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May 17, 2019

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

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

**SUBJECT:** Certain Cold-Rolled Steel Flat Products from the Republic of  
Korea: Issues and Decision Memorandum for the Final Results of  
the 2016-2017 Antidumping Duty Administrative Review

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## I. SUMMARY

The Department of Commerce (Commerce) has analyzed the comments submitted by the interested parties in the administrative review of certain cold-rolled steel flat products (cold-rolled steel) from the Republic of Korea (Korea), covering the period of review (POR) March 7, 2016, through August 31, 2017.

As a result of our analysis, we made certain changes to the *Preliminary Results*.<sup>1</sup> We continue to find that POSCO and POSCO Daewoo Co., Ltd. (collectively, POSCO/PDW) and Hyundai Steel Company (Hyundai) sold the subject merchandise in the United States at prices below normal value (NV). We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

Below is the list of issues for which we received comments from interested parties in this administrative review:

- Comment 1: POSCO/PDW’s CONNUM-Specific Costs
- Comment 2: Adverse Facts Available Applied to Hyundai
- Comment 3: POSCO/PDW’s Cost Methodology
- Comment 4: POSCO/PDW’s CEP Offset
- Comment 5: POSCO/PDW’s Freight Revenue Cap
- Comment 6: POSCO/PDW’s Prime Product Matching

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<sup>1</sup> See *Certain Cold Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review; 2016-2017*, 83 FR 51661 (October 12, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).



Comment 7: POSCO/PDW's Importer-Specific Duty Assessment Rate Calculation

Comment 8: Treatment of Hyundai's Affiliated Freight Company

## II. BACKGROUND

On October 12, 2018, Commerce published the *Preliminary Results* of this administrative review.<sup>2</sup> In accordance with 19 CFR 351.309(c), we invited interested parties to comment on the *Preliminary Results*.<sup>3</sup> On November 20, 2018, the petitioners,<sup>4</sup> POSCO/PDW, and Hyundai submitted case briefs.<sup>5</sup> On November 28, 2018, the petitioners, POSCO/PDW, and Hyundai submitted rebuttal briefs.<sup>6</sup>

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.<sup>7</sup> Between March 19, 2019, and April 18, 2019, Commerce extended the deadline for the final results of this administrative review, until May 17, 2019.<sup>8</sup>

Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

## III. SCOPE OF THE ORDER

The products covered by the order are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-

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<sup>2</sup> See *Preliminary Results*, 83 FR at 51661.

<sup>3</sup> *Id.*, 83 FR at 51622.

<sup>4</sup> The petitioners are ArcelorMittal USA LLC, AK Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation (collectively, the petitioners).

<sup>5</sup> See Letter from Petitioners, "Cold Rolled Steel Flat Products from Korea: Petitioners' Case Brief," dated November 20, 2018 (Petitioners' Case Brief (POSCO/PDW)); see also Letter from Petitioners, "Cold Rolled Steel Flat Products from the Republic of Korea: Case Brief of United States Steel Corporation, ArcelorMittal USA, Nucor Corporation, and AK Steel Corporation," dated November 20, 2018 (Petitioners' Case Brief (Hyundai)); Letter from POSCO/PDW, "Cold-Rolled Steel Flat Products From the Republic of Korea: POSCO's Affirmative Case Brief," dated November 20, 2018 (POSCO/PDW's Case Brief); and Letter from Hyundai, "First Administrative Review of Cold-Rolled Steel Flat Products From Korea: Case Brief of Hyundai Steel Company," dated November 20, 2018 (Hyundai's Case Brief).

<sup>6</sup> See Letter from Petitioners, "Cold-Rolled Steel Flat Products from the Republic of Korea: Petitioners' Rebuttal Brief Regarding POSCO," dated November 28, 2018 (Petitioners' Rebuttal Brief (POSCO/PDW)); see also Letter from Petitioners, "Cold-Rolled Steel Flat Products from the Republic of Korea: Rebuttal Brief of United States Steel Corporation, ArcelorMittal USA, Nucor Corporation, and AK Steel Corporation in Response to Case Brief Filed by Hyundai Steel Company," dated November 28, 2018 (Petitioners' Rebuttal Brief (Hyundai)); Letter from POSCO/PDW, "Cold-Rolled Steel Flat Products From the Republic of Korea: POSCO's Rebuttal Brief," dated November 28, 2018 (POSCO/PDW's Rebuttal Brief); and Letter from Hyundai, "First Administrative Review of Cold-Rolled Steel Flat Products From Korea: Rebuttal Brief of Hyundai Steel Company," dated November 29, 2018 (Hyundai's Rebuttal Brief).

<sup>7</sup> See Memorandum, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

<sup>8</sup> See Memorandum, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated March 19, 2019; see also Memorandum, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated April 18, 2019.

metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (“width”) of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such 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:

- (1) where the nominal and actual measurements vary, a product 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
- (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 the order are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength

Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the cold-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this order unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of the order:

- Ball bearing steels;<sup>9</sup>
- Tool steels;<sup>10</sup>
- Silico-manganese steel;<sup>11</sup>
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in *Grain-Oriented Electrical Steel from Germany, Japan, and Poland*.<sup>12</sup>

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<sup>9</sup> Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

<sup>10</sup> Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

<sup>11</sup> Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

<sup>12</sup> See *Grain-Oriented Electrical Steel from Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances*, 79 FR 42501, 42503 (July 22, 2014). This determination defines grain-oriented electrical steel as “a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths.”

- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan*.<sup>13</sup>

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050. The products subject to the order may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the order is dispositive.

#### IV MARGIN CALCULATION

We calculated United States price (USP) and NV using the same methodology as stated in the *Preliminary Results* for POSCO/PDW and Hyundai, except for certain changes. For POSCO/PDW, we revised our calculation of the freight cap to include the entire pool of movement expenses incurred by POSCO/PDW on its U.S. sales. We revised POSCO/PDW's home market and U.S. margin programs to prevent non-prime home market sales from matching to POSCO/PDW's U.S. sales which were entirely of prime merchandise. Finally, we amended the margin program for POSCO/PDW to calculate assessment rates by importer, rather than by customer code. We continue to find that POSCO/PDW and Hyundai sold the subject merchandise in the United States at prices below NV.

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<sup>13</sup> See *Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders*, 79 FR 71741, 71741-42 (December 3, 2014). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating maybe applied."

## V. RATES FOR NON-EXAMINED COMPANIES

The Act and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}."

For these final results, we have calculated weighted-average dumping margins for Hyundai and POSCO/PDW that are not zero, *de minimis*, or determined entirely on the basis of facts available. Accordingly, we have preliminarily assigned to the companies not individually examined a margin of 11.60 percent, which is the weighted average of Hyundai's and POSCO/PDW's calculated weighted-average dumping margins.<sup>14</sup>

## VI. DISCUSSION OF THE ISSUES

### Comment 1: POSCO/PDW's CONNUM-Specific Costs

#### *The Petitioners' Comments:*

- For the final results, Commerce should assign total adverse facts available (AFA) to POSCO/PDW and find that POSCO/PDW failed to cooperate to the best of its ability.
- Commerce has long held that the requirement to report product-specific sales and cost data is one of the most basic and significant requirements in performing the dumping analysis and margin calculation.<sup>15</sup>
- Pursuant to the antidumping law and Commerce's regulations,<sup>16</sup> a respondent's reported product costs should reflect meaningful cost differences attributable to these different

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<sup>14</sup> For more information regarding the calculation of this margin, see Memorandum, "Calculation of the Margin for Non-Examined Companies," dated concurrently with this memorandum. As the weighting factor, we relied on the publicly-ranged sales data reported in Hyundai and POSCO/PDW's quantity and value charts. See also Comment 8, below.

<sup>15</sup> See Petitioners' Case Brief (POSCO/PDW) at 3 (citing, e.g., *Stainless Steel Bar from India: Final Results of the Antidumping Duty Administrative Review, and Revocation of the Order, in part*, 76 FR 56401 (September 13, 2011) and accompanying Issues and Decision Memorandum (IDM); *Notice of Final Determinations 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; *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 13170, 13201 (March 18, 1998) and accompanying IDM; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia*, 64 FR 73164, 73174 (December 29, 1999) and accompanying IDM; *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2014-2015*, 81 FR 62712 (September 12, 2016) and accompanying IDM).

<sup>16</sup> *Id.* at 3 (citing section 773(a)(6)(C)(ii)-(iii) of the Act; 19 CFR 351.411(a)-(b)).

physical characteristics which ensures that the product-specific costs we use for the sales-below-cost test, constructed export price (CEP) profit, constructed value (CV) and the difference-in-merchandise (DIFMER) adjustment accurately reflect the distinct physical characteristics of the products whose sales prices are used in Commerce's dumping calculations.<sup>17</sup>

- The Act provides Commerce with the authority to depart from a respondent's normal records (provided they are in accordance with the country's Generally Accepted Accounting Principles (GAAP)), but only if they do not reasonably reflect the costs associated with the production and sale of merchandise.<sup>18</sup>
- Commerce made two attempts in this review to obtain matching control number (CONNUM)) specific costs from POSCO/PDW. In each instance, POSCO/PDW claimed to have reported CONNUM-specific costs, but an examination of the data indicates that POSCO/PDW failed to provide the requested and necessary CONNUM-specific cost data.<sup>19</sup>
- POSCO/PDW's inclusion of timing differences is simply a backdoor attempt to support its argument for the use of quarterly costs, which Commerce properly rejected in the *Preliminary Results*.<sup>20</sup>
- While POSCO/PDW's cost accounting system (and POSCO/PDW's reported cost data) "accounts" for the CONNUM characteristics in the sense that the cost attributed to these characteristics are included in POSCO/PDW's cost data, it does not follow from this that POSCO/PDW's reported costs for the CONNUMs are CONNUM-specific and reflect only the cost differences attributable to CONNUM characteristics defined by Commerce.<sup>21</sup>
- POSCO/PDW's stated reliance upon "standard costs by item code, adjusted as appropriate for variances" fails to overcome the significant error in POSCO/PDW's cost reporting methodology. POSCO failed to mention the relevant issues of what it did not do in reporting its costs. POSCO failed to eliminate the cost effects of the other factors related to process and product differences that are not part of the CONNUM and the cost effects related to the timing of the production during the POR.
- Commerce has consistently found that cost data are flawed if they are distorted and not attributable to CONNUM characteristics for any reason (including timing differences and cost variables extraneous to the defined CONNUM characteristics).<sup>22</sup>
- Commerce has fulfilled its statutory obligation by identifying the need for CONNUM-specific costs and offering two opportunities to report costs accurately. The application of total AFA to POSCO/PDW is warranted for the final results.<sup>23</sup>

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<sup>17</sup> *Id.* (citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 37284 (July 1, 2014) and accompanying IDM).

<sup>18</sup> *Id.* at 4 (citing section 773(f)(1)(A); and *Carbon and Alloy Steel Wire Rod from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 83 FR 13228 (March 28, 2018) and accompanying IDM (*Carbon and Alloy Steel Wire Rod from Korea*)).

<sup>19</sup> *Id.* at 10.

<sup>20</sup> *Id.* at 6 (citing *Preliminary Results* and accompanying PDM at 24).

<sup>21</sup> *Id.* at 14.

<sup>22</sup> *Id.* at 13-14 (citing *Welded Line Pipe from Korea* and *Carbon and Alloy Steel Wire Rod from Korea*).

<sup>23</sup> *Id.* at 19 (citing First Administrative Review of Cold Rolled Steel Flat Products from Korea: Supplemental Section A-E Questionnaire Responses at D-1-D-4 and SD-1-SD-4, dated July 18).

- POSCO/PDW has not put forth its maximum effort and should be deemed an uncooperative respondent in this proceeding.<sup>24</sup>
- This same conclusion on similar facts was reached in a changed circumstances review involving *Stainless Steel Bar from India*.<sup>25</sup>
- POSCO/PDW reported the cost data on an item-specific basis, but all of the various processes and product characteristics related to the “items” extraneous to the CONNUM are completely undefined and their impact remains unknown. Commerce is unable to determine how these factors impact the various cost fields and how the costs should be re-allocated in an accurate CONNUM-specific way.<sup>26</sup>

*POSCO/PDW’s Rebuttal Comments:*

- For the final results, Commerce should find that POSCO/PDW’s cost reporting is in accordance with Commerce’s instructions and dismiss the petitioners’ unsupported claims in their entirety.<sup>27</sup>
- The petitioners should realize that Commerce fully addressed these claims, finding that the application of either total or partial AFA is not warranted with respect to POSCO/PDW.<sup>28</sup>
- Commerce should find that the AFA legal framework does not apply to the facts of this case.<sup>29</sup>
- Commerce has already analyzed and accepted POSCO/PDW’s reported costs.<sup>30</sup>
- POSCO/PDW’s cost reporting is consistent with its reporting in the underlying investigation and Commerce fully verified and accepted POSCO/PDW’s cost reporting in the investigation.<sup>31</sup>
- POSCO/PDW followed Commerce’s instructions, as well as the statute, which states that “costs shall normally be calculated based on the records of the exporter or producer of the merchandise.”<sup>32</sup>
- POSCO/PDW reported CONNUM-specific costs, which are reflected in POSCO/PDW’s normal accounting system, wherein POSCO/PDW calculates standard costs by actual item codes that correspond to physical products that are defined in a way that accounts for the physical characteristics that Commerce specifies for CONNUM reporting.<sup>33</sup>
- POSCO/PDW provided a key to its product code structure and a table summarizing how Commerce’s product characteristics are reflected in the accounting system.<sup>34</sup>

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<sup>24</sup> *Id.* at 19.

<sup>25</sup> *Id.* at 20 (citing *Stainless Steel Bar from India: Final Results of Changed Circumstances Review and Reinstatement of Certain Companies in the Antidumping Duty Order*, 83 FR 17529 (April 20, 2018) and accompanying IDM (*Stainless Steel Bar from India*)).

<sup>26</sup> *Id.* at 17.

<sup>27</sup> See POSCO/PDW’s Rebuttal Brief at 2.

<sup>28</sup> *Id.* at 5.

<sup>29</sup> *Id.* at 17.

<sup>30</sup> *Id.* at 2.

<sup>31</sup> *Id.* at 2.

<sup>32</sup> *Id.* at 5-6.

<sup>33</sup> *Id.* at 7-8.

<sup>34</sup> *Id.* at 8 (citing POSCO/PDW’s Section B-E Response at Exhibits D-5 and D-10).



- The petitioners do not dispute that the reported costs are drawn directly from POSCO/PDW's accounting system, which is kept in accordance with Korean GAAP.<sup>35</sup>
- The criteria for applying facts otherwise available are not met in this case.<sup>36</sup>
- POSCO/POSCO has made every attempt to provide any and all information requested by Commerce in this review.<sup>37</sup>
- The petitioners attempted to call into question the completeness of POSCO/PDW's responses by stating that Commerce has made two attempts to obtain CONNUM-specific costs from POSCO/PDW, but the assertion that POSCO/PDW has failed to provide the requested data is simply false.<sup>38</sup>
- The petitioners cited cases that do not support their contention that Commerce rejects cost data that do not accurately reflect differences among CONNUMs.<sup>39</sup>
- The petitioners' reliance on *Welded Line Pipe from Korea* and *Carbon and Alloy Steel Wire Rod from Korea* to support the general premise that Commerce's practice is to reject cost data that is not CONNUM-specific is misplaced.<sup>40</sup> In neither of these cases did Commerce reject the reported cost databases in their entirety; Commerce instead elected to weight-average certain cost elements using the model match criteria. In addressing the CONNUM-specific costs issue in particular, Commerce noted that POSCO/PDW had based its costs on its normal books and records as was required.<sup>41</sup>

**Commerce Position:** We disagree with the petitioners. We continue to find that POSCO/PDW has reported its CONNUM-specific costs consistent with the manner in which POSCO/PDW's costs are maintained within POSCO/PDW's cost accounting system and that such costs are reasonable. Based on our examination of the record of this review, we find that the application of either total or partial AFA is not warranted with respect to POSCO/PDW's reported costs or sales.<sup>42</sup> Section 776(a) of the Act provides, in general, that Commerce shall resort to facts available if necessary information is not available on the record or if an interested party withholds information that has been requested, fails to provide such information by the established deadlines or in the form and manner requested, significantly impedes a proceeding, or if such information cannot be verified. Further, section 776(b) states that an adverse inference may be applied in selecting from among the facts otherwise available, if an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. In this case, we find that POSCO/PDW cooperated to the best of its ability with Commerce's multiple requests for information by timely responding to Commerce's questionnaires.<sup>43</sup> Moreover, we note that the analysis set forth in the instant case is consistent

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<sup>35</sup> *Id.* at 9.

<sup>36</sup> *Id.* at 17.

<sup>37</sup> *Id.* at 17-18.

<sup>38</sup> *Id.* at 16.

<sup>39</sup> *Id.* at 20.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 20-21 (citing *Welded Line Pipe from Korea* and *Carbon and Alloy Steel Wire Rod from Korea*).

<sup>42</sup> See Memorandum, "Final Determination Calculations for POSCO/PDW" dated concurrently with this memorandum (POSCO Final Calculation Memo) at Attachment 3.

<sup>43</sup> See POSCO/PDW's March 30, 2018 Section C Questionnaire Response; POSCO/PDW's March 30, 2018 Section D Questionnaire Response at D-1 ("POSCO has reported the cost of manufacture set forth in the cost of production (COP) database based on the actual costs incurred during the POR as recorded in its accounting system."); and

with that set forth in several other cases wherein Commerce determined that variations relating to the timing of expenses had a minor effect upon respondents' CONNUM reporting.<sup>44</sup>

When Commerce evaluates a respondent's submitted costs, section 773(f)(1)(A) of the Act advises that "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise." Accordingly, Commerce will normally rely on a company's normal books and records if two conditions are met: 1) the books are kept in accordance with the home country's GAAP; and 2) the books and records reasonably reflect the cost to produce and sell the merchandise.<sup>45</sup> Here, the record is clear and the petitioners do not dispute the fact that the reported costs are derived from POSCO/PDW's normal books and records, and that those books and records are kept in accordance with Korean GAAP.<sup>46</sup> Hence, the question facing Commerce is whether the per-unit costs from POSCO/PDW's normal books and records reasonably reflect the cost to produce and sell the merchandise under consideration. Despite the petitioners' assertions, we find that the per-unit costs for the POR from POSCO/PDW's normal books and records reasonably reflect the cost to produce and sell the merchandise under consideration.<sup>47</sup>

At the beginning of this review, Commerce identified the physical characteristics that are the most significant in differentiating costs between products (*e.g.*, specification, paint, carbon content, quality, strength, thickness, width, form, and heat treatment).<sup>48</sup> Moreover, as noted in *Welded Line Pipe from Korea*, a respondent's reported costs should "reflect the cost to produce and sell the merchandise."<sup>49</sup> This is to ensure that "the product-specific costs we use for the sales-below-cost test, CV and DIFMER adjustment accurately reflect the precise physical characteristics of the products whose sales prices are" used in Commerce's antidumping calculations.<sup>50</sup>

In past cases, Commerce has revised CONNUM-specific costs which were based on normal books and records, in order to smooth out large cost differences among products that have minor

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POSCO/PDW's March 30, 2018 Section E Questionnaire Response; *see also* POSCO/PDW's July 18, 2018 Supplemental Section B-E Questionnaire Response (POSCO/PDW's Supplemental Section B-E Questionnaire Response) at Exhibit SD-1-B through Exhibit SD-1-F. POSCO/PDW's supplemental response provides a reconciliation of POSCO's reported costs to its cost accounting system.

<sup>44</sup> *See, e.g., Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) (*Welded Line Pipe from Korea*) and accompanying IDM at Comment 5; *see also Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination*, 82 FR 16369 (April 4, 2017) (*Cut to Length Plate from Korea*) and accompanying IDM at Comment 2.

<sup>45</sup> *See, e.g., Cut to Length Plate from Korea* and accompanying IDM at Comment 2.

<sup>46</sup> *See* POSCO/PDW's Supplemental Section B-E Questionnaire Response at Exhibits SD-1-B through SD-1-F.

<sup>47</sup> *See* POSCO Final Calculation Memo at Attachment 3.

<sup>48</sup> *See* Commerce Letter re: Request for Information: Antidumping Duty Administrative Review: POSCO, dated February 8, 2018, at B-6 through B-13.

<sup>49</sup> *See Welded Line Pipe from Korea* and accompanying IDM at Comment 5.

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

differences in physical characteristics.<sup>51</sup> However, in deciding whether to adjust for unusual cost differences between similar products, Commerce considers “the magnitude of the cost differences and the number of CONNUMs affected.”<sup>52</sup> Here, we find the facts of this case to differ from cases such as *Stainless Steel Bar from India*,<sup>53</sup> because we determine that POSCO/PDW’s CONNUM-specific costs were reported consistent with the data maintained in POSCO/PDW’s normal books and records. Furthermore, unlike in *Stainless Steel Bar from India*, for example, our review of the material costs reported by POSCO/PDW indicates that the reported cost differences among CONNUMs with similar grade characteristics are not significant.<sup>54</sup> As for the differences in conversion costs among similar CONNUMs, as can be seen from the chart provided by the petitioners in Attachment 1 to their case brief, differences in the reported conversion costs generally follow differences in the thickness of products, which is an important characteristic affecting the processing costs. Thus, we find that the per-unit costs reported by POSCO/PDW based on its normal books and records reasonably reflect the cost to produce and sell the merchandise under consideration. Accordingly, we have continued to rely upon POSCO/PDW’s reported CONNUM-specific costs in these final results.

## **Comment 2: Adverse Facts Available for Hyundai**

### *Hyundai’s Comments:*

- For the final results, Commerce’s preliminary decision to apply AFA must be reversed.<sup>55</sup>
- Hyundai fully responded to Commerce’s requests for information and provided accurate and consistent descriptions of its product specifications and CONNUM reporting methodology.<sup>56</sup>
- Even if Hyundai’s response was somehow deficient, Commerce cannot use AFA, because Commerce failed to meet its statutory obligation to notify Hyundai promptly and allow it an opportunity to remedy the deficiency.<sup>57</sup>
- The *Preliminary Results* were the first and only indication Hyundai received from Commerce of any perceived deficiency in its CONNUM and product specification reporting.<sup>58</sup>
- Commerce simply cited to the petitioners’ pre-preliminary comments in its Preliminary Decision Memorandum, in support of its determination that Hyundai had reported inconsistent product specifications.<sup>59</sup>
- It is well established that Commerce requires CONNUM reporting to be based on the physical characteristics of the merchandise “as produced,” and not the characteristics of the merchandise “as sold,” if there is an inconsistency. In *Gray Portland Cement from Mexico*, Commerce determined that the appropriate product to which U.S. sales should be matched is

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<sup>51</sup> See, e.g., *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 Brazil*, 60 FR 31960, 31969 (June 19, 1995); see also *Stainless Steel Bar from the United Kingdom: Final Results of Antidumping Duty Administrative Review*, 72 FR 43598 (August 6, 2007) and accompanying IDM at Comment 1.

<sup>52</sup> See *Welded Line Pipe from Korea* and accompanying IDM at Comment 5.

<sup>53</sup> See *Stainless Steel Bar from India* and accompanying IDM at Comment 2.

<sup>54</sup> See POSCO Final Calculation Memo at Attachment 3.

<sup>55</sup> See Hyundai’s Case Brief at 3-4.

<sup>56</sup> *Id.* at 9.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 12.

<sup>59</sup> *Id.* at 12 (citing *Preliminary Results* and accompanying PDM at footnote 42).

the home market product that is physically identical to the merchandise produced for U.S. market sales.<sup>60</sup>

- Commerce explained in *Gray Portland Cement from Mexico* that a “sold as” approach would increase the possibility for manipulation by respondents (*i.e.*, producing an item to meet the physical requirements of one type of merchandise, but selling the item as another type of merchandise).<sup>61</sup>
- Hyundai properly coded its CONNUMs based on the specifications of its products “as produced” in accordance with Commerce’s practice. Commerce should accept Hyundai’s CONNUM coding for the final results.<sup>62</sup>
- Under section 782(e) of the Act, Commerce cannot ignore necessary information submitted on the record by the respondent if: (1) the respondent acted to the best of its ability; (2) the information was timely submitted; (3) the information can be verified; (4) the information is not so incomplete that it cannot furnish a reliable basis for making the determination; and (5) the information can be used without undue difficulties.<sup>63</sup>
- If Commerce continues to find in the final results that Hyundai withheld information requested by Commerce and applies facts otherwise available pursuant to section 776(a) of the Act, Commerce must fill in the gaps with the information reported by Hyundai in the U.S. sales product code (PRODCOD2) field.<sup>64</sup>

*The Petitioners’ Rebuttal Comments:*

- For the final results, Commerce should find that adverse inferences are authorized because Hyundai failed to act to the best of its ability.<sup>65</sup>
- Commerce gave Hyundai wide latitude to explain its CONNUM coding further and correct product coding deficiencies.<sup>66</sup>
- Hyundai erroneously claims that Commerce owes it yet another opportunity to remedy any “perceived deficiency.”<sup>67</sup> In fact, Hyundai’s deficiencies were real and substantial, and Commerce already afforded Hyundai ample opportunity to remedy such deficiencies in accordance with section 782(d) of the Act. No further “bites at the apple” are warranted at this time.<sup>68</sup>
- Commerce issued a supplemental questionnaire to Hyundai, including a series of questions focused on evaluating the accuracy of the specifications reported in Hyundai’s home market sales product code (PRODCODH) and U.S. sales product code (PRODCODU) fields, and comparing such information to Hyundai’s Standard Code for its products.<sup>69</sup>

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<sup>60</sup> *Id.* at 4 (citing *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 13154 (March 17, 1999) and accompanying IDM).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 18.

<sup>63</sup> *Id.* (citing section 782(e) of the Act).

<sup>64</sup> *Id.* at 18 (citing section 776(a) of the Act).

<sup>65</sup> See Petitioners Case Brief (Hyundai) at 11.

<sup>66</sup> *Id.* at 8.

<sup>67</sup> *Id.* at 2.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 9.

- Commerce afforded Hyundai more than adequate opportunity to remedy its failures in this investigation.<sup>70</sup> Hyundai's CONNUM coding was deficient and Hyundai's *post hoc* explanations do not undermine Commerce's preliminary results.<sup>71</sup>
- Hyundai's assertion that its CONNUM reporting was complete, accurate, and reliable<sup>72</sup> is belied by record evidence demonstrating that the reported data were internally inconsistent and inherently unreliable.<sup>73</sup>
- Given these internal inconsistencies between Hyundai's reported PRODCOD2U/H, U.S. and home market grade specification fields (SPECGRADEU/H), and Standard Codes, there are CONNUMs that are contaminated, and all associated U.S. sales transaction reported for those CONNUMs are inherently unreliable.<sup>74</sup>
- Given the importance of ensuring accurate CONNUM reporting, Commerce instructed Hyundai to revise its sales tape to include an additional field which contains product codes of Hyundai as well as its Standard codes.<sup>75</sup>
- The record demonstrates that Hyundai failed to cooperate to the best of its ability to comply with Commerce's requests for information. Accordingly, Commerce acted consistent with its authority under section 776(b) of the Act. Hyundai ignored completely Commerce's question about how Hyundai's product code applies to precursor products and how its product code maps to the specification.<sup>76</sup>
- The antidumping statute clearly authorizes Commerce to make adverse factual inferences where, as here, the respondent fails to act to the best of its ability and hinders the calculation of accurate dumping margins.<sup>77</sup>

**Commerce Position:** We continue to find that it is appropriate to apply partial AFA to Hyundai in the final results of this review, based on Hyundai's failure to properly report consistent product specification information for the U.S. CONNUMs for which Hyundai provided inconsistent product specification information. We continue to find that Hyundai's inconsistent reporting of product specification information precludes Commerce from accurately determining normal value, because Commerce cannot match the U.S. sales of these CONNUMs to the appropriate sales in Hyundai's home market database.

In the initial AD questionnaire, Commerce instructed Hyundai to report product specification information for each CONNUM that Hyundai sold in the United States.<sup>78</sup> Additionally, Commerce instructed Hyundai in its June 18, 2018, supplemental questionnaire to ensure that it

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<sup>70</sup> *Id.* at 10.

<sup>71</sup> *Id.* at 7.

<sup>72</sup> *Id.* at 1.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 3-5.

<sup>75</sup> *Id.* at 4.

<sup>76</sup> *Id.* at 11.

<sup>77</sup> *Id.* at 12 (citing section 776(b)(1)(A) of the Act).

<sup>78</sup> See Commerce Letter re: Request for Information: Antidumping Duty Administrative Review: Hyundai Steel Company, dated February 8, 2018, at Section C.

had accurately reported all product specifications, and to revise its response as necessary.<sup>79</sup> Thus, despite the arguments raised by Hyundai about having insufficient notice of deficiencies, we find that the initial AD questionnaire and Commerce’s June 18, 2018, supplemental questionnaire provided Hyundai with two opportunities to provide accurate and consistent product specification information. Specifically, the June 18, 2018, supplemental questionnaire requested that Hyundai ensure that it accurately reported all product specification information in its sales and cost reporting and afforded Hyundai an opportunity to remedy deficiencies that existed in its reporting of product specification information in its original questionnaire responses.<sup>80</sup> Thus, we continue to find that Hyundai failed to correct this reporting error despite the opportunity afforded Hyundai in our June 18, 2018, supplemental questionnaire to remedy this deficiency.<sup>81</sup>

We also continue to find Hyundai’s reliance on *Gray Portland Cement from Mexico*, and its attempt to justify its inconsistent product specification reporting based on whether that specification was reported on an “as sold” basis or “as produced” basis, to be unpersuasive.<sup>82</sup> We agree with the petitioners that Hyundai’s explanations fail to address Hyundai’s inconsistent reporting of product specifications in its U.S. sales database for sales of the same CONNUM.

Moreover, we note that our application of AFA to sales for which Hyundai provided inconsistent product specifications is consistent with the analysis of those sales which Commerce conducted in the less-than-fair-value (LTFV) investigation of this proceeding.<sup>83</sup> In the *Final Determination*, we applied partial AFA for the CONNUMs in which Hyundai reported inconsistent product specification information for its U.S. sales.<sup>84</sup> Hyundai challenged the application of AFA before the Court of International Trade (CIT), but Commerce’s approach on this issue in the *Final Determination* was sustained by the CIT.<sup>85</sup> We find a similar situation exists in this review with respect to Hyundai’s reporting of product specification information for the U.S. CONNUMs in question.

Based on the foregoing, we find that the application of partial AFA for the same type of inconsistent product specification reporting in the *Final Determination* put Hyundai on notice that its failure to report product specification information properly could result in the application of an adverse inference. Commerce seeks to calculate a respondent’s dumping margin as accurately as possible and would prefer to use the respondent’s own data when the respondent cooperates to the best of its ability in providing accurate data. However, in this administrative

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<sup>79</sup> See Commerce Letter re: Antidumping Duty Administrative Review of Cold Rolled Steel Flat Products from Korea: First Supplemental Questionnaire for Sections A, B, C, D & E, dated June 18, 2018, at 6 (June 18, 2018 Supplemental).

<sup>80</sup> We note that in future reviews of this case, where we find a respondent’s product specification reporting to be deficient, we will continue to inform interested parties of the deficiency and will continue to further afford the respondent an opportunity to remedy the deficiency.

<sup>81</sup> See *Preliminary Results* and accompanying PDM at 9; see also June 18, 2018 Supplemental at 6.

<sup>82</sup> See *Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review*, 64 FR 13148 (March 17, 1999) (*Gray Portland Cement from Mexico*).

<sup>83</sup> See *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) (*Final Determination*) accompanying IDM at Comment 12.

<sup>84</sup> *Id.*

<sup>85</sup> See *Hyundai Steel Co. v. United States*, No. 16-00228, Slip op. 18-80 (CIT June 28, 2018) at 34-40 (*Hyundai Steel*); see also *Hyundai Steel Co. v. United States*, No. 16-00228, Slip op. 19-24 (CIT Feb. 26, 2019).

review, Hyundai's inconsistent reporting of product specification information precludes Commerce from accurately determining NV by preventing Commerce from determining an accurate match between U.S. sales of these CONNUMs and appropriate sales in Hyundai's home market database. For this reason, it is unduly difficult for Commerce to determine the proper specification for an accurate match. Because Commerce is unable to determine an appropriate match, and Hyundai did not provide the necessary information despite two requests to do so, we continue to determine that Hyundai's failure to report consistent product specification information constitutes a failure by Hyundai to cooperate to the best of its ability, pursuant to section 776(b) of the Act.

Finally, we agree with the petitioners that we properly applied the highest calculated transaction-specific margin as the basis of AFA in the *Preliminary Results*. This approach is consistent with that taken in the LTFV investigation of this proceeding and was sustained by the CIT in *Hyundai Steel*.<sup>86</sup> In sum, for these final results, we have made no changes to our application of partial AFA.

### **Comment 3: POSCO/PDW's Cost Methodology**

#### *POSCO/PDW's Comments:*

- For the final results, Commerce should calculate COP based on a quarterly cost averaging methodology.<sup>87</sup>
- Commerce did not provide any explanations as to why it determined that the quarterly cost methodology was not warranted in this case. Indeed, Commerce's preliminary results did not address the issue, which POSCO/PDW raised in its initial Section D response<sup>88</sup> and pre-preliminary results comments.<sup>89</sup>
- In any event, consistent with Commerce's practice, because POSCO/PDW has demonstrated that raw material prices significantly changed during the POR and had a distortive effect on POSCO/PDW's cost of manufacture (COM), in the final results, Commerce should calculate POSCO/PDW's margin based on a quarterly cost methodology.
- Commerce's normal practice is to examine the change in COM for the five U.S. and five home market CONNUMs sold in the largest quantity in the POR. In accordance with long established Commerce precedent, the threshold for when the change in production costs is significant enough to consider deviating from the agency's normal annual average cost methodology is a 25 percent difference between the highest and lowest weighted-average quarterly cost of the three most significant major input materials. If the percentage difference exceeds 25 percent, Commerce considers the significant cost change threshold to be met.<sup>90</sup>

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<sup>86</sup> See *Hyundai Steel*, No. 16-00228, Slip op. 18-80 (CIT June 28, 2018) at 34-40.

<sup>87</sup> See POSCO/PDW's Case Brief at 3.

<sup>88</sup> *Id.* (citing POSCO/PDW's Section B-E Response at pages D-1 to D-4 and Exhibit D-1).

<sup>89</sup> *Id.* (citing Letter from POSCO/PDW, "Cold-Rolled Steel Flat Products from the Republic of Korea: Response to Petitioner's September 18 and September 20, 2018 Pre-Preliminary Comments," dated September 26, 2018, at 5-8).

<sup>90</sup> See POSCO/PDW's Case Brief at 3-4 (citing *Certain Steel Concrete Reinforcing Bars from Turkey*, 73 FR 66218 (November 7, 2008) and accompanying IDM at Comment 2 ("due to the rapid increase in the cost of a primary input... the 25 percent would be a reasonable percentage to establish the threshold for significance... It is high enough to ensure that we do not move away from our normal practice without good cause and forgoing the benefits

- The quarterly cost methodology is warranted in this case, because raw material prices significantly changed during the POR. The changes were significant enough to affect POSCO/PDW's COM directly. Specifically, POSCO/PDW demonstrated that all of the top home market CONNUMs and two out of five top CONNUMs sold in the U.S. market exceeded the 25 percent cost change threshold.<sup>91</sup> Thus, overall, a total of seven of the ten CONNUMs Commerce traditionally analyzes exceed the 25 percent cost change between the quarterly average COMs, demonstrating the cost changes throughout the POR were significant.
- POSCO demonstrated that for all CONNUMs sold in both markets, the change in the average quarterly cost trended consistently with the change in average quarterly prices.<sup>92</sup>

*The Petitioners' Rebuttal Comments:*

- For the final results, Commerce should continue to use its annual average cost methodology.<sup>93</sup>
- If Commerce decides to accept POSCO/PDW's cost data, despite the data not being CONNUM-specific, Commerce should continue using annual costs over quarterly costs in the final results.
- POSCO/PDW's quarterly cost data do not meet the significant cost change threshold.
- POSCO argues that the relevant threshold in evaluating whether there was a significant change in production costs during the POR is 25 percent.<sup>94</sup> However, that is incorrect. While Commerce's practice is to use the 25 percent threshold in proceedings where the period of investigation or review is 12 months,<sup>95</sup> this is not the case for periods longer than 12 months.
- The period for this proceeding is 18 months (*i.e.*, March 2016 to August 2017), and the appropriate threshold for significant cost changes in this case is 37.5 percent (*i.e.*, 25 percent for 12 months plus 12.5 percent for the additional six months).
- POSCO/PDW's quarterly cost data do not show a reasonable correlation between cost and price for the majority of the CONNUMs.
- Even if POSCO/PDW met the criteria for the first prong of the test, it does not meet the criteria for the second prong. The second prong of the test regarding the linkage between the changes in the cost and sales prices plays a crucial role in determining whether the deviation from Commerce's standard methodology is justified. It is Commerce's long-standing practice that finding positive linkage depends on whether there is a reasonable positive correlation between the underlying costs and final sales prices charged by a company.<sup>96</sup>

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of using an annual average cost, but would allow for a change in methodology when significantly changing input costs are clearly affecting our annual average cost calculations."); and *Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States*, Slip Op. 09-133, 33 CIT 1721 (Nov. 23, 2009)).

<sup>91</sup> *Id.* at 5 (citing POSCO/PDW's Sections B-E Response at D-2-4 and Exhibit D-1-A).

<sup>92</sup> *Id.* (citing POSCO/PDW's Sections B-E Response at D-3 and Exhibit D-1-B).

<sup>93</sup> See Petitioners' Rebuttal Brief (POSCO/PDW) at 3-4.

<sup>94</sup> *Id.* at 3-5.

<sup>95</sup> *Id.* at 3-4 (citing, *e.g.*, *Certain Corrosion Resistant Steel Bar from Turkey: Final Results of Antidumping Duty Administrative Review and Determination To Revoke in Part*, 73 FR 66218 (November 7, 2008) and accompanying IDM at Comment 2).

<sup>96</sup> *Id.* at 4 (citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review*, 75 FR 34980 (June 21, 2010) and accompanying IDM at Comment 1).



- Therefore, there is not sufficient evidence to find linkage between the two variables and, as a result, there is no reason to deviate from Commerce's standard methodology to use annual average costs.

**Commerce Position:** We disagree with POSCO/PDW that the application of the quarterly cost averaging methodology is warranted in this case. Our normal practice is to calculate weighted-average costs for the period of investigation (POI) or POR.<sup>97</sup> However, we recognize that possible distortions may result if our normal POR-or POI-average cost methodology is used during a period of significant cost changes. In determining whether it is appropriate to deviate from our normal methodology and rely on shorter cost averaging periods, Commerce has established two criteria that must be met, *i.e.*, significance of cost changes and linkage between the costs and sales prices during the shorter averaging periods.<sup>98</sup> A significant change in cost for this purpose is defined as a greater than 25 percent change in the COM between the high and low quarters during a 12-month POI or POR. Where a review period exceeds one year, our significance analysis must consider the equivalent changes relative to the extended cost reporting period (*i.e.*, 25 percent for one year, plus 6.25 percent for every additional quarter within the POR). This approach is in line with International Accounting Standard 29 (defining inflation of 100 percent over a three-year period as approximately 25 percent inflation per year) from which Commerce drew guidance in establishing its 25 percent significance threshold for cost changes within a 12-month period.<sup>99</sup>

Accordingly, in this case, we evaluated what constitutes a significant cost change based on an inflated threshold of 37.5 percent (*i.e.*, 25 percent for one year, plus 6.25 percent for the fifth quarter and 6.25 percent for the sixth quarter of the POR), and found that POSCO/PDW did not experience significant cost changes during the POR, which is supported by the analysis of record evidence that POSCO/PDW provided in the attachment to its case brief.<sup>100</sup> With regard to POSCO/PDW's argument that the application of Commerce's 37.5 percent threshold for review periods that cover six quarters should apply only with respect to those CONNUMs in which the lowest and the highest quarters are six quarters apart, we note that Commerce's practice is to consider the change in costs over the entire POR, regardless of the number of quarters between the quarter with the highest average cost and the quarter with the lowest average cost.<sup>101</sup>

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<sup>97</sup> See *Certain Corrosion-Resistant Steel Products from Taiwan: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 64527 (December 17, 2018) and accompanying IDM at Comment 1 (*CORE from Taiwan*); see also *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fifteenth Administrative Review*, 75 FR 13490 (March 22, 2010) (*Certain Corrosion Resistant Flat Products from Korea*) and accompanying IDM at Comment 3.

<sup>98</sup> See, *e.g.*, *CORE from Taiwan* and accompanying IDM at Comment 1; see also *Steel Concrete Reinforcing Bar from Taiwan: Final Determination of Sales at Less Than Fair Value*, 82 FR 34925 (July 27, 2017) and accompanying IDM at Comment 2; *Certain Hot-Rolled Steel Flat Products from Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 53428 (August 12, 2016) and accompanying IDM at Comment 6.

<sup>99</sup> See *CORE from Taiwan* and accompanying IDM at Comment 1.

<sup>100</sup> See POSCO/PDW's Case Brief at Attachment.

<sup>101</sup> See *CORE from Taiwan* and accompanying IDM at Comment 1; see also *Certain Corrosion Resistant Flat Products from Korea* and accompanying IDM at Comment 3.

#### Comment 4: POSCO/PDW's CEP Offset

##### *POSCO/PDW's Comments:*

- For the final results, Commerce should apply a CEP offset, because POSCO performed selling activities for its home market sales to a greater degree and intensity than the activities performed for its CEP sales.<sup>102</sup>
- POSCO provided a complete response to Commerce's questions pertaining to selling functions and the CEP offset.<sup>103</sup> In doing so, POSCO/PDW described the differences in selling functions between the home market and the U.S. market in sales activities. Commerce asked no further questions regarding POSCO/PDW's reported selling functions or any other questions related to POSCO/PDW's claim that a CEP offset is warranted.
- Commerce's preliminary results overlooked key facts on the record as they pertain to POSCO/PDW's selling functions and were contrary to prior cases where Commerce did grant POSCO a CEP offset.
- Commerce's regulations concerning level of trade and CEP offsets provide that: "{t}he Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing."<sup>104</sup>
- POSCO asserts that it has provided detailed explanations of its activities in each of the selling functions identified in the selling functions chart included as part of Commerce's questionnaire.<sup>105</sup>

##### *The Petitioners' Rebuttal Comments:*

- For the final results, Commerce should continue to deny a CEP Offset to POSCO/PDW.<sup>106</sup>
- POSCO/PDW is incorrect when it states that Commerce "overlooked key facts and the record" regarding POSCO/PDW's selling functions and that Commerce's denial of a CEP offset was "contrary to prior cases where {Commerce} did grant POSCO{/PDW} a CEP offset."<sup>107</sup>
- Commerce thoroughly examined all selling functions and properly found no basis for concluding that there are differences in the levels of trade between the home market and the U.S. market to warrant a CEP offset. The record does not support POSCO/PDW's claim that its selling functions to home market customers are "greater in number and intensity" than for its CEP channel sales.<sup>108</sup>
- As affirmed by the CIT, the burden of establishing the propriety of granting a CEP offset falls squarely on the respondent.<sup>109</sup>

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<sup>102</sup> See POSCO/PDW's Case Brief at 7.

<sup>103</sup> *Id.* (citing Section A Response at A-25-32 and Exhibit A-7).

<sup>104</sup> *Id.* at 9 (citing 19 CFR 351.412(c)(2)).

<sup>105</sup> *Id.*

<sup>106</sup> See Petitioners' Rebuttal Brief (POSCO/PDW) at 15.

<sup>107</sup> *Id.* at 15.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* at 16 (citing *Ad Hoc Shrimp Trade Action Comm. v United States*, 616 F. Supp. 2d 1354, 1374 (CIT 2009), *aff'd* 596 F.3d 1365 (Fed. Cir. 2010) (stating "it is the responsibility of the respondent requesting the CEP offset to procure and present the relevant evidence to Commerce"); see also *Corus Eng'g Steels, Ltd. v. United States*, Slip

- POSCO/PDW rests solely on its “detailed explanations” that self-servingly emphasize POSCO/PDW’s selling functions in the home market over those POSCO makes to support CEP sales.<sup>110</sup>
- The fundamental parameters for CEP sales require selling activity by the Korean parent, not just by the U.S. CEP agencies. POSCO/PDW’s attempt to move the emphasis for U.S. selling activities in the CEP chain away from the actions undertaken by the Korean parties is incorrect.<sup>111</sup>
- While it is undeniable that POSCO/PDW’s U.S. affiliates also performed some selling functions, the determination as to whether a difference exists in the level of trade between the home market and U.S. sales (as well as whether a CEP offset should be granted) depends on whether POSCO/PDW demonstrably engaged in several selling functions with a higher intensity on its home market sales than it did on its U.S. affiliate sales.<sup>112</sup>
- An examination of the four selling function categories (*i.e.*, (1) sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support) normally examined by Commerce in conducting its level of trade analysis does not support POSCO/PDW’s claim that home market sales by POSCO are overall at a more advanced level of trade based on more intense selling functions.
- POSCO itself reported that five<sup>113</sup> out of the fifteen selling functions were performed at a similar intensity between home market and U.S. CEP sales. There is evidence on the record that at least nine out of the ten remaining functions were, in fact, performed at a similar intensity between home market and U.S. CEP sales. That leaves only one selling function (sales promotion) which was allegedly at a higher intensity for home market sales, but POSCO failed to provide any actual supporting evidence even for this claim.<sup>114</sup>
- POSCO/PDW’s references to other cases in which Commerce granted it a CEP offset are unsuitable. As Commerce has long held “whether {Commerce} has granted a CEP offset to a respondent in a different proceeding with different factual record... does not necessarily bind {Commerce} in determining whether to grant or deny an offset adjustment to NV” in another proceeding.<sup>115</sup>

**Commerce Position:** We continue to find that no CEP offset is warranted for POSCO/PDW’s CEP sales in these final results. As we noted in the *Preliminary Results*, Commerce will grant a

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Op. 03-110, 27 C.I.T. 1286, 1290 (April 27, 2003) (“{B}urden of proof is upon the claimant to prove entitlement {to a CEP offset}”). Contrary to POSCO/PDW’s claims, petitioners allege that *Ad Hoc Shrimp* is applicable here because POSCO similarly has not provided sufficient evidence to support its claim for a CEP offset, POSCO/PDW’s descriptions of the alleged differences in selling activities are inadequate, and no evidence was provided to support its claim.

<sup>110</sup> See Petitioners’ Rebuttal Brief (POSCO/PDW) at 16.

<sup>111</sup> *Id.* at 17.

<sup>112</sup> *Id.* at 18-19.

<sup>113</sup> Packing, order input/processing, direct sales personnel, warranty service and freight and delivery.

<sup>114</sup> See Petitioners’ Rebuttal Brief (POSCO/PDW) at 37.

<sup>115</sup> *Id.* at 38 (citing, *e.g.*, *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 53419 (August 4, 2016) and accompanying IDM at 9; *Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Administrative Review*, 80 FR 19633 (April 13, 2015) and accompanying IDM at 3; *Shandong Huarong Mach Co. v. United States*, Slip. Op. 05-54, 29 C.I.T. 484, 491 (May 2, 2005) (“{E}ach administrative review is separate segment of proceedings with its own unique facts.”)).

CEP offset, under section 773(a)(7)(B) of the Act, if it determines that the NV level of trade (LOT) is at a more advanced stage of distribution than the LOT of the CEP and the data available do not provide an appropriate basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible).<sup>116</sup> In these final results, we continue to find that the: (1) sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support services provided by POSCO/PDW in the United States are too insignificant to establish that POSCO/PDW's CEP sales are at a separate LOT than POSCO/PDW's home market sales.<sup>117</sup> Moreover, we note that our analysis of POSCO/PDW's LOT in these final results is consistent with that employed in the *LTFV Final Determination*, wherein we also determined that the selling functions provided by POSCO/PDW on its U.S. sales were too insignificant to establish POSCO/PDW's CEP sales as separate and distinct from POSCO/PDW's other U.S. sales or to POSCO/PDW's sales in the home market.<sup>118</sup>

In this review, and consistent with section 773(a)(7)(B) of the Act, we have continued to analyze the: (1) sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing and (4) warranty and technical support services provided by POSCO/PDW in both the home market and the U.S.<sup>119</sup> Our analysis of these selling functions continues to indicate that POSCO/PDW provided sales support to its CEP entities which were supported by POSCO/PDW in Korea and that the sales activities undertaken by POSCO in Korea benefited both CEP and Korean sales.<sup>120</sup> The role of these multiple entities in the sales process suggests that sales and marketing, freight and delivery, inventory maintenance, and warranty and technical support varied across both CEP and home market channels.<sup>121</sup> Based on the foregoing, and consistent with our finding in the *LTFV Final Determination* of the instant proceeding and the record of this review, we continue to find from our examination of POSCO/PDW's home market and CEP selling activities that POSCO/PDW's CEP sales are not substantially more advanced than POSCO/PDW's home market sales.<sup>122</sup> Accordingly, we have continued to deny POSCO a CEP offset in these final results.

Moreover, as the petitioners have also noted, on CEP sales, both POSCO and PDW provide certain selling functions (*e.g.*, sales forecasting, strategic planning, market research and

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<sup>116</sup> See *Preliminary Results* and accompanying PDM at 20.

<sup>117</sup> See POSCO/PDW March 8, 2018 Section A Questionnaire Response at A-20 through A-24 and Exhibit A-7; see also *Preliminary Results* and accompanying PDM at 20.

<sup>118</sup> See *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*, 81 FR 11757 (March 7, 2016) (*LTFV Preliminary Determination*) and accompanying PDM at 19-21 (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) (*LTFV Final Determination*)).

<sup>119</sup> See *LTFV Final Determination* and accompanying IDM at Comment 9.

<sup>120</sup> See POSCO/PDW March 8, 2018 Section A Response at Exhibit A-6.1 (home market sales) and Exhibit A-6.2 (U.S. sales).

<sup>121</sup> *Id.*

<sup>122</sup> See *LTFV Preliminary Determination* and accompanying PDM at 19-21 (unchanged in *LTFV Final Determination*); see also, *e.g.*, *Silicomanganese from Australia: Final Determination of Sales at Less Than Fair Value*, 81 FR 8682 (February 22, 2016) (*Silicomanganese from Australia*) and accompanying IDM at Comment 2; and *Cut to Length Plate from Korea* and accompanying IDM at Comment 9.

marketing support), which benefits both POSCO America and POSCO Daewoo America.<sup>123</sup> As such, we continue to maintain that such activities benefit both home market and CEP sales activities. Given POSCO/PDW's sales activities (with regard to sales activities such as sales forecasting, strategic planning, market research and marketing support), we dispute POSCO/PDW's assertion that it consistently provides a greater degree of sales support on home market transactions than it provides for CEP transactions. Based on our examination of the selling functions reported by POSCO/PDW in the home market and on its CEP sales, we continue to find insufficient evidence to suggest that the home market LOT is sufficiently more advanced than the CEP LOT to warrant granting POSCO an LOT adjustment. Accordingly, consistent with our approach in other cases (*e.g.*, *LTFV Final Determination* and *Silicomanganese from Australia*) we have continued to make no CEP offset in these final results.<sup>124</sup>

#### **Comment 5: POSCO/PDW's Freight Revenue Cap**

##### *POSCO/PDW's Comments:*

- Commerce offset movement expenses with reported freight revenue in the *Preliminary Results*.<sup>125</sup> For the reported freight revenue (FRTREXH), Commerce stated that the revenue was "capped at no higher than the sum of the movement expenses."<sup>126</sup>
- However, Commerce's preliminary programming language did not cap the reported freight revenue by the sum of POSCO/PDW's movement expenses.
- For the final results, Commerce should insert the following programming language to address the programming error with respect to FRTREXH:
  - Line 7641a. uncapped FRTREXH=FRTREXH;
  - Line 7641b. FRTREXH = MIN(uncapped\_FRTREXH,INLFTW1H + INLFTW2H + WAREHSH + INLFTCH + INLFTC1H + DIRSELH + DIRSEL1H).

*No other interested parties commented on this issue.*

**Commerce Position:** We agree with POSCO/PDW. In these final results, we have revised our calculation of the freight revenue cap to include all of POSCO/PDW's movement expenses which POSCO/PDW incurred on its U.S. sales. This includes the inland freight charges, warehousing expenses, and port charges referenced by POSCO/PDW. We have revised our calculations accordingly.<sup>127</sup>

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<sup>123</sup> See Petitioners Rebuttal Brief at 21.

<sup>124</sup> See *LTFV Final Determination* and accompanying IDM at Comment 9; *see also Silicomanganese from Australia* and accompanying IDM at Comment 2; *Cut to Length Plate from Korea* and accompanying IDM at Comment 9.

<sup>125</sup> See POSCO/PDW's Case Brief at 13 (citing *Preliminary Results* of accompanying Preliminary Decision Memorandum at 25).

<sup>126</sup> *Id.*

<sup>127</sup> See POSCO Final Calculation Memo.

## Comment 6: POSCO/PDW's Prime Product Matching

### *POSCO/PDW's Comments:*

- Commerce's consistent practice is to match prime merchandise sold in the United States with prime merchandise sold in the home market, and match non-prime merchandise sold in the United States with non-prime sold in the home market.<sup>128</sup>
- The record shows that POSCO/PDW sold prime merchandise in both the home market and the U.S. market during the POR, but sold non-prime merchandise only in the home market during the POR.<sup>129</sup>
- POSCO/PDW's non-prime merchandise consists of products that were found to have defects during production and, thus, did not meet the required specifications.<sup>130</sup> When comparing prices, Commerce should have matched only home market sales of prime merchandise to U.S. sales of prime merchandise.
- There is no indication in the *Preliminary Results* that Commerce disputed POSCO/PDW's classification of certain sales in the home market as non-prime merchandise. Further, in the underlying investigation, Commerce recognized the distinction between prime and non-prime merchandise when comparing prices.<sup>131</sup>
- For the final results, Commerce should insert the following programming language to match the prime product prices between the home market and the U.S. market for the normal value:

Line 6979 %LET USPRIME = NA PRIMEU; /\*(V) Prime/seconds code.<sup>132</sup>

*No other interested parties commented on this issue.*

**Commerce Position:** Because all of POSCO's U.S. sales in the United States were of prime merchandise, we agree with POSCO/PDW that U.S. sales should be matched to home market sales of prime merchandise.<sup>133</sup> In these final results, we have revised our home market and U.S. margin programs to match POSCO/PDW's prime sales in the United States to sales of prime merchandise in the home market.<sup>134</sup>

## Comment 7: POSCO/PDW's Importer-Specific Duty Assessment Rate Calculation

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<sup>128</sup> See POSCO/PDW's Case Brief at 13-14 (citing *Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Results of Antidumping Duty Administrative Review*, 68 FR 2566 (January 16, 2004) and accompanying IDM at Comment 8).

<sup>129</sup> *Id.* at 14 (citing POSCO/PDW's Sections B-E Response at B-14-15, and C-9; see also POSCO/PDW's Home Market Sales Database ("POSHM02") and ("POSUS02")).

<sup>130</sup> *Id.* at 14 (citing POSCO Sections B-E Response at B-14).

<sup>131</sup> *Id.* (citing *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) and accompanying IDM at Comment 4).

<sup>132</sup> *Id.* at 13-14.

<sup>133</sup> See *Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Results of Antidumping Duty Administrative Review*, 68 FR 2566 (January 16, 2004) and accompanying IDM at Comment 8; see also POSCO/PDW's March 30, 2018 Section B-E Questionnaire Responses at B-14 through B-15 and C-9.

<sup>134</sup> See POSCO Final Calculation Memo.

*POSCO/PDW's Comments:*

- Commerce's *Preliminary Results* state that "{f} or any individually examined respondent whose weighted-average dumping margin is not zero or *de minimis* (i.e., less than 0.5 percent) in the final results of this review and the respondent reported reliable entered values, we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of dumping calculated for the examined sales made during the period of review to each importer and the total entered value of those same sales, in accordance with 19 CFR 351.212(b)(1)."<sup>135</sup>
- However, in its margin calculations, Commerce did not follow its stated intention to calculate and apply importer-specific assessment rates derived from its margin calculations.<sup>136</sup>
- Commerce should correct this oversight in the final results SAS program and resulting liquidation instructions. Specifically, in the margin program when identifying the importer field, Commerce erroneously included the following language in its SAS program:<sup>137</sup>  
Line 6976 %LET IMPORTER = CUSCODU; /\*
- For the final results, Commerce should calculate importer-specific assessment rates for each of the reported imports of record, using the following programming language:  
Line 6976 %LET IMPORTER = CUSCODU IMPORTER; <sup>138</sup>

*No other interested parties commented on this issue.*

**Commerce Position:** We agree with POSCO/PDW regarding the importer-specific assessment rates calculation. Consistent with our stated intention in the *Preliminary Results*, in these final results, we have amended the margin program and calculated assessment instructions by the variable IMPORTER, rather than by the variable CUSCODU.<sup>139</sup>

**Comment 8: Treatment of Hyundai's Affiliated Freight Company**

*The Petitioners' Comments:*

- For the final results, Commerce should not assign an individual weighted-average dumping margin to Hyundai's affiliated freight company but, rather, collapse Hyundai and its affiliated freight company.
- Hyundai's affiliated freight company<sup>140</sup> should not receive an individual weighted-average dumping margin, as the record does not establish that Hyundai's affiliated freight company is

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<sup>135</sup> See POSCO/PDW's Case Brief at 15 (citing *Preliminary Results* at 51662).

<sup>136</sup> POSCO notes that in its draft customs instructions, dated November 2, 2018, Commerce calculated and applied importer-specific assessment rates. POSCO argues that the draft customs instructions appear to be at odds with Commerce's SAS programming instructions in the *Preliminary Results*.

<sup>137</sup> See POSCO/PDW's Case Brief at 15-16 (citing Preliminary Analysis Memorandum, Attachment 3 at 219-224).

<sup>138</sup> *Id.* at 15-16.

<sup>139</sup> See POSCO Final Calculation Memorandum.

<sup>140</sup> The name of Hyundai's affiliated freight company is business proprietary information. See Memorandum, "Final Determination Calculations for Hyundai," dated concurrently with this memorandum.

a producer or exporter of the subject merchandise.<sup>141</sup> Instead, Commerce should collapse Hyundai and its affiliated freight company.<sup>142</sup>

- Under section 777A(c) of the Act, Commerce must calculate a weighted-average dumping margin for each known exporter or producer of the subject merchandise under review. The statute clearly expresses Congress's intent that an individual weighted-average dumping margin shall be determined for each known exporter and producer of the subject merchandise.<sup>143</sup>
- Hyundai could easily shift its exports through the affiliated freight company and undermine the efficacy of Commerce's final results and remedy imposed to counteract Hyundai's dumping.<sup>144</sup>
- Collapsing Hyundai with the affiliated freight company will ensure that Hyundai will not start shipping the subject merchandise through its affiliated freight company at a lower cash deposit rate.<sup>145</sup>
- The petitioners assert that collapsing Hyundai with the affiliated freight company is not speculative, since Hyundai has already demonstrated its willingness to appoint affiliated entities to continue accessing the U.S. market.<sup>146</sup>
- Commerce's rules explicitly allow for the collapsing of affiliated producers.<sup>147</sup>
- Commerce has also found it necessary to collapse non-producing entities under circumstances begetting significant potential for manipulation.<sup>148</sup> In such situations, Commerce has looked to the factors enumerated by 19 CFR 351.401(f) as illustrative of whether significant potential for manipulation exists, Commerce may consider the level of common ownership, whether operations are intertwined and the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm.<sup>149</sup>
- The CIT has affirmed the practice of collapsing related non-producer entities.<sup>150</sup>

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<sup>141</sup> See Petitioners' Case Brief (Hyundai) at 2-3.

<sup>142</sup> *Id.* at 3-4.

<sup>143</sup> *Id.* at 2-3.

<sup>144</sup> *Id.* at 1-2.

<sup>145</sup> *Id.* at 3-4.

<sup>146</sup> *Id.* at 4.

<sup>147</sup> *Id.* at 4 (citing 19 CFR 351.401(f)).

<sup>148</sup> *Id.* at 4 (citing *Certain Frozen Warmwater Shrimp from India: Preliminary Results of Antidumping Duty Administrative Review*; 2016-2017, 83 FR 10665 (March 12, 2018) and accompanying PDM at Affiliation and Collapsing; *Certain Tapered Roller Bearings from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less-Than-Fair-Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 4901 (February 2, 2018) and accompanying PDM at Section V; *Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination*, 82 FR 16369 (April 4, 2017) (*CTL Plate from Korea*) and accompanying IDM at Comment 7; *Honey from Argentina: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 1458, 1461-62 (January 10, 2012) (unchanged in *Honey from Argentina: Final Results of Antidumping Duty Administrative Review*, 77 FR 36253 (June 18, 2012)); *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) and accompanying IDM at Comment 5).

<sup>149</sup> *Id.* at 4-6 (citing 19 CFR 351.401(f)(2)).

<sup>150</sup> *Id.* at 5 (citing *Hontex Enterprises v. United States*, 342 F. Supp. 2d 1225, 1230-34 (CIT 2004); and *Queen's Flowers de Colon v. United States*, 981 F. Supp. 617, 628 (CIT 1997)).



*Hyundai's Rebuttal Comments:*

- For the final results, Commerce should rescind its review of Hyundai's affiliated freight company and find that there is no factual or legal basis to collapse Hyundai and its affiliated freight company.<sup>151</sup>
- Hyundai agrees with the petitioners' contention that the affiliated freight company should not receive an individual weighted-average dumping margin, as the record of this review shows that it is neither a producer nor an exporter of subject merchandise.<sup>152</sup>
- The appropriate way for Commerce to lay to rest any speculative concerns of margin shopping by Hyundai through the use of the affiliated freight company margin is for Commerce to rescind its review of the affiliated freight company.<sup>153</sup>
- Section 751(a)(2)(A) of the Act allows Commerce to determine if dumping took place, and Commerce in the past has rescinded reviews itself using broad discretion if there is substantial evidence on the record to support that there were no sales of subject merchandise during the POR.<sup>154</sup>
- The petitioners' collapsing proposal is inconsistent with Commerce's regulations, past practice, and record evidence.<sup>155</sup>
- The affiliated entity in question is simply an affiliated freight company providing freight services and does not meet the collapsing requirements set forth under 19 CFR 351.401(f).<sup>156</sup>
- Hyundai is affiliated with the freight company, but the record contains no evidence that the affiliated freight company is a producer of subject merchandise.<sup>157</sup>
- The prior cases referenced by the petitioners are misleading. The petitioners have referenced cases where the non-producers that were collapsed were affiliated resellers, exporters, processors, distributors, and service centers.<sup>158</sup>

**Commerce's Position:** Commerce determines that in this administrative review there is an insufficient basis either to rescind the review with respect to Hyundai's affiliated freight company or to collapse the freight company with Hyundai. The statute and Commerce's regulations do not address what rate to apply to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review.<sup>159</sup> Under section 735(c)(5)(A) of the Act, the all-others

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<sup>151</sup> See Hyundai's Rebuttal Brief at 2-7.

<sup>152</sup> *Id.* at 1.

<sup>153</sup> *Id.* at 1-2.

<sup>154</sup> *Id.* at 4 (citing *Allegheny Ludlum Corp. v United States*, Slip Op. 02-112, 26 C.I.T. 1124, 1125-28 (Sept. 12, 2002)).

<sup>155</sup> *Id.* at 6.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.* at 7-8 (citing *Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination*, 82 FR 16369 (April 4, 2017)).

<sup>159</sup> See, e.g., *Certain Oil Country Tubular Goods from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, October 10, 2017 (82 FR 46963) and accompanying PDM at 6 (unchanged).

rate is normally “an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}.”

Regarding collapsing, Commerce’s regulations at 19 CFR 351.401(f) state that in an antidumping proceeding, Commerce 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 manufacturing priorities and Commerce concludes that there is a significant potential for the manipulation of price or production.<sup>160</sup> Section 771(33) of the Act sets out persons that Commerce considers to be affiliated. Furthermore, in collapsing determinations, Commerce normally considers: (i) the 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.<sup>161</sup> These factors are considered in light of the totality of the circumstances.<sup>162</sup>

In this review, the petitioners requested a review of, among other companies, Hyundai’s affiliated freight company.<sup>163</sup> On February 14, 2018, the petitioners timely withdrew their request for review of thirteen companies, but did not withdraw their request for review of Hyundai’s affiliated freight company.<sup>164</sup> During the *Preliminary Results*, Commerce rescinded the review for the companies specified in the petitioners’ withdrawal of their request for review.<sup>165</sup> Throughout the course of the administrative review, we limited our examination of respondents, pursuant to section 777A(c)(2) of the Act, and selected Hyundai and POSCO/PDW for individual examination as the two exporters or producers accounting for the largest volume of U.S. imports of the subject merchandise.<sup>166</sup> Consistent with our normal practice, we continue to find it appropriate to calculate the rate for the companies not selected for individual examination in this administrative review (including Hyundai’s affiliated freight company) based on section 735(c)(5)(A) of the Act. Thus, we continue to assign to the companies not individually examined a margin equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely on the basis of facts available.

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in *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, April 18, 2018 (83 FR 17146)).

<sup>160</sup> See 19 CFR 351.401(f).

<sup>161</sup> *Id.*

<sup>162</sup> See *Koyo Seiko Co., Ltd. v. United States*, 516 F. Supp. 2d 1323, 1346 (CIT 2007).

<sup>163</sup> See Letter from Petitioners, “Cold-Rolled Steel Flat Products from the Republic of Korea – Petitioners’ Request for Administrative Review,” dated October 2, 2017.

<sup>164</sup> See Letter from Petitioners, “Cold-Rolled Steel Flat Products from the Republic of Korea – Petitioners’ Partial Withdrawal of Administrative Review Request,” dated February 14, 2018.

<sup>165</sup> See *Preliminary Results*, 83 FR at 51662.

<sup>166</sup> See Memorandum, “Antidumping Review of Cold Rolled Steel Flat Products from the Republic of Korea: Respondent Selection,” dated February 8, 2018.

Further, based on the record of this review, we agree with both the petitioners and Hyundai that the affiliated freight company is neither a producer nor exporter of the subject merchandise. Record evidence identifies the entity in question as involved in the transport of raw materials to Hyundai's production facilities and the transport of finished cold-rolled steel to domestic customers.<sup>167</sup> However, there is nothing on the record which suggests that this entity has the facilities to produce or sell the subject merchandise.<sup>168</sup> Moreover, we note that Commerce relies on the totality of the circumstances in deciding when to treat affiliated parties as a single entity, pursuant to 19 CFR 351.401(f). In this case, because the affiliated freight company is involved in transportation and is not a producer or exporter, we find that it would not be appropriate to collapse this company with Hyundai, regardless of the remaining collapsing criteria.<sup>169</sup> Furthermore, pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review if a party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation. Because the petitioners did not file a timely request to rescind the review with respect to Hyundai's affiliated freight company and only requested to withdraw the review for that company in its administrative case brief, well after Commerce had issued its *Preliminary Results*, we find that it is not appropriate to rescind the review for that company at such a late stage of the administrative review. Accordingly, we continue to find that the record of this review does not support a decision to rescind the review or collapse Hyundai with the affiliated freight company, and we have continued to assign the affiliated freight company the margin for non-individually examined companies, as described above.

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<sup>167</sup> See Hyundai's March 8, 2018 Section A Questionnaire Response at A-12 through A-13.

<sup>168</sup> *Id.*

<sup>169</sup> See Memorandum, "Antidumping Review of Cold Rolled Steel Flat Products from the Republic of Korea: Respondent Selection," dated February 8, 2018.

## 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 results of the review and the final dumping margin in the *Federal Register*.

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\_\_\_\_\_  
Agree

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\_\_\_\_\_  
Disagree

5/17/2019

**X** 

Signed by: JEFFREY KESSLER

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