April 16, 1998), at Comment 2 (“The creation of a product concordance inherently relies upon the matching of significant physical characteristics, not on cost groupings in a company's cost accounting system.”).
product differentiation associated with differences in minimum carbon content, which is reflected in another field (CARBON) identified in the Department’s model matching hierarchy.\(^{87}\)

In short, the highly arbitrary assortment of reporting codes assigned to the various grades under voestalpine’s proposals, resulting from a blunt application of estimated relative costs of all alloying elements regardless of particular alloy combinations, would have deleterious effects upon the margin analysis. It would negate the effect of the chemical element fields lower in the model match hierarchy, which provide some differentiation of products assigned to the same QUALITY subcategory, and disrupts the groupings of products by the “distinct specialty alloy steel product segments” (e.g., tool steels) acknowledged by voestalpine as relevant throughout the investigation (from its initial Model Match Comments through to its Case Brief).

The problems with voestalpine’s proposed GRADE field extend beyond those evident from the aforementioned review of the Grade Chart, which is based on data for the POI. As noted above in several of the cited cases rejecting differences in costs as a basis for determining model matching methodology, costs vary over time. A methodology such as that proposed by voestalpine, which assigns reporting codes based on aggregate costs of various alloying elements, would result in different reporting codes being assigned to the same grades, as costs for the elements changed from segment to segment. However, variation in the costs of inputs does not change the impact of those inputs on the physical characteristics of the products in question, and for that reason, such variations in costs, in and of themselves, are inappropriate as the basis for determining the comparability of products with respect to physical characteristics. Furthermore, the LME pricing data supplied by voestalpine and utilized by it in its calculations of the relative alloying costs for each grade, show substantial and varying fluctuations in the prices of the various alloys, which highlights the potential impact of reliance upon such quantitative data for determining the relative comparability of grades.\(^{88}\)

\(^{87}\) Chromium, nickel, and carbon contents are identified by individual grades. Therefore, once the individual grades are each assigned a reporting code under voestalpine’s GRADE field that would replace the QUALITY field at the top of the model matching hierarchy, the fields reflecting chromium, nickel, and carbon content become superfluous, as no additional differentiation is achieved by them.

\(^{88}\) See BBG Sales Verification Exhibit 11 (as included in “Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria: BBG Sale Verification Exhibits,” dated December 23, 2016).

Furthermore, voestalpine’s calculations of the total alloying costs for each grade, which it uses to show extreme differences between the lowest and highest alloy cost “high alloy specialty steel” products, exaggerates the overall costs of alloys, as well as the differences between the grades. For example, voestalpine has used the maximum allowable alloy content of each element in its calculations, with no explanation why that is appropriate. See Grade Chart. voestalpine’s calculations also do not account for the fact that the higher the alloy content, the lower the cost of iron (given less of the final product consists of iron). Also, for those LME price elements that are ferro-alloys, while the LME prices may reflect the value per weight unit of the alloying element, those ferro-alloys also contain iron, as ferroalloys are compounds of iron and other elements, further reducing the need for iron from other sources. voestalpine did not submit any LME source information in its responses, and when it provided that information at verification, it did not provide documentation from LME explaining those data, so there is no way to be certain about what the LME prices represent, in particular for ferroalloys. See BBG Sales Verification Exhibit 11 (as included in “Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria: BBG Sale Verification Exhibits,” dated December 23, 2016).

Related to the absence of documentation explaining LME pricing definitions and methodology is the issue of whether the items for which LME identifies prices are actually representative of inputs used by respondents such as voestalpine. For additional discussion, see Memorandum, “Additional Information Regarding Product
Finally, the Department is unable to confirm the accuracy of all the information in the Grade Chart, and there is at least one example in which the information appears to be incorrect, as discussed below. The Department requested that voestalpine provide all standards and specifications for its sales of merchandise under investigation. However, voestalpine did not do so, as evidenced by the absence from the record of detailed chemical requirement information for some of the grades in the Grade Chart. This is of particular concern given that at least some of the chemical requirement information in the Grade Chart for SSD grades is inconsistent with information on the record about the requirements of the products in question.

voestalpine appears to have constructed this chart by identifying each SSD grade on a separate line, and then linking each grade to the standard industry grade to which voestalpine concluded it was most comparable to that SSD grade, where such standard industry grades existed. Where such standard industry grades did not exist for an SSD grade, by voestalpine’s estimation, voestalpine presumably just listed the requirements of the SSD grade. However, as mentioned above, for at least one SSD grade, an important aspect of the chemical requirements, as identified in voestalpine’s own brochure information, is inconsistent with that in the Grade Chart.

Furthermore, for one of the two grades for which voestalpine identified at a sales verification as requiring corrections to the QUALITY subcategory, the supporting documentation provided by voestalpine demonstrates that the product as described in the brochure information cannot possibly meet the requirements of the product identified in the corresponding standard grade.

Given the absence of supporting documentation for other grades in the Grade Chart, these type of errors, both within the Grade Chart and in a supposed minor correction from verification, call into question the general reliability of the Grade Chart with regard to chemical requirements identified on that chart, which were, in turn, used by voestalpine to calculate proposed reporting codes for each grade.

In short, the GRADE field assigns reporting codes based on partially unconfirmable information which, even if assumed to be largely accurate, utilizes an inappropriate cost-based methodology that leads to inappropriate matching. Such matching, in turn, would be subject to change over time as alloying element costs change, even though such cost changes have no impact on physical characteristics, which are the fundamental bases for identifying product characteristics.

Characteristics and Model Matching Methodology,” dated concurrently with this memorandum (Additional Product Characteristic and Model Matching Methodology Memorandum).

90 See the Department’s original request for that information, as referenced in the voestalpine’s “Response to Section A of the Questionnaire” (Section A Response), dated June 29, 2016, at 50.

91 For additional discussion of this, see Additional Product Characteristic and Model Matching Methodology Memorandum.

92 Id. Note that while the grade in question is no longer identified by voestalpine as a high alloy specialty steel product, this faulty linking of an actual voestalpine grade described in its brochure information to an incompatible standard industry grade calls into further question the accuracy of the information in the Grade Chart. This is particularly evident given that this error appears in the context of an attempt to actually correct other misreported information (i.e., the incorrect QUALITY reporting), indicating special attention was paid to this example and the inconsistent explanation was nevertheless made.
control numbers, and model matching comparisons. Therefore, voestalpine’s proposed GRADE field methodology is inappropriate for use in the Department’s analysis.

With regard to the PROCESS field, what is of relevance, regardless of claimed differences in production costs, which, as noted, may vary for various reasons across companies and even for a given company over time, as well as between production lines or production factories, are voestalpine’s claims about the varying physical characteristics resulting from the different liquid steel processing methods. voestalpine has stated that the remelt process is performed after the standard EAF process to achieve “a more homogeneous distribution of carbon and alloying elements,” “improved toughness,” and “fewer inclusions (non-metallic particles in the steel as a result of chemical reactions, physical effects and contamination during the melting and casting process)” (e.g., sulfur).

A “toughness” product characteristic could have been proposed for evaluation during the model match comments period but no interested party, including voestalpine, chose to do so. The same applies for inclusion content, as it was evident from the outset of the investigation that inclusion content is measurable. Regardless, it appears that voestalpine can achieve exacting standards of those properties, as well as homogeneity, without the required use of remelt (or PM) processes.

An example of a product the company describes as “very clean” (which reflects minimal inclusion content) and possessing “a homogenous microstructure” is Bohler-Uddeholm S7 Mold Quality. The company notes “these features are achieved through strict processing control and a maximum sulfur content of 0.005%,” and makes no reference to any requirement that the product be made from steel that had been remelted or via the PM process.

The entire brochure describes various production processes and ultimate properties of the

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93 Although relative costs are not, in and of themselves, relevant with regard to model matching methodology, the Department notes the large differences in production costs between EAF versus EAF-remelt versus PM claimed by voestalpine appear to be exaggerated, given the cost data cited by voestalpine appear to ignore additional production stages that may follow EAF processing. See Additional Product Characteristic and Model Matching Methodology Memorandum.

94 voestalpine also acknowledged that one reason for higher per unit costs for products made from the PM process is that PM production batches are small, which is not pertinent in the context of differentiating product characteristics of different products. See Supplemental Section DE Response at 15. Furthermore, voestalpine does not appear to have provided supporting documentation for the summary cost figures it submitted for those three PROCESS groupings. Id., at 16-17, identifying those summary figures, but with no citation or explanation for how the costs of the types of furnaces were calculated. See Supplemental Section DE Response at 14.

95 Toughness is a property that the record indicates can be measured quantitatively. See e.g. Hitachi Metals, Ltd.’s May 18, 2016 scope comments (Hitachi Scope Comments) at unnumbered Attachment, YSS Cold Work Tool Steels brochure, at 5.

96 Several products excluded from the scope of the investigation include requirements the products “have cleanliness in accordance with ASTM E45 method A” followed by the specific inclusion limitations in question. See Initiation Notice at 27097. voestalpine itself provided product information that identifies ASTM E45. See Additional Product Characteristic and Model Matching Methodology Memorandum.

product, with no reference to remelting or PM, and record evidence indicates no such use of remelting or PM is required for such a product.  

Another voestalpine document, this one submitted by another interested party, associates low inclusion content, and, in particular, low sulfur content, which as just noted can be achieved for at least some products without use of remelting or PM, with another property voestalpine claimed requires remelt or PM processes, high levels of toughness.  

Furthermore, voestalpine itself indicates that toughness may result from homogeneity.  

Therefore, to at least a certain extent, voestalpine has identified three “properties” it claims are superior in EAF+remelt products versus EAF alone products that are not mutually exclusive, distinct differences at all.

voestalpine described the properties of the Bohler K340 product that it requested to be excluded from the scope, noting it “has excellent toughness and wear resistance” and that the “{m}elting practices” used to produce this product are “Conventional: Electric Arc Furnace (EAF) and Ingot Casting technology or also provided remelted using ESR or PESR.” However, no reference is made to any variation in properties depending upon liquid steel processing method.

This is record evidence, provided by voestalpine itself, of an example of how the same grade can be produced with or without remelting.

With regard to homogeneity, one of voestalpine’s own brochures assigns great importance to a much later stage in the production process, the cross-rolling process, for achieving homogeneity.  

Therefore, homogeneity, however it may be measured or compared across products, is a property affected by factors other than just liquid steel processing, based on voestalpine’s own information.  The same is true of toughness.  Toughness is affected by heat

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98 Id. in its entirety. For more discussion of this product, see Additional Product Characteristic and Model Matching Methodology Memorandum.

99 See Letter from Friedr. Lohmann GmbH and AG der Dillinger Huettenwerke, “Comments on the Scope of the Investigations,” dated May 18, 2016, Exhibit 1 (“Voestalpine Steel Manufacturing Brochure”), at 8. This document appears more likely to be a power point presentation, rather than a brochure, but in any case, voestalpine has not challenged the characterization of the document as one associated with voestalpine.

100 See voestalpine’s May 18, 2016 scope comments at Exhibit 1 (“Improved toughness due to increased homogenity {sic} and isotropy”). voestalpine documents indicate “isotropy” is distinguished as homogeneity of mechanical properties. See e.g. Section A Response, Exhibit A-19, part 7.e, Bohler-Uddeholm H13 Superior brochure, at 2.

101 See voestalpine Scope Comments at Exhibit 2

102 For example, one BBG brochure refers to the various melting and remelting processes individually (EAF/AOD versus others, including remelt and “MICROCLEAN” (the last a term used in voestalpine brochures to refer to PM, see below), followed by a single statement that “{i}n combination with our cross-rolling technology, we are able to support you with a homogeneous product having excellent material properties concerning mechanical and technical characteristics.” See Section A Response, Exhibit A-19, part 7.e., Knife Steels brochure, at 2. The same references to various difference furnace options and to cross-rolling generating a “homogeneous” end products appear in BBG product literature appearing in other submissions. See e.g. Section BCD Response at Exhibit D-4 (“Bohler Special Materials – funded solutions” page), and Supplemental Section A Response at Exhibit SQ A-23. During the plant tour conducted during the sales verification of BBG, the Department observed the “cross rolling technology.” See SSC and BBG Sales Verification Report at 9.

Note also that the aforementioned references to “EAF/AOD” are examples demonstrating that voestalpine has in its submissions relating to the proposed PROCESS field oversimplified what may occur when EAF processing is used. The AOD is one of the additional types of steel refining furnaces that may also be used to fine-tune the chemical content of the liquid steel, and which also would incur additional costs, which voestalpine failed to mention in its references to alleged production costs by type of liquid steel processing method.
treatments, for which there is a product characteristic. In short, it appears that these properties cited by voestalpine as exceptional when liquid steel processing includes the remelting process are affected by later stages of the overall CTL plate production process, which argues against use of the upstream processes (e.g., liquid steel processing) as a proxy for reflecting such properties in control numbers.

With regard to the PM process, voestalpine has stated that this process is “used to produce certain high alloy special steel CTL plate that cannot be produced using the conventional EAF melting process (even with remelting)” and that “the different melting temperatures of the alloys used in these very high alloyed grades would result in segregation during the solidification process, which would not allow the required physical and mechanical properties to be achieved.”

Given that voestalpine states that the PM process is used for certain specific grades, it is not evident why any additional segregation of such products would be needed by a PROCESS field, beyond the GRADE field proposed by voestalpine. voestalpine restated this concept more recently, in its case brief, where it noted that PM is used “to produce certain high alloy steel CTL plate that cannot be produced using the conventional EAF process (even with remelting).” The record, however, indicates that various high alloy grades can be produced without use of PM. Furthermore, voestalpine has not stated that PM can only be used for grades that cannot be produced using EAF or EAF+remelt.

Regardless, if PM is required for certain grades, and if neither EAF nor EAF+remelt can be used for those grades, then the PROCESS field would have no impact on the data and matching of the PM products in question, because they would already have been segregated from non-PM products by the GRADE field, which, in voestalpine’s methodology, is higher in the product characteristic hierarchy than the PROCESS field. On the other hand, if EAF and/or EAF+remelt is used for grades for which PM is also used, then it would be inappropriate to distinguish those PM products from those other products, given the same “required physical and mechanical

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103 See Petition Volume I at Exhibit I-7, USITC Publication Number 4581 (December 2015), at page I-30, and Memorandum from Brittany Bauer through Shawn Thompson to the File entitled “Placing the International Trade Commission Preliminary Report on the record for the Anti-Dumping Investigations of Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, Brazil, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the People’s Republic of China, South Africa, Taiwan, and the Republic of Turkey,” dated October 7, 2016 (containing Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, Brazil, China, France, Germany, Italy, Japan, Korea, South Africa, Taiwan, and Turkey, Investigation Nos. 701-TA-559-561 and 731-TA-1317-1328 (Preliminary, Publication 4615, May 2016) at pages I-28 to I-29). As noted above, the Department modified its Proposed Model Match to add a subcategory to the heat treatment field for “quenched and tempered,” which voestalpine had requested in its Model Match Comments.

104 See Petition Volume I at Exhibit I-7, USITC Publication Number 4296 (December 2011), at page I-24 (footnote 38). See also Section A Response, Exhibit A-19, part 7.e., voestalpine “Steel Division” product catalog, at 4 (“We specialize in thermomechanical rolling with accelerated cooling,” and “the thermomechanical rolling process leads to a fine-grained structure that provides high strength, high toughness levels and good cold formability.”).

105 See Supplemental Section DE Response at 15.

106 voestalpine has not provided data incorporating only a PROCESS field, without also the GRADE field replacing the QUALITY field, so there is no option for modifying the Department’s methodology through addition of just the PROCESS field, if that were considered justifiable.

107 See voestalpine Case Brief at 11.

108 See Additional Product Characteristic and Model Matching Methodology Memorandum.
properties to be achieved” for the grades in question are achievable regardless of the liquid steel processing method.109

voestalpine has not provided in its narrative responses or its case brief any elaboration regarding the “required physical and mechanical properties to be achieved” via the PM process, properties supposedly unachievable if the PM process is not employed. voestalpine’s product brochures appear to identify PM steels under the expression “MICROCLEAN.”110 voestalpine product brochure information refers to “The Advantages of Microclean Materials,” with the subheading “The world’s most modern PM steel production plant,” which produces materials “known by the name MICROCLEAN,” which “offer even further improvements in wear resistance, compressive strength, toughness, fatigue strength and polishability.”111 The extent to which such “improvements” exist however, is not evident from the record.

Taking toughness as an example, Hitachi Metals indicates that certain of its tool steels not identified as PM grades have superior toughness to those identified as PM grades.112 Also, one of the two industry standards submitted by voestalpine that it claims are collectively “applicable to much of the subject merchandise sold in the United States during the POI” characterizes the toughness of the range of products covered by the specification using terminology comparable to the terminology used to describe the toughness voestalpine states is achievable through the PM process.113

voestalpine has not been precise in identifying what physical property or properties of the final, finished CTL plate, if any, can only be achieved if PM is utilized as a liquid steel processing method. It also has not explained why the property or properties in question should be reflected in the model match hierarchy, or if they should be, why they cannot be represented by actual properties of the final, finished plate, rather than reflected through identification of an upstream production process.

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109 The same conclusion applies for distinguishing EAF+remelt from EAF. To the extent the GRADE field would distinguish such products from each other because grades are made exclusive from one method or the other, the PROCESS field would be superfluous, and to the extent certain grades may be made using either method, the liquid steel processing method should not be distinguished. In the example of the S7 Mold Quality steel referenced above, the excellent properties referenced in the “specification” are promised with no reference to liquid steel processing methods, such that variations of the grade are provided depending upon liquid steel processing method but, rather, the same product description would apply regardless of liquid processing method. voestalpine has stated on the record that what appear to be product brochures are in fact product specifications. See Supplemental Section BC Response at SBC-25.


111 Id.

112 See Hitachi Scope Comments at unnumbered Attachment, YSS Cold Work Tool Steels brochure, at 3 (compare two grades described as “Extremely tough Powder Metallurgy process high speed steel” to two grades described as either “Matrix high speed steel, extremely highest toughness” or “Matrix high speed steel highest toughness”).

113 See Section A at 50 and at Exhibit A-17, part 7.d., in the second industry standard, at 1-2; Section BCD Response at Exhibit D-4, BBG subheading, Powder Metallurgical Steel page; and Supplemental Section A Response at Exhibit SQ A-23, Special Steel Division, BBG section, Bohler Bleche brochure entitled “HIGH SPEED STEELS/TOOL STEELS/POWDER-METALLURGY STEELS/PLASTIC MOULD STEELS, at page 12. For additional discussion of the second industry standard, which was submitted as proprietary information, see Additional Product Characteristic and Model Matching Methodology Memorandum.
With regard to pricing differences associated with varying grades or liquid steel processing methods, voestalpine could have attempted during the model match comment period to provide evidence of varying pricing among different grades of high alloy steel plate products, as part of an explanation for why GRADE or PROCESS would be appropriate to distinguish commercially relevant differences in products resulting from varying physical characteristics. However, it did not do so.

In its later proposals, voestalpine still did not provide specific arguments attempting to link variations in liquid steel processing methods to differences in prices, other than to claim that alleged cost differences for those methods result in difference prices. For grades, in addition to the same incorrect assumption that varying costs of inputs must result in varying prices for product sales, voestalpine did expound upon how the varying alloying content of different grades could affect pricing. voestalpine stated in its Section A response that some group companies employ alloy surcharges, subject to periodic revision, when establishing final prices they charge customers, but refers also to a variety of things affecting final prices (e.g., base prices) other than alloy surcharges, which are themselves only referred to as “typical” for various voestalpine affiliates.\(^\text{114}\) In any case, voestalpine did not, in its submissions, provide any systematic basis for comparing variation in pricing across grades to actual plate sale prices. Later, at the BBG sales verification, voestalpine provided the LME alloy pricing data it used to calculate POI average costs for various elements identified in the Grade Chart.\(^\text{115}\) However, those average costs for elements served as the basis for assigning the numeric reporting codes for the GRADE, rather than to establish patterns of pricing variation between different grades of voestalpine plate products.\(^\text{116}\)

Furthermore, even if variation existed in voestalpine’s pricing across different grades of plate products covered under individual QUALITY subcategories, that, in and of itself, would not constitute a valid basis for altering the Department’s model match methodology. Variation in pricing of assorted products sold by a single respondent under investigation for possible unfair trading can hardly be the basis for establishment of a model match methodology, let alone for revising it after it has been established following the model match comment period.\(^\text{117}\) Prices for products sold may diverge “wildly” from each other for various reasons, both for a single respondent and between respondents, including dumping.

As noted, voestalpine’s references to pricing variations rely upon its assertions pertaining to costs, as voestalpine claims the “drastic differences in material costs, and as a result sales prices,

\(^{114}\) See Section A Response at 40-41.

\(^{115}\) See BBG Sales Verification Exhibit 11 (as included in “Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria: BBG Sale Verification Exhibits,” dated December 23, 2016).

\(^{116}\) voestalpine also did not provide evidence linking remelt or PM processing methods to variation in pricing.

\(^{117}\) See Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey, 65 FR 15123 (March 21, 2000), and accompanying IDM at Model Match Comment 1 (“...the Department focuses its selection of model match characteristics on unique measurable physical characteristics that the product can possess... “ and “...differences in price or cost, standing alone, are not sufficient to warrant inclusion in the Department's model-match of characteristics which a respondent claims to be the cause of such differences...”)
resulting from variations in alloy content are precisely the reason the Department has correctly decided in other proceedings, such as *Stainless Steel Bar from Brazil*, to code CONNUMs in the manner proposed here by voestalpine.\textsuperscript{118} However, voestalpine provided no evidence that the Department’s model match methodology in *Stainless Steel Bar from Brazil* is based on material cost differences or on variations in sales prices allegedly resulting from such material cost differences.\textsuperscript{119} Even if it had done so, the Department’s policy, as noted above, is to base its product characteristics and model matching methodology upon important differences in physical characteristics that are determined to be commercially meaningful, rather than differences in costs or prices that may coincide with some type of variation in physical characteristics. The Department has frequently stated that it does not attempt to account for every conceivable difference between products when determining which products are identical to others.\textsuperscript{120} Furthermore, the Federal Circuit has established that merchandise need not be exactly the same in order to be considered “identical,” noting also that the Department has “considerable discretion in defining ‘identical in physical characteristics’.”\textsuperscript{121}

In its Model Match Comments and its Model Match Rebuttal Comments, voestalpine did not suggest particular physical characteristics that might have directly addressed the concerns it raised later in the investigation. As noted above, the Department had defined one product characteristic, minimum specified carbon content, in its Model Match Proposal, and added two additional ones involving chemical elements (minimum specified chromium content and minimum specified nickel content) in its Final Model Match Methodology. Instead, voestalpine, like several other interested parties, not only did not object to the QUALITY field in the Model Match Proposal, but actually proposed a change that would further limit the extent to which products could be differentiated within the QUALITY characteristic, namely, identifying all tool steels under a single QUALITY subcategory. Subsequent to the Department’s issuance of the Final Model Match Methodology, voestalpine did not raise concerns about limitations of that methodology in a timely fashion, but instead waited until after that methodology was issued to respondents in the CTL plate investigations, and after it had prepared and analyzed databases,

\textsuperscript{118} See Supplemental Section DE Response, at 13 (emphasis added).

\textsuperscript{119} In an administrative review of a stainless steel wire rod order, the Department noted it had not introduced a product characteristic in stainless steel bar proceedings simply because an interested party requested it, and that “most, if not all, parties to those proceedings concurred that remelting” should be reflected in the construction of control numbers. See *Stainless Steel Wire Rod from Sweden: Final Results of Antidumping Duty Administrative Review*, 73 FR 12950 (March 11, 2008), and accompanying IDM at Comment 1. In contrast, in these CTL plate investigations, no party, including voestalpine, suggested in their model match comments the addition of a field that would distinguish products made from varying liquid steel processing methods, and interested parties in the other CTL plate investigations have had no opportunity to comment on voestalpine’s belated request for such a field.

\textsuperscript{120} See e.g., *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review: 2012-2013*, 79 FR 71087 (December 1, 2014), and accompanying IDM at General Issues Comment 1; *Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion Resistant Carbon Steel Flat Products from the Republic of Korea*, 70 FR 12443 (March 14, 2005), and accompanying IDM at General Issues Comment 1; *Light Walled Rectangular Pipe and Tube from Mexico: Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53677 (September 2, 2004), and accompanying IDM at Comment 13; and *Certain Cold Rolled Carbon Steel Flat Products from Germany: Final Results of Antidumping Duty Administrative Review*, 60 FR 65264, 65271, (December 19, 1995).

\textsuperscript{121} See *Pesquera Mares Australes Ltda. v. United States*, 266 F.3d 1372, 1384 (Fed.Cir. 2001), and *SKF USA, Inc. v. United States*, 537 F.3d 1373, 1381 (Fed.Cir. 2008).
before making successive proposals, which included a gradual rollout of information in questionnaire responses over several months. As discussed above, those proposals are unacceptable both from a procedural and an analytical standpoint. Therefore, in the final determination, we are continuing to use the CONNUMs resulting from the Department’s Final Model Match Methodology.

Comment 2: Collapsing of Companies by Division

**voestalpine Comments:**

- There is record evidence to support separately collapsing the Steel Division companies (Grobblech and SSC) and the Special Steel Division companies (BEG, BBG, BIG, and BUC), but not evidence to support collapsing the two divisions into a single entity.

- There is little to no evidence that the Steel Division companies and the Special Steel Division companies have production facilities for similar or identical products.

- The Steel Division and Special Steel Division companies cannot be collapsed, because shifting production from a Steel Division company to a Special Steel Division company (or *vice versa*) would require substantial rebuilding, not merely retooling.

- There is no potential for manipulation of price or production, because although they do not contest common ownership, the companies’ operations are insufficiently intertwined. There is little evidence of interlocking of company board membership across divisions. Additionally, mere common ownership is insufficient to warrant finding manipulation of price or production.

**SSAB Comments:**

- The Department properly collapsed members of the voestalpine group into a single entity in the *Preliminary Determination*.

- In analyzing whether producers have production facilities for similar or identical products that would not require substantial retooling, the Department should analyze whether the companies are producing similar or identical products, not whether the companies have different production facilities.

- The Steel Division and Special Steel Division companies all produce subject merchandise.

- In analyzing whether there is a significant potential for manipulation of price and production, not all three prongs of the explicit regulatory analysis need to be present for an affirmative finding.

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122 See voestalpine’s Case Brief at 19-30.
123 SSAB’s Rebuttal Brief at 6-9.
• The Department should find there is significant potential for manipulation of price or production. All parties agree there is common ownership among the voestalpine companies. There are interlocking board members among the companies in the respective divisions, and there are interlocking board members between voestalpine Stahl GmbH (Stahl) and voestalpine Edelstahl GmbH (Edelstahl). There is potential for an entity that interlocks top-down within both divisions to manipulate prices. Finally, there is a high level of intertwined operations, including voestalpine USA sharing market research and providing other support to the Group as a whole. Based on a totality of the ownership levels, it would be difficult not to have the level of intertwining sufficient for an affirmative finding of collapsing.

Department’s Position:

The Department finds that, based on the totality of record evidence, it should continue to treat BEG, BBG, BIG, Grobblech, and SSC as a single entity for purposes of this investigation.

Neither voestalpine nor SSAB contest that BEG, BBG, BIG, Grobblech, and SSC are affiliated.\(^{124}\) Furthermore, neither voestalpine nor SSAB contest the fact that the Steel Division and the Special Steel Division companies both produce merchandise which is subject to the investigation.\(^{125}\) The issue before the Department, however, is whether or not the regulatory requirements for collapsing are met in this case. In order to collapse the affiliated companies into a single entity, 19 CFR 351.401(f)(1) requires, “In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure the manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.”\(^{126}\) Accordingly, we have considered the issue of “production facilities for similar or identical products,” “substantial retooling,” as well as if there has been “a significant potential for the manipulation of price or production.”

Production Facilities for Similar or Identical Products

With respect to voestalpine’s argument that the production facilities of the Special Steel and Steel Division companies are so different that substantial retooling would be required, we note that contrary to voestalpine’s argument, the CAFC has interpreted the regulatory requirement “on its face {to} require {} similarity in the products produced, not in the facilities that produce them.”\(^{127}\)

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\(^{124}\) See voestalpine Case Brief at 19, “voestalpine does not contest that each company is, as the Department Notes, either 99 percent or 100 percent-owned, and, thus, under common control of… voestalpine AG;” see also SSAB’s Rebuttal Briefs at 6.

\(^{125}\) See voestalpine Case Brief at 19-30; see also SSAB’s Rebuttal Brief at 6-9.

\(^{126}\) 19 CFR 351.401(f)(1).

\(^{127}\) See Viraj Gr. v. United States, 476 F.3d 1349, 1356 (Fed. Cir. 2007) (Viraj) (emphasis added).
We find that a number of products produced by the Special Steel Division are “similar” to products produced by the Steel Division.

The final cost database submitted by voestalpine, which presumably does not even cover the full range of CTL plate products manufactured by the voestalpine companies during the POI, given only products sold to the U.S. and comparison markets were required to be reported, include products made by the Steel Division and the Special Steel Division that vary only for a few product characteristics out of the numerous ones used to identify CONNUMs. Although the product characteristics of the merchandise produced by voestalpine’s various affiliated companies are proprietary, we can state publicly that a number of products produced in the Steel and Special Steel Divisions share physical characteristics which are the same at the top of the model-matching hierarchy. In other words, those particular products differ based only on physical characteristics which are considered less significant for purposes of the Department’s model-matching methodology than those at the top of the hierarchy. That merchandise therefore is “similar” for purposes of our collapsing analysis.

This determination is further supported by our conclusion in this investigation that CTL plate, as defined by the scope of the investigation, constitutes a single class or kind of merchandise, based on our analysis of the Diversified Products factors, found in 19 CFR 351.225(k)(2). In addition, it is also consistent with the United States International Trade Commission (ITC)’s decision that there is not a “clear dividing line between tool steel and high speed steel on the one hand, and other CTL plate products on the other” for purposes of its domestic like product analysis.

Accordingly, we determine that voestalpine’s “producers have production facilities for similar” products between both its Steel and Special Steel Divisions.

Substantial Retooling

128 See Memorandum, “Less-Than-Fair-Value Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria; Final Analysis Memorandum for voestalpine Companies,” dated concurrently with this memorandum (Final Analysis Memorandum) for additional analysis.

129 See id.

130 See Final Scope Memorandum at 34-39, citing Diversified Products v. United States, 572 F. Supp. 883, 889 (CIT 1983) (Diversified Products). See also e.g., Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 81 FR 42314 (June 29, 2016), and accompanying IDM at General Comment 1; Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Germany, 60 FR 31974 (June 19, 1995); Pure and Alloy Magnesium from Canada: Final Affirmative Determination; Rescission of Investigation and Partial Dismissal of Petition, 57 FR 30939 (July 13, 1992).

131 See Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, Brazil, China, France, the Germany, Italy, Japan, Korea, South Africa, Taiwan, and Turkey, Investigations Nos. 731-TA-1319 (Final), 731-TA-1326 (Final), 731-TA-1328 (Final), U.S.I.T.C. Pub. No. 4664 (2017) at 17-18; see also Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, Brazil, China, France, the Germany, Italy, Japan, Korea, South Africa, Taiwan, and Turkey, Investigations Nos. 701-TA-559-561 (Preliminary), 731-TA-1317-1328 (Preliminary), U.S.I.T.C. Pub. No. 4615 (2016).
With respect to the retooling requirement of the regulation, both voestalpine and SSAB cite to the CAFC’s decision in *Viraj* with respect to this prong of the collapsing test. The CAFC held in *Viraj*, “that where any one of two related companies could shift production to that of the other without necessitating substantial retooling, this part of Commerce’s collapsing regulation is satisfied.” In the administrative review at issue in *Viraj*, on remand the Department determined that collapsing was permissible because retooling would not be substantial because the Department “estimated that it would require ‘less than 10 percent’” of the company’s “current fixed asset value” to retool the production facilities between its affiliates. In a second remand, the Department determined that retooling would require only “2.88 percent of VAL’s production-related assets.” The Court held that such an investment was not “substantial” based on the record evidence.

Voestalpine provides no evidence that the companies would need to “gut and rebuild” their operations “from the ground up in order to produce the other division’s products.” In fact, it provided no evidence that any retooling at all would be needed to allow for the manufacture of any plates by one voestalpine company (e.g., a Steel Division company) during the POI to be manufactured by another voestalpine company (e.g., a Special Steel Division company). At no point does voestalpine even state that the plate-making Special Steel Division companies are unable to roll any of the “carbon steel plate” products normally manufactured and sold by the Steel Division, let alone explain why such Special Steel Division companies would be unable to do so.

Furthermore, if the Special Steel Division is unable to produce ingots or slabs in the chemistries required for “carbon steel plate,” which voestalpine has not even claimed, the Special Steel Division companies could still purchase ingots or slabs (whether from other voestalpine companies, or other suppliers) from which they could roll “carbon steel plates.” Voestalpine does not provide evidence that “carbon steel plate” products require certain plate rolling methods, and record evidence indicates there are no particular restrictions on rolling methods for producing varieties of “carbon steel plate.” Even if “cross-rolling is a unique form of technology used for tool steels,” that does not demonstrate it cannot be used to produce other types of steel.

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132 See *Viraj*, 476 F.3d at 1356.
133 Id., at 1352.
134 Id., at 1358.
135 Id.
136 See voestalpine Case Brief at 25.
137 The melting practices (e.g., the use of electric furnaces by the Special Steel Division) are irrelevant in this context, because there is nothing prohibiting the use of ingots or slabs made from liquid steel made in electric furnaces to produce varieties of “carbon steel plate.” Voestalpine identified what it claimed were the top ten specifications accountable for its U.S sales in the POI. Voestalpine chose to not provide full copies of any of those specifications, but, rather, just the first page of each. See Supplemental BC response at SBC-25 and Exhibit SBC-25. However, another party submitted information on the record of this investigation that identifies requirements of some of the subject merchandise produced and sold by voestalpine, and that information makes no reference to particular melting practice requirements or rolling methods. Because of the proprietary nature of the documents, this is described in a separate memorandum. See Final Analysis Memorandum.
138 Id.
139 See voestalpine Case Brief at 22.
plates, and voestalpine does not claim otherwise.\textsuperscript{140} voestalpine claims that the record establishes that the rolling of carbon steel requires more rolling force than high alloy specialty steel.\textsuperscript{141} However, the BBG sales verification exhibit cited by voestalpine simply makes claims about the relative rolling forces of the different plate mills (with no substantiating technical documentation), and makes no claims regarding what amount of rolling force is required for the full ranges of “carbon steel plates” and “high alloy specialty steel plate,” or for any specific types of plate for that matter.\textsuperscript{142}

To be clear, voestalpine argues that the production facilities of the Steel Division and Special Steel Division companies are so different that substantial retooling would be required, yet it fails to provide evidentiary support for such a claim. voestalpine has provided no analysis of the total production-related assets of the combined Steel Division and Special Steel Division companies, nor has it provided an analysis of the percentage of those assets which would be required to retool production facilities in order to “restructure the manufacturing priorities.”

voestalpine relies on Viraj Group to substantiate its claim, yet does not provide the necessary data, or any analysis of that data, to reach its argued conclusion.\textsuperscript{143} Unlike the facts before the CAFC in Viraj, however, the Department finds that no record evidence supports voestalpine’s arguments with respect to this issue. Because there is no evidence on the record providing the amount of investment required to retool the production facilities to produce similar or identical products, the Department is unable to calculate the percentage of retooling, and thus is unable to determine whether retooling would be “substantial.” Absent such information, in light of the fact that merchandise produced by both Divisions is “similar or identical,” as explained above, we must determine that the amount of retooling necessary to “restructure the manufacturing” facilities would not be substantial.

\textit{Significant Potential for Manipulation of Price or Production}

The third condition for collapsing affiliates into a single entity is that the Department must determine “that there is significant potential for the manipulation of price or production.”\textsuperscript{144} The regulations specify that in evaluating the second condition, Commerce “may consider” the following factors: (i) level of common ownership, (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.\textsuperscript{145} As the CIT has held, “none of these factors

\textsuperscript{140} In fact, voestalpine has acknowledged elsewhere that cross-rolling is used for types of steel other than tool steel (i.e., other types of “high alloy specialty steel” products.

\textsuperscript{141} \textit{Id.}, at 22-23, citing BBG Sales Verification Exhibit 6.

\textsuperscript{142} See BBG Sales Verification Exhibit 6.

\textsuperscript{143} We recognize that that the companies’ financial statements contain the total value of fixed assets. \textit{See} Section A Response at Exhibit A-14. However, there is no breakdown of those asset values as they pertain to the particular products at issue and the facilities which could be retooled to manufacture those products at either the Steel Divisions’ facilities or the Special Steel Division’s facilities.

\textsuperscript{144} 19 CFR 351.401(f)(1) and (2).

\textsuperscript{145} \textit{Id.}
alone are dispositive, and when Commerce evaluates them, it looks for actual price manipulation in the past and the possibility of future manipulation.”\textsuperscript{146} Additionally, “Commerce considers these factors ‘in light of the totality of the circumstances,’ when deciding whether collapsing is appropriate.”\textsuperscript{147}

\textit{(i) level of common ownership}

As discussed above, voestalpine does not contest there is a very high level common ownership, wherein BEG, BBG, BIG, Grobblech, and SSC are either 99 percent or 100 percent owned by voestalpine AG.

\textit{(ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm}

Regarding the second prong of the analysis for significant potential for price or production manipulation, the Department considers the evidence on the record that was addressed in the Collapsing Memorandum regarding interlocking board membership between voestalpine companies.\textsuperscript{148}

The Department agrees with voestalpine that evidence on the record clearly indicates that there are shared board of directors within Special Steel Division companies and the Steel Division companies. Additionally, the parent companies of each division, Edelstahl and Stahl, respectively, have shared board members. It is argued by voestalpine that these shared board members demonstrate little more than “top-level,” common ownership by voestalpine AG. However, we disagree with voestalpine that the record reflects such a relationship between the boards. Rather, this “top-level” common ownership demonstrates that there is potential that the two divisions, with shared voting board members, could manipulate prices and production through their mutual interest in both boards. Specifically, the parent companies, Stahl and Edelstahl, share board members, and within the two divisions, Grobblech and SSC, and BEG, BBG, and BIG, respectively, share board members as well. Therefore, Department finds that the shared board members of the companies within each respective division and the shared board members of the parent companies are sufficient to find a significant potential for manipulation of price or production. For additional proprietary discussion regarding shared employees, see Collapsing Memorandum at 6.

\textit{(iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers}


\textsuperscript{147} See Koyo Seiko Co. v. United States, 516 F.Supp.2d 1323,1346 (CIT 2007) aff’d, 551 F.3d 1286 (Fed. Cir. 2008).

\textsuperscript{148} See Collapsing Memorandum at 6.
Lastly, voestalpine itself argues that there is record evidence supporting intertwined operations within the Steel Division and Special Steel Division. Record evidence demonstrates there is a high level of intertwined operations, including intercompany transactions among Grobblech and SSC and among BEG, BBG, and BIG, sharing of employees between Grobblech and SSC, and shared facilities between BEG and BIG.\(^{149}\) There were also cross-division operations such as voestalpine USA Corp. providing general sales support to voestalpine as a whole, including general U.S. market competition research and customer credit reviews,\(^{150}\) and Grobblech’s rolling of products for BBG.\(^{151}\) While we agree with voestalpine that operations are intertwined within the divisions, we disagree that this is where the intertwining stops.

Citing to *U.S. Steel Corp.*, voestalpine argues that Grobblech’s contract work “represents ‘nothing more than a continuation of a prior commercial relationship rather than a vehicle of manipulation’ cannot be considered on their own to establish ‘a significant potential for the manipulation of price or production.’”\(^{152}\) However, the commercial relationship of the affiliates in *U.S. Steel Corp.* differed greatly from those of the companies in this case, such as Grobblech and BBG. In *U.S. Steel Corp.*, the Court held that transactions between the affiliates were “nothing more than a continuation of a prior commercial relationship rather than a vehicle for manipulation,” where the companies became affiliated halfway through the review period and the commercial relationship did not change.\(^{153}\) Specifically, those companies were unaffiliated for a portion of the review period; therefore, those companies were not in a position to manipulate prices or production to avoid paying antidumping duties. However, once those companies became affiliated (for the remainder of the review period), the commercial relationship could have changed, but did not, demonstrating that the transactions at issue were not “a vehicle of manipulation.” In contrast, Grobblech and BBG have been affiliated for approximately 10 years, and have an extensive, established, relationship.\(^{154}\) Furthermore, Grobblech performs contract rolling work for BBG.\(^{155}\) In addition, voestalpine USA Corp. provides general sales support to voestalpine as a whole, including general U.S. market competition research and customer credit reviews.\(^{156}\) The commercial relationship of the companies in this case is therefore very different from those at issue in *U.S. Steel Corp.*, and we determine that there is the potential to manipulate price and production between the voestalpine affiliated producers.

**Conclusion**

In consideration of each of the three factors listed in 19 CFR 351.401(f)(1), and based on the totality of record evidence, the Department has determined that BEG, BBG, BIG, Grobblech, and SSC “have production facilities for similar or identical products that would not require substantial retooling” of those companies’ facilities “in order to restructure the manufacturing

\(^{149}\) *See Section A Supplemental Response at SQ A-9.*  
\(^{150}\) *Id.*, at SQ A-15-16  
\(^{151}\) *Id.*  
\(^{152}\) *See U.S. Steel Corp. v. United States*, 844 F. Supp. 2d 1334, 1339 (CIT 2012).  
\(^{153}\) *Id.*  
\(^{155}\) *See Supplemental Section A Response at 9.*  
\(^{156}\) *Id.*, at SQ A-15-16
priorities.” Furthermore, we have concluded that there is a “significant potential for the manipulation of price or production.” Thus, we continue to find that BEG, BBG, BIG, Grobblech, and SSC should be collapsed and treated as a single entity.

**Comment 3: Changes to the Level of Trade Analysis**

**voestalpine Comments:**

- Although the Department found home-market sales were performed at three levels of trade in the *Preliminary Determination*, voestalpine had reported sales as being made at one of two levels of trade in its home-market database, distinguishing between sales of non-further-processed products and further-processed products. The evidence demonstrates that the sales of further-processed products involved higher levels of selling functions and, thus, these sales should be deemed at a higher level of trade than other home-market sales.

- Where a channel involves more intensive selling activities, the Department has found that such a channel is at a more advanced level of trade than other channels. For example, in *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Final Determination of Sales at Less Than Fair Value*, 81 FR 47352 (July 21, 2016) and accompanying IDM at Comment 8, the Department found two levels of trade where one home-market channel of distribution involved significantly higher levels of selling activities performed for original equipment manufacturers (OEMs) than the other home-market channels of distribution.

- The further-processed products can be distinguished from the other products because they underwent additional fabrication steps, involving a significant investment in labor and machining necessary to further process such products. Also, the Department has routinely found that the channels of distribution involving OEM customers constitute a more advanced level of trade, such as in *Ball Bearings and Parts Thereof From Japan and the United Kingdom: Preliminary Results of Antidumping Duty Administrative Review; 2010-2011* (September 17, 2014) (*Ball Bearings from Japan*) and accompanying IDM at 14-15 (unchanged in final results), where the OEM channel involved more intensive selling activities, such as the provision of custom-designed products and onsite visits.

- Sales of further-processed products made by voestalpine at the second level of trade involved the performance of the following selling activities at a high intensity: inventory maintenance, general promotion/marketing activities, sales forecasting, use of direct sales personnel, sales/marketing support, freight and delivery arrangements, order processing and invoicing, and further processing.

- At the CEP sales verification, the Department focused its examination on the selling functions BUC performed for its unaffiliated customers. However, the Department’s standard practice of designating the level of trade for CEP sales is to examine the level of sales.

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157 See voestalpine’s Case Brief at 30-35.
the constructed sale from the exporter to the importer and, accordingly, the Department should consider the selling functions performed by the Austrian mills for BUC in determining the level of trade. Because these selling functions are essentially non-existent, the Department should find the CEP sales are made at a lower level of trade than the EP sales and code the “LOTU” variable in the margin-calculation program as “0” for the CEP sales.

**SSAB Comments:**

- The Department rejected voestalpine’s claim for a separate level of trade for further-processed products in the *Preliminary Determination*, where it found no difference in the selling functions performed for channel 3 and channel 4 sales apart from the further processing functions, which it found to be part of the manufacturing process for these sales.

- voestalpine has not provided record evidence that would support it conducting such substantially and qualitatively different selling activities for home-market sales of further-manufactured products. In its Section A Response, voestalpine reported performing the same eleven selling activities for its further-processed and non-further-processed home-market sales, apart from the further-processing activity. In its September 14, 2016, supplemental questionnaire response for Section A, voestalpine clarified that most of SSC’s home-market sales involved further-processed, cut-to-shape products produced from Grobblech plate and that the further-processing was performed at a high level of intensity.

- In *Stainless Steel Bar from France: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 17411 (April 6, 2005) at 17414, the Department found that further-manufacturing activities were not selling functions and were thus not relevant to the level-of-trade analysis. For purposes of the level-of-trade analysis, it does not matter that a range of further-processing services were performed for some sales at a high level of intensity but that eleven selling activities were performed exactly the same way for home-market sales of all products, whether they were further-manufactured or not.

- It is the Department’s well-established approach to analyze the level of trade by examining stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Accordingly, there is no basis for the Department to reconsider its level-of-trade analysis with respect to voestalpine’s CEP sales.

**Department’s Position:**

In our Preliminary Decision Memorandum, we reviewed voestalpine’s information regarding its channels of distribution and selling functions and we found that it had made its home-market sales at three levels of trade, which corresponded to sales made through its “channel 1,” “channel

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158 See SSAB’s Rebuttal Brief at 10-13.
2.” and combined “channels 3 and 4” channels of distribution.\textsuperscript{159} However, in its Section B Response, voestalpine reported two levels of trade for its home-market sales – one level for non-further-processed products and one level for further-processed products.\textsuperscript{160} In addition, when asked if the pricing of CTL plate varied by channel of distribution or customer category, voestalpine responded that the prices in channels of distribution through which an affiliate stocked and further manufactured plate were significantly higher than prices through which plate was not further manufactured.\textsuperscript{161} voestalpine also responded by stating that the price premium reflected additional selling functions performed by the affiliate, as well as the further-manufacturing operations and the smaller quantities per item in comparison to production lots.\textsuperscript{162}

In its September 14, 2016, supplemental questionnaire response, voestalpine reiterated that the prices for sales of CTL plate products that are shipped from standing inventory or are further manufactured, are often significantly higher than prices for direct-mill sales.\textsuperscript{163} The company also stated that the price premium reflected, among other things, the additional selling functions performed for stocking and further-manufacturing operations.\textsuperscript{164} It noted that, in particular, SSC charged higher prices for the specialized further-manufactured products sold through home-market channel 4 (i.e., small plate shapes, steel blanks, and steel parts and components) and BIG’s sales of high-alloyed steel plate (purchased from BEG) to Austrian toolmakers in small quantities, supplied from stock and further manufactured prior to sale, which were higher than BIG’s sales prices to customers who purchased standard products in larger lot sizes.\textsuperscript{165}

Following the Preliminary Determination, company officials discussed the customized nature of the further-manufactured products with Department officials at the CEP sales verification.\textsuperscript{166} Furthermore, in its case brief, voestalpine argued that selling functions for its level 2 sales had been performed at a greater intensity, citing the large inventories of CTL plate that must be maintained by the resellers of the further-processed products, the larger marketing and sales staff that must be maintained for customers of these products, and the technical services required to produce customized items.\textsuperscript{167}

After a reconsideration of the record, we conclude that voestalpine’s reporting of its two levels of trade were appropriate. A review of the company’s selling-functions chart shows little distinction between the types and degrees of selling activities performed for each of the four home-market channels of distribution. One of the few differences is the further-processing activity performed for channel-4 sales. At the CEP sales verification, BUC officials clarified the

\textsuperscript{159} Preliminary Decision Memorandum at 11.
\textsuperscript{160} On page B-45 of its Section B Response, voestalpine stated that level of trade 1 corresponded to its channels of distribution 1 through 3 and level of trade 2 corresponded to channel 4; however, a review of the home-market sales database shows that the sales were divided between levels depending on whether the merchandise was further-processed or not.
\textsuperscript{161} See Section A Response at 28-29.
\textsuperscript{162} Id.
\textsuperscript{164} Id.
\textsuperscript{165} Id., at SQ A-15.
\textsuperscript{166} See CEP Verification Report at 7.
\textsuperscript{167} See voestalpine’s Case Brief at 32-33.
customized nature of its further-manufactured products, which require additional customer support and technical services. Finally, voestalpine has cited *Ball Bearings from Japan*, in which we found that the two OEM channels of distribution constituted one level of trade due to the types and intensity of the selling functions performed for those two channels. Many of these functions, including prototype development services, custom-design products, and customer-specific research and development, are similar to the activities voestalpine performs for its customers of further-processed products. Therefore, we accept the level-of-trade information reported by voestalpine in its Section B Response and will base our final margin calculations on two home-market levels of trade – one for non-further-processed products and one for further-processed products.¹⁶⁸

As noted by voestalpine in its comments, it is our practice to designate the level of trade for CEP sales by comparing the selling activities performed by the exporter in the constructed sale between it and the importer, the U.S. sales affiliate. When we compare those activities to those performed for home-market customers at the two levels of trade, we find that the selling activities performed for the home-market customers at both levels of trade were performed at a higher degree of intensity or were greater in number than the selling functions performed at the CEP level of trade. In other words, we conclude that both home-market levels of trade are at a more advanced stage than the CEP level of trade. Finally, the available data does not permit us to determine whether a level-of-trade difference affects price comparability in order to permit for a level-of-trade adjustment to be made to NV. Accordingly, to adjust for differences in any levels of trade between the home and U.S. markets, we have continued to apply a CEP offset to NV, in accordance with section 773(a)(7)(B) of the Act, in our final margin calculations.¹⁶⁹

**Comment 4: Use of Actual Weight Bases**

*voestalpine Comments:* ¹⁷⁰

- The Department should not rely on a common weight basis to compare carbon steel and high-alloy special steel products in calculating the dumping margin. The Steel Division, which sells carbon steel products, sells plate and tracks production costs based on nominal weight, whereas the Special Steel Division, which sells high-alloy special steel products, sells plate and tracks production costs based on actual weight. In a supplemental questionnaire response to Sections B and C of the antidumping questionnaire, voestalpine clarified that, because of the ways in which the products are weighed, produced and sold, it could not convert all home-market and U.S. sales quantities to a common-weight basis for reporting purposes.

- The method voestalpine used to derive theoretical weight for the high-alloy products in response to a later supplemental questionnaire is inherently unreliable because the weight estimates were based on assumptions about the dimensions of each plate at the time the

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¹⁶⁸ We inadvertently used this same data to calculate the preliminary dumping margin, even though our findings with respect to the level-of-trade analysis somewhat differed.

¹⁶⁹ The CEP offset from home-market net price is subject to an offset cap, which is calculated as the sum of home-market indirect selling expenses up to the amount of U.S. indirect selling expenses deducted from CEP.

¹⁷⁰ See voestalpine’s Case Brief at 36-39.
product was ordered; the actual dimensions of the product vary because the plate is produced in random lengths, as opposed to carbon plate, which is cast to a specific length. Deviations between the theoretical and actual weights of the high-alloy products were demonstrated to Department officials at the BBG sales verification.

**SSAB Comments:**¹⁷¹

- All sales should be calculated on a theoretical-weight basis for the final margin calculation, pursuant to the Department’s practice to convert all values to a single unit of measure so that its margin calculations are performed on a consistent basis.

**voestalpine Comments:**¹⁷²

- The Department should not adopt SSAB’s proposal to calculate the dumping margin on a theoretical-weight basis because use of the theoretical-weight-based figures for the sales of high-alloy products would introduce unnecessary inaccuracy into the margin calculation. Furthermore, there is no need to convert sales of all products to a single unit of measurement because sales of carbon steel and high-alloy special steel products are not comparable for purposes of calculating the margin.

- The calculation of all sales on a theoretical-weight basis is not in line with voestalpine’s actual business practices. Therefore, the Department should continue to calculate unit prices and expenses for the Steel Division companies using theoretical weight and for the Special Steel Division companies using actual weight.

**SSAB Comments:**¹⁷³

- The dumping margin should be calculated consistently, using theoretical weight for all sales, in keeping with the Department’s finding in *Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 81 FR 75030 (October 28, 2016) (*Pipe from UAE*), accompanying IDM at Comment 2.

**Department’s Position:**

As noted by voestalpine, it reported the weight differently for high alloy steel and carbon steel products due to the method that weight was recorded and reflected on the commercial invoices to its customers.¹⁷⁴ Carbon alloy products were reported on a theoretical weight basis in the home market and U.S. market because the products’ large dimensions made it impossible to record actual weight.¹⁷⁵ This was the only weight that was consistently reported for carbon steel products and reflected on commercial invoices issued to customers. High-alloy products were...
reported on an actual weight basis in the home market and U.S. market and reflected on commercial invoices issued to customers. Following the Preliminary Determination, voestalpine did report a theoretical weight for its high-alloy products in response to a supplemental questionnaire, where they explained that the amounts were based on estimated weights because production of the products were in random lengths.\(^{176}\) Finally, at the sales verification of BBG, company officials confirmed that BBG records the weight of its products – the high-alloy products, on an actual basis in the normal course of business because its customers require BBG to invoice them for the actual weight of the product given the precise nature of the product and the high-alloy content.\(^{177}\) The officials explained that they follow industry standard by recording weight on an actual basis for tool steel.\(^{178}\) They added that, in order to respond to the Department’s supplemental questionnaire, the company used a theoretical ingot weight, which was highly unreliable and would introduce distortions into the margin calculations.\(^{179}\)

In Pipe from UAE, we selected the use of theoretical weight as the basis for dumping margin calculations because, although the company recorded actual weight on certain shipping documents and in its sales register for tracking purposes, it did not price any sales in actual weight or reflect the actual weight on the commercial invoices issued to customers.\(^{180}\) Rather, the company priced its products in theoretical weight in both markets.\(^{181}\) In the current case, voestalpine only records and prices the weight of its high-alloy products in actual weights in both markets. Thus, in light of Pipe from UAE, we find it may be reasonable to continue using the actual weights for these products in the final margin calculations, despite the fact the prices and costs for the carbon steel products could only be reported on a theoretical basis due to the large dimensions of the products. In addition, the theoretical weights provided by voestalpine for the alloy products are estimated amounts because of the production of the products in random lengths and, for this reason, will never be as accurate as actual weights.\(^{182}\) Thus, use of the actual weights for the alloy products will result in the calculation of a more accurate dumping margin. Ideally, the prices, costs and expenses of all products would be compared on the same basis, but, as noted by the respondent, reliance on the theoretical weights in the manner reported by voestalpine for the high-alloy products would be more likely to introduce significant distortions into the final margin calculations. Therefore, we will continue to use the bases of weights relied upon for the Preliminary Determination. However, in the event of the issuance of an antidumping duty order, we will request voestalpine to report theoretical weights for high-alloy products on a more reliable basis.

\(^{176}\) See voestalpine’s response to a supplemental questionnaire, dated November 25, 2017. SBCD-1-SBCD-4.
\(^{177}\) See BBG Verification Report at 9.
\(^{178}\) Id.
\(^{179}\) Id.
\(^{180}\) See Pipe from UAE, accompanying IDM at Comment 2, 12-13.
\(^{181}\) Id.
\(^{182}\) See voestalpine’s Case Brief at 38.
Comment 5: Adjustment to Home Market Sales for Hub Fee

SSAB’s Comments:\(^{183}\)

- The Department should not make an adjustment for the hub fee because it is an intercompany transaction between two of the voestalpine entities that the Department collapsed and treats as a single entity.

voestalpine’s Comments:\(^{184}\)

- voestalpine does not agree with the Department’s basis for collapsing BIG because BIG does not produce subject merchandise, and therefore would have to go far beyond substantial retooling to produce similar or identical products. BIG should not be collapsed; therefore, the hub fee cannot be considered an intercompany transaction. The Department should continue to make the direct selling expense adjustment, as it did in the Preliminary Determination.

- Alternatively, if BIG is collapsed, the Department should continue to deduct the per-unit hub fee expense reported by BIG, because the expenses are clearly direct selling expenses incurred by BIG in relation to its sales to unaffiliated customers, not the collapsed transactions with affiliated mills.

Department’s Position:

We disagree with voestalpine that 19 CFR 351.401(f) does not permit BIG to be collapsed with other Special Steel Division or voestalpine entities. In support of its claim on this issue, voestalpine relies on Butt-Weld Pipe Fittings from Italy, “where the Department collapsed a producer and seller because ‘management could easily switch the role of producer and seller between the two companies without substantial retooling of either company.’”\(^{185}\) In that case, the Department, relying on its analysis and determinations from a previous case, Shrimp from Brazil, determined to collapse the two companies because they “operate as one company, managed by the same individuals… {and;} share the same building and mailing address.”\(^{186}\) voestalpine argues that because that factual scenario does not appear in this case, the Department should not collapse BIG with the other voestalpine entities.

We disagree with voestalpine that the Department’s practice of collapsing producing and non-producing companies is limited to the factual situation in Butt-Weld Pipe Fittings from Italy. In

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\(^{183}\) See SSAB’s Case Brief at 1-8.

\(^{184}\) See voestalpine Rebuttal Brief at 2-7.

\(^{185}\) Id., at 4 (citing to Stainless Steel Butt-Weld Pipe Fittings from Italy: Preliminary Results of Antidumping Duty Administrative Review and Preliminary No Shipment Determination, 76 FR 79651 (December 22, 2011) (Butt-Weld Pipe Fittings from Italy) and accompanying Preliminary Decision Memorandum, unchanged in Stainless Steel Butt-Weld Pipe Fittings from Italy: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination, 77 FR 24459 (April 25, 2012)).

\(^{186}\) See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil, 69 FR 76910 (December 23, 2004) (Shrimp from Brazil) and accompanying Issues and Decision Memorandum at 12-13.
fact, the Department’s practice to determine whether non-producers should be treated as a single entity is to rely on the criteria in 19 CFR 351.401(f)(2): (1) level of common ownership, (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, (3) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers, and (4) any other criteria the Department finds indicate a significant potential for manipulation.\(^{187}\) Although both statutory and regulatory provisions exist for classifying affiliated producers as a single entity, there are no statutory or regulatory provisions for considering related non-producers as a single entity with respect to antidumping analyses. In a situation where Congress has not provided clear guidance on an issue, the courts have shown deference to the agency’s interpretation of its own statute as long as the interpretation is reasonable.\(^{188}\) While 19 CFR 351.401(f) applies only to producers, the Department has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria in the regulation in its analysis.\(^{189}\)

The Department’s practice was recently affirmed in United States Steel Corporation \textit{v. United States}, where the CIT explained that “(a)lthough Commerce's collapsing regulation speaks of treating two or more affiliated producers as a single entity, Commerce has developed a practice of collapsing exporters with affiliated producers of subject merchandise under certain circumstances.”\(^{190}\) The Court explained that “Commerce’s practice for collapsing exporters with affiliated producers is to look solely at the second requirement under its regulation that the relationship between the affiliated companies raises ‘a significant potential for manipulation of price or production.’”\(^{191}\) The Court explained that “In assessing whether such significant potential for manipulation of price or production exists, Commerce has incorporated the criteria from 19 CFR 351.401(f)(2), as well as other criteria Commerce finds indicate “a significant potential for manipulation.”\(^{192}\) The Court affirmed that “(s)ince the structure of the regulation,

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\(^{187}\) See e.g., Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination Results, 81 FR 11757 (March 7, 2016) and accompanying Preliminary Decision Memorandum, (Cold-Rolled from Korea) unchanged in Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value, 81 FR 49953 (July 29, 2016)); see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2013–2014, 80 FR 80746 (December 28, 2015) and accompanying Preliminary Decision Memorandum, (Solar Cells from PRC) unchanged in Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013–2014, 81 FR 39905 (June 20, 2016) (where the Department collapsed producers and exporters).


\(^{189}\) Id. Additionally, the \textit{Hontex} court found that collapsing exporters is consistent with a "reasonable interpretation of the antidumping duty statute.” \textit{Hontex} at 1338.

\(^{190}\) United States Steel Corp. \textit{v. United States}, 179 F. Supp. 3d 1114, 1135 (CIT 2016) (\textit{United States Steel}); see also, Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods from India, 79 FR 41981 (July 18, 2014) and accompanying IDM at 24; see also Shrimp from Brazil IDM at 14; see also 19 CFR 351.401(f)(1).

\(^{191}\) See id. at 1136; see also, Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods from India, 79 FR 41981 (July 18, 2014) and accompanying IDM at 24 and Shrimp from Brazil IDM at 14.

\(^{192}\) United States Steel, 179 F. Supp. 3d at 1135.
which is incorporated in Commerce's practice, makes clear that Commerce need not consider all of the §351.401(f)(2) factors, Commerce need not conclude on the basis of any one factor listed in the regulation alone that the potential for manipulation of price or production was significant.”

As discussed above in Comment 2, neither voestalpine nor SSAB contest that voestalpine AG maintains 99 or 100 percent ownership over BIG, BEG, BBG, SSC, and Grobblech, and thus they are under common control by voestalpine AG. Additionally, as noted in the Collapsing Memorandum, BIG, BBG, and BEG have shared board members. Furthermore, the Department finds BIG’s operations are intertwined with the rest of the voestalpine because significant transactions occurred between BIG, BEG, and BBG, office facilities were shared between BEG and BIG, and involvement in pricing decisions can be inferred through an shared board members. Therefore, the Department continues to determine that BIG should be collapsed with the other members of voestalpine.

When companies are collapsed and treated as a single entity, it is the Department’s practice to eliminate intercompany transactions from the margin analysis. An intercompany transaction is an expense that is attributable to the sale between affiliated companies. voestalpine argues that the hub fee relates to goods that are sold by BIG to unaffiliated customers. We acknowledge that BIG’s order is fulfilled by and shipped from BEG to the unaffiliated customer; however, the evidence on the record reflects that the hub fee is incurred by BIG, not the unaffiliated customer. Specifically, record evidence demonstrates that BEG invoices BIG for the price of the goods and a “hub” fee for BEG’s stocking, handling, and logistic services. Therefore, we find that the hub fee is an intercompany transaction between BEG and BIG, and, accordingly, we are not deducting this fee from normal value in our final margin calculations.

**Comment 6: Calculation of U.S. Indirect Selling Expenses for Non-Further-Manufactured Products**

**SSAB Comments:**

- Department practice treats all selling, general and administrative (SG&A) expenses incurred by the affiliated U.S. importer as indirect selling expenses incurred in the United States, however, voestalpine abandoned that concept and excluded certain general and administrative (G&A) expenses from the pool of indirect selling expenses. Specifically, voestalpine calculated a pool of G&A expenses that it applied to further-manufacturing.

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193 Id. at 1136.
194 See voestalpine’s Case Brief at 19; see also SSAB’s Rebuttal Brief at 8.
195 For more details, see Collapsing Memorandum; see also Section A Response at Exhibit A-6.
196 See Supplemental Section A Response at 9; see also home market sales database.
197 See Certain Hot-Rolled Steel Flat Products from Australia: Final Determination of Sales at Less Than Fair Value, 81 FR 53406 (August 12, 2016), and accompanying IDM at 17.
198 See voestalpine Rebuttal Brief at 5.
199 See Section A Response at Exhibit A-11.
200 See Final Analysis Memorandum for additional discussion regarding the programming changes.
201 See SSAB’s Case Brief at 10-13.
costs but omitted to apply the G&A ratio to CEP sales that were not further manufactured. This practice was set forth by the Department in Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administration Review; 2013-2014, 81 FR 46647 (July 18, 2016) and accompanying IDM at Comment 3.

voestalpine Comments:202

- If the Department adjusts the amount for indirect selling expenses incurred on non-further-manufactured products, it should adjust the CEP offset to reflect the increased expenses.

Department’s Position:

We agree with SSAB that, pursuant to our practice, the G&A ratio should be applied to the cost of goods sold of the CEP sales that were not further manufactured, in order to capture indirect selling expenses incurred on those sales by the U.S. affiliate. This adjustment should also be reflected in the calculation of the CEP offset, as raised by voestalpine. Thus, these changes are reflected in our final margin calculations.203

Comment 7: Use of Revised Databases to Calculate Final Dumping Margin

voestalpine Comments:204

- The Department should calculate its final dumping margin by using the revised sales and further-manufacturing databases submitted by the company on February 13, 2017. The Department verified minor corrections presented at the verifications of SSC, BBG, and BUC and certain minor corrections are reflected in the revised databases.

- The Department should also base its margin calculations on the most recently-submitted production cost database, submitted on November 25, 2016, and the revised hub fees, which the Department examined during the BBG verification and which are reflected in the revised home-market sales database, submitted on February 13, 2017.

SSAB Comments:

SSAB did not comment on this issue.

Department’s Position:

The Department requested that voestalpine submit revised sales and further-manufacturing databases to reflect minor corrections presented at the verifications and a revision to the reported

202 See voestalpine Rebuttal Brief at 10.
203 See Final Analysis Memorandum for additional discussion regarding the programming changes.
204 See voestalpine’s Case Brief at 35-36.
amounts for hub fees. Per the Department’s request, voestalpine also submitted a revised production cost database on November 25, 2016. We have relied upon these databases, except with respect to the hub fee discussed in Comment 5, above, in our calculation of the final dumping margin.

Comment 8: Implementation of Verification Findings

Comment 8A: Reported Weight for a CEP Sale

SSAB Comments:206

- At the CEP sales verification, the Department found that the weight for a certain sale had been incorrectly entered in the accounting system and that the gross unit price for the sale should reflect the correct weight. The Department should revise the gross unit price accordingly for the final margin calculations.

voestalpine Comments:207

- The finding at verification differed from the three minor corrections concerning the recording of product weight in the accounting system. In the case of the finding at verification, the Department noted in its verification report that the nominal weight of the product may have been entered in the system and rounded down to the reported weight, in which case the recording of the weight had been intentional, was not erroneous, and should not be corrected by the Department. Furthermore, if the Department had wanted voestalpine to revise the data for the sale, it would have requested this revision following the CEP sales verification.

Department’s Position:

At the outset of the CEP sales verification, voestalpine presented three minor corrections concerning the reported weights of sales that had been pre-selected for a review of sales trace documentation. As a follow-up exercise, we reviewed the work orders, packing lists or “repeat print-outs,” and invoices for an additional eight sales.208 Of these eight sales, we found a discrepancy for one sale, in which the weight of the product recorded on the work order differed from that entered in the accounting system and consequently recorded on the repeat print-out and invoice.209 In the verification report, we noted that company officials had suggested that, for this sale, the nominal weight of the product in kilograms may have been entered in the system and rounded down to a smaller amount.210

205 See the Department’s letter to voestalpine, dated February 9, 2017; see also Memorandum to the File from Madeline R. Heeren, International Trade Compliance Analyst, on the subject of “Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria: Clarification of Request for Revised Databases,” dated February 13, 2017.
206 See SSAB’s Case Brief at 13-14.
207 See voestalpine’s Rebuttal Brief at 11-13.
208 See CEP Verification Report at 10.
209 Id.
210 Id.
The respondent now argues that this discrepancy was in fact an intentional act and provides no basis for a revision to the gross unit price of the sale at issue. However, officials at verification could only speculate as to how the discrepancy may have been entered in the record-keeping system. Without more definite information, it is reasonable to accept the weight recorded on the work order as the more accurate weight for the product and to revise the gross unit price to reflect this correction. Thus, we have entered these revisions for the sale at issue in our final margin calculations.\footnote{See Final Analysis Memorandum for a detailed discussion of the revisions.}

**Comment 8B: Cost Variances**

**SSAB Comments:**\footnote{See SSAB’s Case Brief at 13-14.}

- The Department should make an adjustment to the COP database to include the unfavorable cost variance detailed in the Cost Verification Report.\footnote{See Cost Verification Report at 19.}

**voestalpine Comments:**\footnote{See voestalpine’s Rebuttal Brief at 11-13.}

- The Cost Verification Report identifies two cost variances that were not included in reported cost. voestalpine contends that both variances are minor and unnecessary. However, if the Department does make an adjustment for the variances, both the favorable and unfavorable variances should be included.

**Department’s Position:**

At verification, we found that voestalpine omitted two variances from its reported cost: an unfavorable fixed cost variance and a favorable scrap variance related to the sale of its scrapped hot rolling mill. For the final determination, we have included the fixed cost variance in the reported cost of manufacturing to ensure we have captured the total POI production costs. In addition, we have included the favorable scrap variance in the reported general and administrative expenses because the disposal of a routine fixed asset is related to the general operations of the company as a whole.\footnote{See Memorandum, “Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – voestalpine AG,” dated concurrently with this memorandum for further details on the calculation of these two variances.}

**Comment 9: BBG’s Purchases from Affiliated Suppliers**

**voestalpine Comments:**\footnote{See voestalpine’s Case Brief at 39-40.}

- For the Preliminary Determination, voestalpine asserts that the Department incorrectly overstated the percentage that BBG’s steel slab/ingot purchases from affiliated suppliers
represents of cost of manufacturing in its calculation of the adjustment for the major input rule (i.e., section 773(f)(3) of the Act). Because BBG and its affiliated supplier and producer BEG are a part of the collapsed voestalpine entity, voestalpine contends that, for the final determination, it would be more appropriate to exclude from the adjustment for BBG, the percentage of cost of manufacturing that steel slab/ingot purchases represent from BEG.

SSAB Comments:

- SSAB did not comment on this issue.

Department’s Position:

We agree with voestalpine that we incorrectly overstated the affiliated party input adjustment for BBG’s purchases of steel slab/ingot from affiliated suppliers in the Preliminary Determination. Therefore, we have revised the adjustment for the final determination.217

Comment 10: Grobblech and SSC’s Affiliated Supplier Purchases

voestalpine Comments:218

- For the Preliminary Determination, the Department made a major input adjustment for slab and coil purchased by Grobblech and SSC, respectively, from their affiliated supplier Stahl. As part of the adjustment, the Department revised Stahl’s reported COP to include selling expenses.

- According to voestalpine, the Department should exclude selling expenses from its calculation of COP for both slab and coil supplied by Stahl because it does not incur any selling expenses on its sales to either Grobblech or SSC.

- Specifically, voestalpine asserts that Grobblech and Stahl have integrated production systems that allow orders to be placed electronically. voestalpine contends that the integrated production/order system captures any selling expenses in its overhead costs already reported in Stahl’s COP. In addition, Stahl does not sell slab to outside parties, thus they do not have a sales staff for slabs.

- Further, voestalpine argues that Stahl does not incur selling expenses related to its transactions with SSC because SSC is a captive customer of Stahl’s.

SSAB Comments:

- SSAB did not comment on this issue.

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217 See Final Cost Calculation Memorandum for a discussion involving the business proprietary information used in calculating the adjustment.
218 See voestalpine’s Case Brief at 40-42.
Department’s position:

We disagree with voestalpine that selling expenses should not be included in its affiliated suppliers COP that is used when applying the major input rule. The purpose of the major input rule is to evaluate whether the purchases of a major input from an affiliate reflects an arm’s length transaction. The Department determines whether the transaction is arm’s length by comparing the transfer price to the market price and the affiliate’s COP, in accordance with section 773(f)(3) of the Act. Section 773(b)(3)(B) of the Act provides that for the purposes of calculating COP, the Department shall include “an amount for {SG&A} expenses based on actual data pertaining to the production and sales of the foreign like product by the exporter in question.” Because the Act does not provide a specific methodology for calculating SG&A for the major input test, the Department has developed a consistent and predictable approach of using an affiliate’s company-wide SG&A costs incurred\(^\text{219}\) and not on a divisional or product specific basis (as advocated by voestalpine). In addition to being consistent and predictable, this methodology is a reasonable application of the statute that discourages “results-oriented” approaches to calculating the major input test. Therefore, for the final determination, we continue to include selling expenses in Stahl’s COP for purposes of applying the major input rule.

Comment 11: Record-Keeping Based on Country of Origin

SSAB Comments:\(^\text{220}\)

- The administrative record reveals record-keeping deficiencies on the part of voestalpine’s U.S. affiliate BUC that must be remedied if this investigation results in issuance of an AD order.

- In particular, BUC should improve its ability to track inventory and sales and further-manufacturing costs based on their country of origin, report its U.S. sales information for all Austrian-origin merchandise, and report its further-manufacturing costs on a CONNUM-specific basis.

- voestalpine has made statements throughout the investigation that it does not maintain its books and records a certain way in the “normal course of business” (e.g., “BUC does not calculate product-specific or production-order specific costs of production in the ordinary course of business.”) or that certain things “cannot be identified” because of how they are recorded in the normal course of business.

\(^{219}\) See Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from the Republic of Korea, 77 FR 75988 (December 26, 2012), and accompanying IDM at Comment 7; see also Notice of Final Determination of Sales at Less Than Fair Value: Corrosion-Resistant Steel Products from the Republic of Korea, 81 FR 35303 (June 2, 2016) and accompanying IDM at Comment 8.

\(^{220}\) See SSAB’s Case Brief 14-16.
**Department’s Position:**

We agree that the administrative record reveals record-keeping deficiencies on the part of voestalpine’s U.S. affiliate BUC. While we note that these record-keeping deficiencies did not cause us to question voestalpine’s overall reporting of information to the Department, as it relates to BUC, these deficiencies must be remedied if this investigation results in issuance of an antidumping duty order.

We found voestalpine’s data to be reliable based on our verification findings, but in the event we issue an antidumping duty order in this proceeding, we would instruct voestalpine and future respondents to report their sales and cost data on as reliable a basis as possible. In particular, we would ask voestalpine and any U.S. affiliates reporting downstream sales to record and report sales and cost information for subject merchandise sold in the United States during a review period on the most accurate basis possible. Additionally, BUC should improve its ability to track inventory and sales and further-manufacturing costs based on their country of origin, report its U.S. sales information for all Austrian-origin merchandise, and report its further-manufacturing costs on a CONNUM-specific basis.

**Comment 12: Differential Pricing**

*European Commission Comments:* 221

- The European Commission argues that a WTO dispute settlement panel recently held that the Department’s differential pricing methodology is inconsistent with the WTO Antidumping Agreement. 222 Specifically, the European Commission notes that the WTO dispute settlement panel found that this methodology inappropriately: 1) “identified patterns of price differences based on random and unrelated price variations”; and 2) uses zeroing as part of the differential pricing test. 223 According to the European Commission, the panel found that a “pattern can only be found in prices that differ significantly either among purchasers, or among regions, or among time periods - not across these categories ‘cumulatively’ – and that ‘prices that are too high and prices that are too low do not belong to the same pattern.” 224

Thus, the European Commission contends that the Department should suspend its use of differential pricing and instead calculate voestalpine’s weighted-average dumping margin using the A-to-A method in the final determination.

*voestalpine Comments:*

- voestalpine did not comment on the above arguments.

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223 See id.

SSAB Comments:

- SSAB did not comment on the above arguments.

Department’s Position:

The European Commission argues that the Department’s differential pricing methodology is contrary to law because the Department applies zeroing to the sales to which it applies the A-to-T method, and the WTO has made clear that the “fair comparison” requirement in the WTO Antidumping Agreement (included also in U.S. law) does not permit the use of zeroing because individual pattern transactions priced above normal value are not properly taken into account.225 The Department disagrees with the European Commission. The CAFC however, has held that WTO reports are without effect under U.S. law, “unless and until such a {report} has been adopted pursuant to the specified statutory scheme” established in the URRA.226 In fact, Congress adopted an explicit statutory scheme in the URRA for addressing the implementation of WTO reports.227 As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically supersede the exercise of the Department’s discretion in applying the statute.228 With regard to the A-to-T method, specifically, as an alternative comparison method and the use of zeroing under the second sentence of Article 2.4.2 of the WTO Antidumping Agreement, the Department has issued no new determination, and the United States has adopted no change to its practice pursuant to the statutory requirements of sections 123 or 129 of the URRA.

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225 See European Commission’s Comments, at 2-3.
226 See *Corus Staal BV v. Dep’t of Commerce*, 395 F.3d 1343, 1349 (Fed. Cir. 2005)
227 See, e.g., 19 USC §§3533, 3538 (sections 123 and 129 of the URRA).
228 See, e.g., 19 USC §3538(b)(4) (implementation of WTO reports is discretionary).
VII. **Recommendation**

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

☑ ☐

Agree  Disagree

3/29/2017

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

(Date)