



A-580-883
Administrative Review
POR: 3/22/2016-9/30/2017
Public Document
E&C/V: JMN/BB

June 21, 2019

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

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

SUBJECT: Certain Hot-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

I. SUMMARY

The Department of Commerce (Commerce) has analyzed the comments submitted by the interested parties in the administrative review of certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Korea (Korea), covering the period of review (POR) March 22, 2016 through September 30, 2017. Following the *Preliminary Results*,¹ based on our verification findings and our analysis of the comments received, we made certain changes to the margin calculations for the final results, as discussed below. 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:

Hyundai Steel² Issues

Comment 1: Usability of Hyundai Steel’s Cost Database

- A. Hyundai Steel’s CONNUM-Specific Costs Reporting and Whether to Smooth Cost
- B. Constituent Ratio to Calculate the Components of COM
- C. Cost Center Reporting
- D. Hyundai Steel Affiliated-Supplied Inputs

¹ See *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 56821 (November 14, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

² Hyundai Steel Company (Hyundai Steel).



- E. General & Administrative (G&A) Ratio
- F. Financial Expense Ratio
- Comment 2: Whether Hyundai Steel is Affiliated with Certain Home Market Customers
- Comment 3: Application of Adverse Facts Available (AFA) for Hyundai Steel
 - A. Application of Total AFA for Hyundai Steel's Cost Reporting
 - B. Application of Total AFA for Certain Hyundai Steel Home Market Customers
- Comment 4: Hyundai Steel's Sales Under Temporary Import Bond (TIB)
- Comment 5: Hyundai Steel's Overrun Sales
- Comment 6: Hyundai Steel Gross Unit Price Variables
- Comment 7: Hyundai Steel Late Payment Fees

POSCO³ Issues

- Comment 8: Whether POSAM's Indirect Selling Expense Ratio Should be Revised
- Comment 9: Whether Commerce Should Correct Errors Made in the Preliminary Results
- Comment 10: Whether POSCO Incorrectly Included Freight Revenues in the Gross Unit Price for UPI's Sales
- Comment 11: Whether Commerce Should Apply Partial AFA to POSCO's U.S. Inventory Carrying Costs
- Comment 12: Whether Commerce Should Revise UPI's Further Manufacturing G&A Expense Ratio
- Comment 13: Whether Commerce Should Revise UPI's G&A and INTEx Ratio Denominators
- Comment 14: Whether Commerce Should Revise the Further Manufacturing Cost of UPI's Non-Prime Products
- Comment 15: Whether Commerce Should Revise UPI's U.S. Brokerage and Handling Expenses
- Comment 16: Whether POSCO/UIP Should Receive a CEP Offset
- Comment 17: POSCO's CONNUM-Specific Costs Reporting and Whether to Smooth Cost
- Comment 18: Whether Commerce Should Apply the Quarterly Cost Methodology to POSCO

II. BACKGROUND

Commerce published in the *Federal Register* the *Preliminary Results* on November 14, 2018.⁴ During March and April 2019, Commerce conducted sales, cost, and further manufacturing verifications, as applicable, at the offices of POSCO and Hyundai Steel and certain U.S. affiliates, in accordance with section 782(i) of the Tariff Act of 1930, as amended (Act).⁵

³ In the *Preliminary Results*, Commerce collapsed POSCO and POSCO Daewoo Corporation (PDW). See *Preliminary Results*, and accompanying PDM. As no interested parties commented on the preliminary affiliation finding, Commerce will continue to treat these two companies as a single entity for the final results. POSCO and its affiliates POSCO Processing and Service (POSCO P&S), POSCO Daewoo Corporation (PDC), POSCO Daewoo America Corp. (PDA), POSCO America Corporation (POSAM), and USS-POSCO Industries (UPI) (collectively, POSCO).

⁴ See *Preliminary Results*.

⁵ See Memoranda, "Administrative Review of the Antidumping Duty Order on Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Verification of the Questionnaire Responses of POSCO," dated May 14, 2019 (POSCO Sales Verification Report); "Administrative Review of the Antidumping Duty Order on Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Verification of the Questionnaire Responses of USS-POSCO Industries," May 14, 2019 (UPI FM Verification Report); and "Administrative Review of the Antidumping Duty Order on Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Cost Verification of POSCO," dated

In accordance with 19 CFR 351.309(c), we invited parties to comment on the *Preliminary Results*. The petitioners⁶ submitted case briefs regarding all issues with respect to Hyundai Steel,⁷ and the sales and further manufacturing issues with respect to POSCO,⁸ on May 21 and 30, 2019, respectively. On May 21, 2019, Hyundai Steel submitted a letter in lieu of a case brief.⁹ On May 30, 2019, POSCO submitted case briefs regarding POSCO's sales and further manufactured information.¹⁰ On May 31, 2019, the petitioners¹¹ and Hyundai Steel submitted rebuttal briefs for issues pertaining to Hyundai Steel.¹² On June 5, 2019, the petitioners and POSCO submitted rebuttal briefs regarding POSCO's sales and further manufactured information.¹³ On June 5, 2019, the petitioners submitted their case brief regarding POSCO's cost information.¹⁴ On June 10, 2019, POSCO submitted its rebuttal brief regarding its cost

May 24, 2019 (POSCO Cost Verification Report); *see also* Memoranda, "Verification of the Cost Response of Hyundai Steel Company in the Antidumping Duty Administrative Review of Hot Rolled Steel Flat Products from the Republic of Korea," dated May 14, 2019 (Hyundai Steel's Cost Verification Report); "Verification of the Sales Response of Hyundai Steel Company in the Antidumping Duty Administrative Review of Hot Rolled Steel Flat Products from the Republic of Korea," dated May 14, 2019 (Hyundai Steel's Sales Verification Report); and "Verification of the CEP Response of Hyundai Steel Company in the Antidumping Duty Administrative Review of Hot Rolled Steel Flat Products from the Republic of Korea," dated May 14, 2019 (Hyundai Steel's CEP Verification Report).

⁶ The case brief regarding Hyundai Steel was filed on behalf of ArcelorMittal USA LLC (ArcelorMittal); the POSCO sales and further manufacturing case brief was filed on behalf of ArcelorMittal, AK Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., SSAB Enterprises, LLC, and United States Steel Corporation. For the purposes of this memorandum, we refer to all domestic parties collectively as "the petitioners" or "Petitioners."

⁷ *See* Petitioners' Letter, "Petitioners' Case Brief for Hyundai Steel Company," dated May 21, 2019 (Petitioners' HS Case Brief); Petitioners' Letter, "Hot-Rolled Steel from the Republic of Korea – Petitioner's Request to Submit Replacement Pages for Case Brief Regarding Hyundai Steel Company," dated May 22, 2019 (Errata to HS Case Brief).

⁸ *See* Petitioners' Letter, "Petitioners' Case Brief Regarding POSCO's Sales and Further Manufacturing Issues," dated May 30, 2019 (Petitioners' S&FM Case Brief).

⁹ Hyundai Steel's Letter, "Certain Hot-Rolled Steel Flat Products from Korea, 3/22/2016-9/30/2017 Administrative Review, Case No. A-580-883: Letter in Lieu of Case Brief," dated May 21, 2019 (Hyundai Steel's Case Brief). Hyundai Steel submitted a letter in lieu of case brief to correct for the record three alleged ministerial errors in the verification reports for Hyundai Steel.

¹⁰ *See* POSCO's Letter, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea, Case No. A-580-883: POSCO's Sales and Further Manufacturing Case Brief," dated May 30, 2019 (POSCO's S&FM Case Brief).

¹¹ The petitioners note that in prior instances Commerce has specifically declined to make any amendments to the factual points made in a verification report once it is issued. Here, we agree with the petitioners and decline to amend our verification finding.

¹² *See* Petitioners' Letter, "Certain Hot-Rolled Steel Flat Products from Korea – Petitioner's Letter in Lieu of Rebuttal Brief," dated May 31, 2019 (Petitioners' HS Rebuttal); and Hyundai Steel's Letter, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea, Case No. A-580-883: Hyundai Steel Rebuttal Brief," dated May 31, 2019 (Hyundai Steel's Rebuttal).

¹³ *See* Petitioners' Letter, "Petitioners' Rebuttal Brief Concerning POSCO's Sales and Further Manufacturing Issues," dated June 5, 2019 (Petitioners' S&FM Rebuttal); and POSCO's Letter, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea, Case No. A-580-883: POSCO's Sales and Further Manufacturing Rebuttal Brief," dated June 5, 2019 (POSCO's S&FM Rebuttal).

¹⁴ *See* Petitioners' Letter, "Petitioners' Case Brief Regarding POSCO's Cost Issues," dated June 5, 2019 (Petitioners' Cost Case Brief); and Petitioners' Letter, "Hot-Rolled Steel Flat Products from the Republic of Korea – Petitioners' Request to Correct Citations in Case Brief Regarding POSCO's Cost Issues," dated June 6, 2019 (Petitioners' Citation Corrections).

information.¹⁵ Based on our analysis of the comments received, as well as our findings at verification, we recalculated the weighted-average dumping margins for POSCO and Hyundai Steel from the *Preliminary Results*. We conducted this administrative review in accordance with section 751(a) of the Act.

On December 21, 2018, Commerce extended the deadline for the final results of this administrative review.¹⁶ 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, 2019.¹⁷ On June 3, 2019, Commerce again extended the deadline for the final results.¹⁸ The revised deadline for the final results of this administrative review is now June 21, 2019.

III. SCOPE OF THE ORDER

The products covered by this order are certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and whether or not annealed, painted, varnished, or coated with plastics or other non-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 thickness, and 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 of 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 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 unless the resulting measurement makes the product covered by the

¹⁵ See POSCO’s Letter, “Certain Hot-Rolled Steel Flat Products from the Republic of Korea, Case No. A-580-883: POSCO’s Cost Rebuttal Brief,” dated June 10, 2019 (POSCO’s Cost Rebuttal).

¹⁶ See Memorandum, “Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,” dated December 21, 2018.

¹⁷ See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, “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.

¹⁸ See Memorandum, “Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,” dated June 3, 2019.

existing antidumping¹⁹ or countervailing duty²⁰ orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products From the Republic of Korea (A-580-836; C-580-837), 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 this 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, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium, 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, the substrate for 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. The substrate for motor lamination steels contains 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.

¹⁹ See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products from France, India, Indonesia, Italy, Japan, and the Republic of Korea, 65 FR 6585 (February 10, 2000).

²⁰ See Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate from India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea, 65 FR 6587 (February 10, 2000).

Subject merchandise includes hot-rolled steel that has been further processed in a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, 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 hot-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 this order:

- Universal mill plates (*i.e.*, hot-rolled, flat-rolled products not in coils that have been rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, of a thickness not less than 4.0 mm, and without patterns in relief);
- Products that have been cold-rolled (cold-reduced) after hot-rolling;²¹
- Ball bearing steels;²²
- Tool steels;²³ and
- Silico-manganese steels;²⁴

The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.10.1500, 7208.10.3000, 7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7208.90.0000, 7210.70.3000, 7211.14.0030, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.11.0000, 7225.19.0000, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000,

²¹ For purposes of this scope exclusion, rolling operations such as a skin pass, levelling, temper rolling or other minor rolling operations after the hot-rolling process for purposes of surface finish, flatness, shape control, or gauge control do not constitute cold-rolling sufficient to meet this exclusion.

²² 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.

²³ 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.

²⁴ 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.

7226.19.9000, 7226.91.5000, 7226.91.7000, and 7226.91.8000. The products subject to the order may also enter under the following HTSUS numbers: 7210.90.9000, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.5000, 7226.99.0180, and 7228.60.6000.

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. CHANGES SINCE THE PRELIMINARY RESULTS

Based on our analysis of comments received from parties, we made certain changes to Hyundai Steel's and POSCO's margin calculations.²⁵

V. DISCUSSION OF THE ISSUES

Comment 1: Usability of Hyundai Steel's Cost Database

A. Hyundai Steel's CONNUM-Specific Costs Reporting and Whether to Smooth Cost

Petitioners' Comments:

- Hyundai Steel stated multiple times that it provided CONNUM-specific costs. However, in a supplemental questionnaire, Hyundai Steel admitted that the reported cost differences are not related to the CONNUM's characteristics, but instead, are related to production at multiple mills, timing of production, production quantities, and its use of fixed average percentages to calculate each cost element. Thus, Hyundai Steel chose not to provide CONNUM-specific costs despite Commerce's instructions.²⁶
- Commerce's verification report confirms that Hyundai Steel failed to report CONNUM-specific costs. Commerce explained that for the sets of CONNUMs that were identical with the exception of nominal thickness, nominal thickness is not the only factor affecting cost. Commerce also came to the same conclusion regarding sets of CONNUMs that varied by either nominal width or pattern.²⁷ Thus, even though there was only one varying CONNUM characteristic in a set of CONNUMs, Commerce verified that the reported costs varied by factors not related to the CONNUM characteristics.²⁸
- Commerce has rejected this same behavior by Hyundai Steel in *CTL Plate from Korea, 2014-15*.²⁹ Specifically, Commerce found that the difference in costs were not the result of

²⁵ See Memorandum, "Antidumping Duty Administrative Review of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results Analysis Memorandum for Hyundai Steel Company," dated June 21, 2019 (Hyundai Steel's Final Analysis Memorandum); and Memorandum, "Final Results Analysis Memorandum for POSCO in the Antidumping Duty Administrative Review of Certain Hot-Rolled Steel Flat Products from the Republic of Korea," dated June 21, 2019 (POSCO's Final Analysis Memorandum).

²⁶ See Petitioners' HS Case Brief at 7-8.

²⁷ *Id.* at 8 (citing Hyundai Steel Cost Verification Report).

²⁸ *Id.* at 9.

²⁹ *Id.* at 19-20 (citing *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2014-2015*, 81 FR 62712 (September 12, 2016), and accompanying IDM (*CTL Plate from Korea, 2014-15*)).

differences in physical characteristics, but instead included differences in product-specific production volumes and in processing.³⁰ Commerce did not rely on Hyundai Steel's submitted costs and should conclude, here, that Hyundai Steel received prior notice of the importance of providing CONNUM-specific costs that reflect meaningful cost differences attributable to the CONNUM's product characteristics.³¹

- Hyundai Steel did not provide prior notice to Commerce that it would not report the requested CONNUM-specific costs, which deprived Commerce and the petitioners a full explanation and suggested alternative forms in lieu of CONNUM-specific costs.³² Therefore, Commerce should find that there is no reliable, accurate, and usable cost file on the record.³³
- The approach taken in prior proceedings to “smooth the costs” is impossible here because the reported costs in the DIRMAT, OTHDIRMAT, DIRLAB, VOH and FOH are the result of a meaningless calculation. For instance, the DIRMAT field does not report the actual material costs, as the values reported in this field do not reflect, for example, the actual costs associated with a product's bill of materials. Thus, smoothing out values that have no relationship to the cost field would not fix the underlying problem that Hyundai Steel has created by not reporting the actual costs of materials, other materials, direct labor, variable overhead and fixed overhead in the related cost fields.³⁴
- The record shows that the costs reported in DIRMAT, OTHDIRMAT, DIRLAB, VOH and FOH fields are not a consistent percentage of the total cost of manufacture (TOTCOM), thus, confirming that Hyundai Steel's methodology is not reasonable. Any attempt to “smooth” the costs is wrong and would not alleviate Hyundai Steel's misreporting.³⁵
- Smoothing Hyundai Steel's costs would require Commerce to recalculate the entire cost database. Therefore, Commerce should not be responsible for the development of Hyundai Steel's record. In fact, Commerce should not place itself in the position of developing and preparing Hyundai Steel's cost file from data that are known to be wrong.³⁶
- Smoothing out Hyundai Steel's costs would be an ineffective exercise because it would smooth out average calculated costs, which have no bearing to the actual costs that Hyundai Steel should have reported.³⁷
- Commerce methodology of re-averaging costs with the same CONNUM characteristics will not result in the required cost trend. Accordingly, Commerce should conclude that Hyundai Steel has failed to cooperate to the best of its ability and assign Hyundai Steel a final dumping margin based on total AFA.³⁸
- Should Commerce decline to follow its practice here of applying the highest rate alleged in the petition, it should rely on the single highest TOTCOM and assign this single cost to all CONNUMs as partial AFA. The use of the single highest TOTCOM is reasonable, as it is

³⁰ *Id.* at 20.

³¹ *Id.*

³² *Id.* at 21.

³³ *Id.*

³⁴ *Id.* at 41; Errata to HS Case Brief at 2.

³⁵ *Id.*

³⁶ *Id.* (citing *Fujian Lianfu Forestry Co. v. United States*, 638 F. Supp. 2d 1325, 1340 (Ct. Int'l Trade 2009) (“A respondent has ‘a statutory obligation to prepare an accurate and complete record in response to questions plainly asked by Commerce.’”)).

³⁷ *Id.*

³⁸ *Id.* at 42.

clear that the costs reported in each cost field do not reflect the actual costs for that field. Thus, Commerce has no means to determine the actual costs for DIRMAT, OTHDIRMAT, DIRLAB, VOH and FOH for any CONNUM. As such, Commerce cannot reward Hyundai Steel for its refusal to rely on the information available from its accounting system to report actual costs.³⁹

Hyundai Steel's Rebuttal:

- Reporting CONNUM-specific costs means reporting the actual costs of producing specific CONNUMs, as reflected in a company's books and records, which is precisely what Hyundai Steel has done in this review, using the same methodology that was verified and accepted in the *LTFV Investigation*.⁴⁰ Thus, the petitioners' argument that the existence of cost differences among CONNUMs that are attributable to other factors demonstrate Hyundai Steel's reported costs are not CONNUM-specific costs, is nonsense.⁴¹
- CONNUM characteristics are adopted by Commerce based on their tendency to affect price comparability, not necessarily because they affect production costs. Commerce requires respondents to report CONNUM-specific costs to ensure that any actual differences in costs attributable to differences in CONNUM characteristics are reflected in the reported costs. It does not follow, however, that there will always be discernable cost differences attributable to specific CONNUM characteristics or that the differences in CONNUM characteristics will be the only cost differences between any given pairs of CONNUMs.⁴²
- Actual costs mean exactly that; the actual costs incurred in producing specific CONNUMs, and that is what Hyundai Steel has reported. Thus, the petitioners' repeated assertions to the contrary are without merit.⁴³
- As previously explained, Hyundai Steel has built-up the CONNUM-specific COM reported to Commerce by capturing the actual production quantity and the actual COM recorded in its cost accounting system for each internal item code falling within the CONNUM. Thus, this results in CONNUM-specific cost of manufacturing that reflects the actual costs incurred by Hyundai Steel in producing each CONNUM during the POR as maintained in Hyundai Steel's cost accounting system in the normal course of business.⁴⁴
- Hyundai Steel provided the same information in the sample CONNUM calculations examined by Commerce at verification, and Commerce verified Hyundai Steel's reported costs without exemption. Thus, contrary to the petitioners' assertions, Hyundai Steel has reported an actual CONNUM-specific cost for each CONNUM produced by Hyundai Steel during the POR.⁴⁵
- In *CTL Plate from Korea, 2014-15*, Commerce emphasized that it was not applying AFA or facts available of any kind. Thus, in the event that Commerce determines, in this case, that it is preferable to adjust Hyundai Steel's reported costs to eliminate or mitigate cost difference that are attributable to factors other than CONNUM characteristics, Commerce should again

³⁹ *Id.*

⁴⁰ See *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 53419 (August 12, 2016) (*LTFV Investigation*), and accompanying IDM.

⁴¹ See Hyundai Steel's Rebuttal Brief at 9.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* at 10.

⁴⁵ *Id.* at 10-11.

find that because Hyundai Steel cooperated and has reported its actual, verified, CONNUM-specific costs, there is no basis for the application of facts available.⁴⁶

Commerce Position: We disagree that the facts concerning Hyundai Steel's reporting of CONNUM-specific cost merit the application of AFA. For a full discussion of the application of facts available and AFA regarding Hyundai Steel's cost data, *see* Comment 3.A. below.

While Hyundai Steel did in fact submit CONNUM-specific costs for these final results, Commerce finds that Hyundai Steel's reported per-unit costs exhibited certain significant variations that were unrelated to the physical characteristics of the products under review.⁴⁷ Such findings are not unusual in these proceedings because Commerce is directed to use, as a starting point for reporting information, a respondent's normal books and records.⁴⁸ For large steel companies like Hyundai Steel, these books and records are typically generated from computer-based enterprise-wide reporting systems, capable of calculating product costs monthly, or even over certain production runs. Costs captured at specific points in time will naturally vary due to timing differences. When such costs are assigned to specific CONNUMs, some of which had limited production quantities, differences between CONNUM costs arise that will not be related to the physical characteristics designated for an antidumping duty proceeding. To address this issue, Commerce has adopted a practice of smoothing out these differences by weight-averaging certain CONNUMs that share certain key physical characteristics. For example, in *CWP from Korea* Commerce stated:

{T}he Department is instructed to rely on a company's normal books and records if two conditions are met: 1) the books are kept in accordance with the home country's GAAP; and 2) the books reasonably reflect the cost to produce and sell the merchandise. In the instant case, it is unchallenged that the unadjusted per-unit costs are derived from Husteel's normal books and that those books are in accordance with Korean GAAP. Hence, the question facing the Department is whether the per-unit costs from Husteel's normal books reasonably reflect the cost to produce and sell the merchandise under consideration.

Based on an analysis of Husteel's reported cost data, the Department continues to find that the fluctuation in costs between CONNUMs cannot be explained by the differences in the physical characteristics of those CONNUMs.... Based on the foregoing discussion, *i.e.*, the fact that the reported costs for different products do not reflect cost differences that logically result from differences in the products' physical characteristics, the Department finds that Husteel's HRC costs do not reasonably reflect POR average costs.... Thus, for these final results, *the Department reallocated Husteel's reported raw material costs among products of the same pipe grade, nominal pipe size, surface finish, and end finish (coupled-*

⁴⁶ *Id.* at 11.

⁴⁷ *See* Hyundai Steel Cost Verification Report at 17.

⁴⁸ *See* section 773(f)(1)(A) of the Act.

*versus non-coupled pipe) and fabrication costs among products of the same thickness, surface finish, and end finish.*⁴⁹ (Emphasis added.)

Commerce reiterated this point regarding Hyundai Steel in *CORE from Korea*.⁵⁰ There Commerce found,

{We} mitigated these distortive cost fluctuations, by smoothing Hyundai's reported per-unit costs by weight-averaging direct material costs among products of the same finish type, reduction process, coating metal, coating weight, coating process, quality, and yield strength. While smoothing out the costs by weight averaging {CONNUMs} over certain characteristics does not eliminate all differences, it balances the need to use cost differences for certain purposes within an antidumping duty proceeding and the requirement to use a respondent's normal books and records as the starting point.⁵¹

We find it appropriate to mitigate cost fluctuations by smoothing Hyundai Steel's reported unit costs by weight-averaging conversion costs among products of the same nominal thickness, nominal width, and form.⁵² Smoothing or weight-averaging ensures that the product-specific costs we use for the sales-below-cost test, constructed value (CV), and the DIFMER (difference in merchandise) adjustment reflect the physical characteristics of the products whose sales prices are used in Commerce's dumping calculations. Smoothing also allows us to rely as much as possible on the respondent's normal books and records. The record shows that Hyundai Steel maintains its books and records in accordance with Korea's generally accepted accounting principles, and that Hyundai Steel reported CONNUM-specific costs derived from its actual accounting system.⁵³ As discussed above, Hyundai Steel's accounting system is typical for a large integrated steel producer, and we determine that Hyundai Steel maintains its books and records in a manner that reasonably reflects the cost associated with the production and sales of the merchandise under review. Therefore, we have continued to use Hyundai Steel's reported COP and CV data for the final results. However, we performed an analysis of the per-unit costs to determine the extent of the cost fluctuations.⁵⁴ While there were some fluctuations in material costs between similar products, they were not on the whole significant or frequent. For conversion costs, we found significant differences that affected the majority of the reported CONNUMs. Because we find that CONNUM cost differences exist due to the combining of production from multiple mills, differences in timing of production, production quantities produced in batches, we have smoothed conversion costs.⁵⁵ We then recalculated the general

⁴⁹ See *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 at Comment 1 (*CWP from Korea*).

⁵⁰ See *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2016-2017, 84 FR 10784 (March 22, 2019), and accompanying IDM at Comment 9 (*CORE from Korea*).

⁵¹ See *CORE from Korea* and accompanying IDM at Comment 9.

⁵² See Hyundai Steel's Final Analysis Memorandum.

⁵³ See Hyundai Steel's Section D Questionnaire Response at D-11 and D-15.

⁵⁴ See Hyundai Steel's Final Analysis Memorandum.

⁵⁵ *Id.*

and administrative expenses and the financial expenses by applying the corresponding rate to the revised costs.

B. Constituent Ratio to Calculate the Components of COM

Petitioners' Comments:

- Hyundai Steel's failure to report CONNUM-specific costs is a direct result of the methodology it chose to use in this review. To report its costs, Hyundai Steel cobbled together a system that simply relied on average finished goods inventory values (by internal item code), production quantities (by CONNUM), and fixed average percentages to calculate the DIRMAT, OTHDIRMAT, DIRLAB, VOH, and FOH costs. This system does not yield reasonable CONNUM-specific costs that reflect the expected cost trends. In fact, it demonstrates that Hyundai Steel took every step possible to homogenize its costs and eliminate variances.⁵⁶ Hyundai Steel should have reported the actual cost for each cost element (DIRMAT, OTHDIRMAT, DIRLAB, VOH, and FOH), which could have easily been done with its accounting system.⁵⁷
- Commerce has a long-standing practice that requires each respondent to develop a cost methodology system that properly reports costs that vary by the CONNUM's characteristics.⁵⁸ At verification, Hyundai Steel explained how the costs should vary by CONNUM characteristic, based on various cost drivers (thickness, width, etc.). However, Hyundai Steel's reported costs do not abide by these cost trends. This indicates that Hyundai Steel knew that its chosen methodology for reporting its costs was wrong and would result in aberrational and invalid costs.⁵⁹
- Hyundai Steel reported that its "cost accounting system is based on an actual process cost accounting system," where "costs are captured in the cost centers on an actual basis rather than being determined by way of standard or budget costs."⁶⁰ Therefore, Hyundai Steel should have traced not only the raw material input, but the cost associated with the raw material input, other materials, labor, and variable overhead, and fixed overhead backwards to segregate out the costs associated with each production process.⁶¹
- Commerce has evidence in this review that each cost field is not a consistent fixed percentage of TOTCOM for each and every CONNUM; and under no measure would the use of fixed percentages applied against finished goods inventory values result in reasonable or reliable costs for each cost element. Therefore, the use of this information would not result in reasonable dumping margins.⁶²
- These average percentages are not limited to the subject hot-rolled steel costs, but include all products produced at the integrated mill, including hot-rolled steel, non-subject reinforcing bar (rebar), cut-to-length plate (CTL plate), corrosion-resistant (CORE) steel, cold-rolled (CR) steel, *etc.*, which Commerce discovered at verification. Commerce discovered that a subset of non-subject merchandise accounted for an above-*de minimis* percent of the

⁵⁶ See Petitioners' HS Case Brief at 10.

⁵⁷ *Id.* at 12.

⁵⁸ *Id.* at 10.

⁵⁹ *Id.* at 11.

⁶⁰ *Id.* at 12 (citing Hyundai Steel Section D Questionnaire Response at D-15).

⁶¹ See Petitioners' HS Case Brief at 12-13.

⁶² *Id.* at 16.

integrated mill cost.⁶³ Additionally, the costs used to calculate these average percentages also are not the cost of manufacturing. Therefore, the use of average percentages has no bearing on hot-rolled steel or on the cost of manufacturing for hot-rolled steel, and under no measure are reasonable.⁶⁴

- Commerce should find that the methodology relied upon by Hyundai Steel is unreasonable and unreliable, as it does not accurately reflect CONNUM-specific costs.⁶⁵
- Under section 782(c) of the Act, a respondent has a responsibility not only to notify Commerce if it is unable to provide requested information, but also to provide a full explanation and suggest an alternative form of the data necessary to perform a valid analysis. At no time in this review did Hyundai Steel follow this protocol of notifying Commerce in advance that it would not report actual CONNUM-specific costs or that it could not report CONNUM-specific costs. Instead, Hyundai Steel continually, and wrongly, claimed that it was following Commerce's reporting instructions. Therefore, Hyundai Steel impeded Commerce's investigation of this issue.⁶⁶

Hyundai Steel's Rebuttal:

- As demonstrated and confirmed at verification, Hyundai Steel was able to correlate each item code with the appropriate CONNUM in order to build-up the CONNUM-specific cost. Once all item codes had been assigned to the appropriate CONNUM or CONNUMs, Hyundai Steel then weight-averaged the actual costs (by item code) from its cost accounting system by CONNUM to generate the CONNUM-specific costs reported to Commerce.⁶⁷
- It appears that the petitioners argued that Hyundai Steel should have disregarded the actual inventory values generated in its cost accounting system and somehow developed new costs using underlying production records. However, this argument is directly contrary to Commerce's longstanding requirement that respondents rely on their normal cost accounting system to generate the costs reported, as it would have resulted in costs that were unverifiable.⁶⁸
- In addition, such a methodology would do nothing to address the petitioners' complaint that costs sometimes differ among CONNUMs for reasons other than CONNUM characteristics because this would not change the fact that additional factors such as production quantity, timing, and other conditions of production would in some instances affect the actual costs incurred for producing particular CONNUMs.⁶⁹
- As previously explained and observed at verification, Hyundai Steel's process cost system accumulates the total manufacturing costs incurred at each production stage, so that the total costs incurred at one stage (materials and processing) are summed and transferred to the next stage of the production process as a single amount. That single amount is then treated as the input cost at the subsequent stage. For this reason, Hyundai Steel separates the constituents of total cost (materials, labor, and overhead) by taking the overall POR ratios for materials, labor, and overhead recorded in the cost of manufacturing statement for the Integrate Mill

⁶³ *Id.* at 16-17.

⁶⁴ *Id.* at 17.

⁶⁵ *Id.* at 18.

⁶⁶ *Id.* at 19.

⁶⁷ See Hyundai Steel's Rebuttal Brief at 12.

⁶⁸ *Id.* at 12-13.

⁶⁹ *Id.* at 13.

and applying these constituent ratios to CONNUM-specific to generate the constituent costs reported to Commerce.⁷⁰

- The fact that Hyundai Steel's process cost accounting system accumulates the total costs of materials and processing at each production stage, rather than tracking materials and processing separately does not mean that the resulting COM is not CONNUM-specific.⁷¹
- The petitioners argue that because the conversion cost ratios used to separate the constituents of the total CONNUM-specific COM are based on the cost of manufacturing statement of the Integrated Mill, these ratios reflect the processing costs of producing other non-subject products in addition to subject HR steel. However, the petitioners fail to identify any actual record evidence that the resulting ratios are inaccurate or unreasonable.⁷²
- The vast majority of the costs are in the steelmaking stage, which is common to all products produced at the Integrated Mill. Thus, the processing costs for these products produced at the Integrated Mill are incurred jointly and do not vary based on whether the end-product is subject hot-rolled steel or whether it is non-subject CTL plate, CORE steel, CR steel, or pipe.⁷³
- The petitioners include a cryptic assertion that "{Commerce} has evidence in this review that each cost field is not a consistent fixed percentage of TOTCOM for each and every CONNUM." However, rather than explaining what this supposed evidence consists of, the petitioners simply provide a citation to a cost file of another respondent.⁷⁴
- Hyundai Steel also used this same constituent ratio methodology in the investigations of CR steel and CORE steel, where it was also verified successfully and accepted by Commerce.⁷⁵
- The petitioners have failed to demonstrate any error in the CONNUM-specific costs reported by Hyundai Steel using this methodology for calculating the constituent ratios, therefore Commerce should reject this argument on Hyundai Steel's CONNUM-specific cost methodology.⁷⁶

Commerce Position: As stated above, the record shows that Hyundai Steel maintains its books and records in accordance with Korea's generally accepted accounting principles, and that it reported CONNUM-specific costs derived from its actual accounting system.⁷⁷ Hyundai Steel's accounting system is typical for a large integrated steel producer, and we determine that Hyundai Steel maintains its books and records in a manner that reasonably reflects the cost associated with the production and sales of the subject merchandise. Additionally, the record shows that Hyundai Steel's process cost system accumulates the total manufacturing costs incurred at each production stage, so that the total costs incurred at one stage (materials and processing) are summed and transferred to the next stage of the production process as the input of the subsequent stage.⁷⁸ Therefore, because the production process and the activities are going through the same layout and processes, and because Hyundai Steel reasonably maintains its books and records in a

⁷⁰ *Id.* at 13-14.

⁷¹ *Id.* at 14.

⁷² *Id.* at 15.

⁷³ *Id.* at 15-16.

⁷⁴ *Id.* at 16 (citing Petitioners' HS Case Brief at 16).

⁷⁵ *Id.*

⁷⁶ *Id.* at 16-17.

⁷⁷ See Hyundai Steel's Section D Questionnaire Response at D-11 and D-15.

⁷⁸ See Hyundai Steel's Cost Verification Report at 5.

manner that reflects production cost, we find that Hyundai Steel's calculation methodology is reasonable. Furthermore, because of the accumulated nature of Hyundai Steel's process cost system, Commerce has continued to accept Hyundai Steel's reporting methodology used in prior proceedings and in other cases, such as *CTL Plate from Korea, 2014-15*, and *CORE from Korea*.⁷⁹ Commerce also accepted this reporting methodology by other respondents in other cases.⁸⁰ Accordingly, we find that Hyundai Steel's methodology for reporting the cost of hot-rolled steel is acceptable and indeed CONNUM-specific.

C. Cost Center Reporting

Petitioners' Comments:

- In its supplemental questionnaire, Commerce asked Hyundai Steel to confirm that certain cost centers do not produce, handle, or otherwise contribute directly or indirectly to the production of subject merchandise, since these cost centers were only attributed to non-subject merchandise.⁸¹ In its response, Hyundai Steel confirmed that these cost centers did not produce, handle, or contribute directly or indirectly to the production of subject merchandise. However, at verification, Commerce discovered that two groups of cost centers were actually involved with subject merchandise.⁸²
- By withholding until verification, the fact that these two groups of cost centers were actually involved in the subject merchandise, Hyundai Steel impeded Commerce's investigation of the costs and prevented Commerce from fully understanding this issue.⁸³

Hyundai Steel's Rebuttal:

- With respect to cost centers that relate to CTL Plate, the majority of costs in this center relates to non-subject merchandise. The portion of plate production that constitutes subject merchandise (*i.e.*, plate with a thickness of 4.75 mm or less) have properly been reported and verified.⁸⁴
- With respect to cost centers that relate to harbor operations of material unloading, loading for finished goods shipments, and loading services for other companies, some of the amounts in these cost centers were reported as direct selling expenses in field DBROKU1.⁸⁵ Thus, the amounts related to subject merchandise in these cost centers were reported as costs or direct selling expenses, both of which Commerce successfully verified.⁸⁶

Commerce Position: Although Hyundai Steel may not have expressly identified that these cost centers were involved directly or indirectly in the production of subject merchandise, we find

⁷⁹ See *CTL Plate from Korea 2014-15*, and accompanying IDM at Comment 1; and *CORE from Korea*, and accompanying IDM at Comment 9.

⁸⁰ See *CWP from Korea*, and accompanying IDM at Comment 1; and *Fine Denier Polyester Staple Fiber from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 24743 (May 30, 2018) (*PSF from Korea*), and accompanying IDM at Comment 6(d).

⁸¹ See Petitioners' HS Case Brief at 21-22 (citing Hyundai Steel's Section D Questionnaire Response at Exhibit D-11).

⁸² *Id.* at 21-23.

⁸³ *Id.* at 23.

⁸⁴ See Hyundai Steel's Rebuttal Brief at 17 (citing Hyundai Steel's Cost Verification Report).

⁸⁵ *Id.*

⁸⁶ *Id.*

that Hyundai Steel did properly include the relevant costs within these cost centers as either cost of production or direct selling expenses. Specifically, we find that the cost centers used for CTL Plate (that were subject to this review) were properly included in the reported COM.⁸⁷ At verification, we confirmed that Hyundai Steel indeed captured these costs.⁸⁸ We also find that the cost centers used for harbor operations of material unloading, loading for finished goods shipments, and loading services for other companies were properly reported. At verification, we confirmed that the cost center used for loading services for other companies is for non-subject merchandise, and therefore it was properly excluded from the reported COM. We also verified how certain cost center expenses were allocated through indirect cost centers to direct cost center expenses (*i.e.*, loading expense reported in DBROKU1).⁸⁹ Further, we find that Hyundai Steel did not impede this review, because it did not withhold information and in fact provided Commerce with the actual relevant costs within the cost centers. Accordingly, we find the petitioners' allegation that Hyundai Steel impeded the investigation by not providing an accurate description of its cost centers is without merit.

D. Hyundai Steel Affiliated-Supplied Inputs

Petitioners' Comments:

- Under the antidumping law, if Hyundai Steel acquired inputs from affiliated parties, Commerce is required to determine if those affiliate-supplied inputs are properly valued.⁹⁰ Hyundai Steel acknowledged that it acquired certain inputs and services from affiliated parties. However, in a supplemental response, Hyundai Steel withheld key data on affiliated party purchases and therefore, hindered Commerce's ability to properly value these inputs and services.⁹¹
- Thus, despite Commerce's second request, Hyundai Steel continued to withhold the quantity of affiliated purchases and the quantity and value of unaffiliated purchases in its supplemental response.⁹² Without, this information, Commerce has no ability to examine affiliated party transactions.⁹³
- Hyundai Steel reported that iron ore, coal, and scrap are major inputs, however it failed to report the three elements required for the major inputs test for a certain major input.⁹⁴ Since Hyundai Steel was twice asked for the data necessary for the major input test, Commerce should find that Hyundai Steel's withholding of this data substantially impedes Commerce's ability to analyze and conduct its major input test.⁹⁵
- Hyundai Steel also claimed that the "purchase price of materials includes related expenses such as transportation and duties."⁹⁶ However, the limited information that Hyundai Steel

⁸⁷ See Hyundai Steel's Cost Verification Report at 16.

⁸⁸ *Id.* at VE-10.

⁸⁹ *Id.* at 16 and VE-20.

⁹⁰ See Petitioners' HS Case Brief at 23 citing section 773(f) of the Act.

⁹¹ *Id.* at 23-25.

⁹² *Id.* at 26.

⁹³ *Id.* at 27.

⁹⁴ *Id.* at 24.

⁹⁵ *Id.* at 26.

⁹⁶ *Id.* at 24.

reported is unusable. Therefore, Hyundai Steel failed to provide sufficient information for Commerce's examination of affiliated-party purchases.⁹⁷

- Hyundai Steel's failure to provide the requested information only serves to obstruct Commerce's investigation and its ability to calculate an accurate margin.⁹⁸

Hyundai Steel's Rebuttal:

- Hyundai Steel reported the quantity and value for steel scrap it purchased from all affiliated suppliers, in addition to the quantity and value purchased from unaffiliated suppliers, the average price/MT paid to each supplier, and the percentage these purchases represent of the total COM, which is all that Commerce required.⁹⁹
- Hyundai Steel did follow Commerce's instructions in providing the data requested in the initial Section D response, and at no time did Commerce advise Hyundai Steel that the information provided was not satisfactory, nor did it request additional data.¹⁰⁰
- Hyundai Steel acknowledged that steel scrap is a major input, however, it also reported that the *de minimis* amount of the steel scrap purchased from affiliates establishes that the valuation of scrap from affiliated suppliers does not have a material impact on Hyundai Steel's costs.¹⁰¹ Thus, the petitioners' claims that Hyundai Steel significantly impeded this review are entirely without merit.¹⁰²
- With respect to affiliated suppliers of other goods and services, Hyundai Steel did not report quantities or values of purchases from unaffiliated suppliers of the goods and services to which the petitioners point because there were no comparable purchases from unaffiliated suppliers to compare. Thus, Hyundai Steel cannot be expected to provide information that does not exist regarding transactions that have not happened.¹⁰³
- The petitioners also claim that Hyundai Steel should have reported the quantity of these goods and services rather than simply the value, however, once again Commerce never advised Hyundai Steel that any additional information was required. In addition, none of these goods or services amounted to more than a *de minimis* percentage of COM.¹⁰⁴
- The petitioners argue that the samples provided for certain arm's-length comparisons are not appropriate comparisons because one of the samples of freight from the affiliated supplier cannot be compared to freight purchased the same month from the unaffiliated supplier. However, the petitioners ignore the fact that there was not a transaction in that month from an unaffiliated supplier. Thus, again the petitioners are complaining that Hyundai Steel did not provide information that does not exist.¹⁰⁵
- This focus on supposed problems with the samples provided ignores the more fundamental evidence provided by the exhibit, *i.e.*, that the USD/MT freight price from the affiliated supplier is greater than that from the unaffiliated supplier.¹⁰⁶

⁹⁷ *Id.* at 27.

⁹⁸ *Id.* at 28.

⁹⁹ See Hyundai Steel's Rebuttal Brief at 18.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 19.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 20.

¹⁰⁶ *Id.*

Commerce Position: We agree with Hyundai Steel that Hyundai Steel’s affiliated inputs and services, as listed in Exhibit D-25 of Hyundai Steel’s supplemental response,¹⁰⁷ do not constitute major inputs falling within the meaning of section 773(f)(3) of the Act. In determining whether an input is “major” in accordance with section 773(f)(3) of the Act, among other factors, we normally consider both the percentage of an individual input purchased from affiliated parties and the percentage each individual input represents in relation to the product’s total cost of manufacturing.¹⁰⁸ In the current case we looked at the percentage of inputs Hyundai Steel received from affiliated parties and the percentage of those input costs to each company’s total cost of manufacturing.¹⁰⁹ Based on our analysis of all of the information on the record, we continue to determine that inputs purchased by Hyundai Steel from affiliates are not significant in relation to the total costs incurred to produce subject merchandise and accordingly, are not major inputs in accordance with section 773(f)(3) of the Act.

However, section 773(f)(2) of the Act (*i.e.*, the transactions disregarded rule) is applicable in this case. It is appropriate for Commerce to adjust the inputs’ costs to account for instances where transfer prices for affiliated-party inputs were lower than the market prices. In terms of transactions disregarded, we reviewed a sample of transactions during our cost verification and concluded from the information presented that the transactions were at arm’s length prices.¹¹⁰ Therefore, we have not adjusted Hyundai Steel’s reported affiliated transactions for the final results.

E. General & Administrative (G&A) Ratio

Petitioners’ Comments:

- At verification, Commerce found that Hyundai Steel understated the G&A ratio by including the reversal of impairment of property, plant, and equipment (PPE) in its G&A calculation. Additionally, Commerce found that the miscellaneous gains included as an offset to the G&A expenses, also understated the G&A ratio.¹¹¹ This misreporting of G&A expenses is yet another example of Hyundai Steel’s uncooperative behavior.¹¹²

Hyundai Steel’s Rebuttal:

- The petitioners argue that Hyundai Steel did not accurately report its G&A expenses because it included reversal of impairment expenses incurred the prior year in its G&A calculation and because it included miscellaneous gains as an offset to G&A expenses that were either related to prior years or not related to the general operations of the company. However, as

¹⁰⁷ See Hyundai Steel’s August 2, 2018 Supplemental Response at 6-14; and Exhibit D-25.

¹⁰⁸ See *Final Results of the Fifth Administrative Review of the Antidumping Duty Order on Stainless Steel Plate in Coils (SSPC) from Belgium*, 70 FR 72789 (December 7, 2005), and accompanying Issues and Decision Memorandum, at Comment 1 (*SSPC from Belgium*); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Ecuador*, 69 FR 76913 (December 23, 2004), and accompanying Issues and Decisions Memorandum, at Comment 28.

¹⁰⁹ See Hyundai Steel’s August 2, 2018 Supplemental Response at 6-14; and Exhibit D-25.

¹¹⁰ See Hyundai Steel’s Cost Verification Report at 21-22.

¹¹¹ See Petitioners’ HS Case Brief at 29.

¹¹² *Id.* at 30.

this income was incurred in the same fiscal years as the expenses, it is appropriate to include it and it should be treated the same.¹¹³

- Because each of these offsets to G&A expense are fully itemized and explained, and were examined at verification, there is no issue of Hyundai Steel having failed to provide complete and accurate information. To the extent that Commerce may disagree that some of these expenses should be included as an offset to G&A expenses, it has all of the information necessary to adjust the G&A expense rate.¹¹⁴

Commerce Position: As an initial matter, we disagree with the petitioners that Hyundai Steel's reporting is an example of uncooperative behavior. In its questionnaire response, Hyundai Steel followed Commerce's instructions to compute a G&A expense ratio and then demonstrated how this ratio reconciled to its financial statements.¹¹⁵ Further, Hyundai Steel fully cooperated at verification and provided every document requested by Commerce in order to make the necessary adjustments noted below.¹¹⁶ Therefore, we find Hyundai Steel did not behave in an uncooperative manner.

We agree with the petitioners that certain adjustments to Hyundai Steel's reported G&A expenses are necessary because it has included reversal of impairment expenses incurred the prior year in its G&A calculation and also it included miscellaneous gains as an offset to G&A expenses that were either related to prior years or not related to the general operations of the company. Commerce has adopted a practice of excluding gains where the related losses were incurred in periods other than the POR.¹¹⁷ In *Melamine Trinidad and Tobago Final* Commerce disallowed income from insurance proceeds related to expenses recognized prior to the POI.

Thus, with regard to Hyundai Steel's G&A expense ratio calculation, we find that reversal of impairment of property, plant and equipment (PPE) and the supporting account detail shows that all of the impairments occurred and were booked before FY2016 (and before the entire POR). Hyundai Steel argues its offsets to G&A expenses are fully itemized and explained, and were examined at verification. We agree with Hyundai Steel that it provided complete and accurate information, however, as the record shows, these reversal expenses were booked in the prior year.¹¹⁸ Therefore, it is appropriate to disallow the impairment offset because the associated expense being reversed was booked in the prior year.

Regarding the miscellaneous gains, we found at verification certain other miscellaneous income related to expenditures that occurred prior to FY2016, therefore, it is appropriate to exclude the income as an offset to G&A expenses.¹¹⁹ Likewise, we find that other miscellaneous gains were

¹¹³ See Hyundai Steel's Rebuttal Brief at 20.

¹¹⁴ *Id.* at 21.

¹¹⁵ See Hyundai Steel's Section D Questionnaire Response at Exhibit D-16.

¹¹⁶ See Hyundai Steel's Cost Verification Report at VE-18.

¹¹⁷ See *Melamine from Trinidad and Tobago, Final Determination of Sales at Less Than Fair Value*, 80 FR 68846 (November 6, 2015) (*Melamine Trinidad and Tobago Final*) and accompanying IDM at Comment 3; see also *Certain Steel Concrete Reinforcing Bars from Turkey, Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082 (November 7, 2006) (*Rebar Turkey Final*) and accompanying IDM at Comment 49.

¹¹⁸ See Hyundai Steel's Cost Verification Report at 14; and VE-18.

¹¹⁹ *Id.* at 14-15.

incurred during the POR and have continued to include them as offsets to G&A expenses.¹²⁰ In addition, in the *Preliminary Results*, we disallowed an offset for reversal of bad debt expenses offset, as it does not relate to the general operational activities of Hyundai Steel, and will continue to do so here. Accordingly, we have made all of these adjustments to Hyundai Steel's G&A expense calculation for the final results.¹²¹

F. Financial Expense Ratio

Petitioners' Comments:

- Since Hyundai Steel did not report actual short-term interest income, it had to allocate total interest income to determine the short-term portion. When allocating total interest income, Hyundai Steel overstated short-term assets and understated long-term assets in its calculation, which artificially overstated the calculated value for short-term interest income. Thus, Hyundai Steel's incorrect methodology understated the net interest expenses and the interest expense (INTEX) ratio.¹²²
- Hyundai Steel's attempt to overstate the short-term ratio should be rejected by Commerce because it is wrong and results in an artificial reduction to the interest expenses. This manipulation of the INTEX ratio is another example of Hyundai Steel's uncooperative behavior.¹²³

Hyundai Steel's Rebuttal:

- Hyundai Steel previously explained that interest income related to short-term and long-term assets are booked into one account, and in order to properly calculate interest income expenses, Hyundai Steel had to identify which assets in this account were short-term and which were long-term.¹²⁴
- Hyundai Steel also demonstrated that it only included short-term assets, *i.e.*, bank deposits, short-term financial instruments, other short-term financial assets, and long-term assets, because they were the only assets that could generate interest income.¹²⁵
- Hyundai Steel did not take total current assets and total assets because accounts such as inventory, income tax refund trade, other receivables, and derivative financial assets cannot generate interest income. Thus, Hyundai Steel was able to determine the ratio between short-term and long-term assets only using the accounts that could generate the interest income and then apply this ratio to the interest income reported in its audited and consolidated financial statement. This method is reasonable and accurate and should be accepted by Commerce.¹²⁶

Commerce's Position: We disagree with the petitioners that Hyundai Steel did not accurately report its financial expense ratio. At verification, we obtained a detail of the interest income from the consolidated financial statements, traced each income item to supporting documents,

¹²⁰ *Id.*

¹²¹ See Hyundai Steel's Final Analysis Memorandum.

¹²² See Petitioners' HS Case Brief at 30.

¹²³ *Id.* at 31.

¹²⁴ See Hyundai Steel's Rebuttal Brief at 22.

¹²⁵ *Id.*

¹²⁶ *Id.*

and noted that most of it was short-term interest income.¹²⁷ However, consistent with the adjustments made in the *Preliminary Results*, we continue to find that two income offset items were not short-term interest income in nature: dividend income and reversal of allowance for bad debt of other assets. We continue to find it appropriate to exclude these offset items from Hyundai Steel's financial expense ratio calculation because they relate to investment activity and to sales transactions, respectively. Accordingly, for these final results, we will continue to exclude these items from Hyundai Steel's financial expense ratio.¹²⁸

Comment 2: Whether Hyundai Steel is Affiliated with Certain Home Market Customers

Petitioners' Comments:

- The facts on the record demonstrate that Hyundai Steel is affiliated with certain home market customers because it has the ability to control them via a close supplier relationship.¹²⁹
- In *OCTG from Korea*,¹³⁰ Commerce found that Nexteel sourced the majority of its inputs from POSCO. Here, these home market customers source a large portion of their inputs from Hyundai Steel.¹³¹
- In *OCTG from Korea*, Commerce found that Nexteel sold "significant amounts" to POSCO's affiliate Daewoo. Here, these customers account for a large portion of products sold back to Hyundai Steel affiliates.¹³²
- Thus, these customers account for about a quarter of the sales volume in Hyundai Steel's home market sales database, and both customers rely on Hyundai Steel and its affiliates for both inputs and revenue.¹³³
- Hyundai Steel disputes the relevance of *OCTG from Korea*, but focuses on peripheral facts, *i.e.*, that POSCO and Nexteel shared market information and that POSCO provided marketing support to Nexteel. As Commerce's findings made clear, however, it was POSCO's and its affiliates' roles as both Nexteel's supplier and customer that was the salient fact for Commerce affiliation finding. Thus, the same type of evidence is present here, making Commerce's determination of affiliation in *OCTG from Korea* very relevant to how Commerce should evaluate the record evidence in this case.¹³⁴
- The record shows that Hyundai Steel is intimately involved in these home market customers sales process: Hyundai Steel and its affiliates are the customer for the large portion of these companies' sales. This is the same type of involvement that was present in *OCTG from Korea*, where POSCO was involved in Nexteel's sales process because POSCO's affiliate, Daewoo, was Nexteel's customer for a significant amount of OCTG that Nexteel sold.¹³⁵

¹²⁷ See Hyundai Steel's Cost Verification Report at 15-16.

¹²⁸ See Hyundai Steel's Final Analysis Memorandum.

¹²⁹ See Petitioners' HS Case Brief at 44.

¹³⁰ See *Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014), and accompanying IDM (*OCTG from Korea*).

¹³¹ See Petitioners' HS Case Brief at 47-48.

¹³² *Id.* at 48.

¹³³ *Id.*

¹³⁴ *Id.* at 48-49.

¹³⁵ *Id.* at 49.

- Hyundai Steel’s conduct at verification demonstrates that it has access to these customer’s books and records, a significant factor demonstrating the ability to exercise restraint or control.¹³⁶
- Neither customer was a participating party at Commerce’s verification. The “List of Participants” in Commerce’s verification report lists only Hyundai Steel’s officials and Hyundai Steel’s various representatives (from Sojong Accounting Corporation and Morris Manning & Marlin LLP). Rather, Hyundai Steel itself presented these customer’s internal and confidential books and records to Commerce as part of the verification.¹³⁷
- Because Hyundai Steel can access these companies’ records, Hyundai Steel can see all purchases made by these customer’s, including the parties they purchased from, what they purchased, and the prices they paid. Similarly, Hyundai Steel can see all these customer’s sales, including their customers, what they sold, and the prices at which they sold.¹³⁸
- In *Pipe Fittings from Taiwan*,¹³⁹ Commerce applied AFA to respondent Ta Chen after finding that it had withheld information regarding its affiliation with another company, which Commerce described as consisting of “an abnormal degree of access” to the other party’s business-sensitive information. Here, the same is true of Hyundai Steel and these customers.¹⁴⁰
- Hyundai Steel even presented examples of transactions by these customers, which neither Hyundai Steel nor its affiliates had any part. However, it is unclear how Hyundai Steel would even know about these transactions, no less have the ability to produce invoices and other documentation that provide proprietary details about these transactions.¹⁴¹
- While Hyundai Steel readily supplied the confidential books and record of these customers at verification, it had repeatedly claimed in its questionnaire responses that it had no access to these documents. This demonstrates that Hyundai Steel has access to these customers proprietary documents and internal systems, including their sales and purchasing systems. Thus, Hyundai Steel controls these customers and misrepresented its relationship with them.¹⁴²
- Because Hyundai Steel did not present this information until verification, Commerce did not have an opportunity to issues supplemental questions and further examine documentation, and the petitioners could not comment or present rebuttal factual information.¹⁴³

Hyundai Steel’s Rebuttal:

- These allegations of a close-supplier relationship, at least with regard to at least one of these companies, are not new, and, in fact, were considered and rejected by Commerce during the

¹³⁶ *Id.* at 49-50 (citing Hyundai Steels Sales Verification Report).

¹³⁷ *Id.* at 52.

¹³⁸ *Id.*

¹³⁹ *See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review*, 70 FR 1870 (January 11, 2005), and accompanying IDM (*Pipe Fittings from Taiwan*).

¹⁴⁰ *See* Petitioners’ HS Case Brief at 53.

¹⁴¹ *Id.*

¹⁴² *Id.* at 53-54.

¹⁴³ *Id.* at 54.

original investigation.¹⁴⁴ Commerce found that while Hyundai Steel may have a longstanding relationship, the information reviewed at verification did not reflect a potential to affect decisions concerning production, pricing, or the cost of the home market sales to these customers.¹⁴⁵

- The record of this review demonstrates that the threshold of control required to demonstrate affiliation is not met with respect to either home market customer. In particular, the petitioners have failed to identify any evidence that Hyundai Steel exercises any role in the sales process of these company.¹⁴⁶
- The petitioners' argument that the criteria for control based on a close supplier relationship are satisfied in this case relies almost entirely upon Commerce's determination in *OCTG from Korea*. However, *OCTG from Korea* went beyond the sort of close-relationship alleged here, as Commerce did not simply find evidence of POSCO and its affiliates' roles as both a supplier and customer but found actual evidence of POSCO in NEXTEEL's operations.¹⁴⁷
- None of these facts is present here. Hyundai Steel has no involvement in, let alone control over either company's sales process, does not manage their inventory, does not market their products, and does not share technology with either company.¹⁴⁸
- The petitioners' argument that the volume and share of sales from these customers to Hyundai Steel's affiliates establishes that these companies are reliant on Hyundai Steel is without merit.¹⁴⁹
- Hyundai Steel and its counsel explained at verification, Hyundai Steel has no access to confidential information of either of these companies and has no basis to direct them to provide confidential or proprietary information to Hyundai Steel. However, in an effort to fully cooperate with Commerce's verification requests, Hyundai Steel's counsel contacted these companies and requested that they provide certain limited information.¹⁵⁰
- In response to this request, these companies agreed to provide this information directly to counsel for disclosure to Commerce, on the condition that the information not be shared or disclosed to Hyundai Steel.¹⁵¹
- Commerce should summarily reject this line of argument, as it is in Commerce's interest to encourage parties to cooperate with its verification requests to the maximum extent possible. The fact that these customers agreed to cooperate in verification of Hyundai Steel by providing information directly to Commerce, in no way undermines the fact that these are unaffiliated customers over whom Hyundai Steel has no control. Thus, Commerce should find these customers unaffiliated as it did in the original investigation.¹⁵²

¹⁴⁴ See Hyundai Steel's Rebuttal Brief at 23 (citing *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 53419 (August 12, 2016), and accompanying IDM at Comment 13 (*Hot-Rolled Steel from Korea*)).

¹⁴⁵ *Id.* at 24.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 26 (citing *OCTG from Korea*, and accompanying IDM at 73).

¹⁴⁸ *Id.* at 26-27.

¹⁴⁹ *Id.* at 27.

¹⁵⁰ *Id.* at 28-29.

¹⁵¹ *Id.* at 29.

¹⁵² *Id.* at 29-30.

Commerce Position: We find that Hyundai Steel and its home market customers are not affiliated within the meaning of section 771(33) of the Act. Section 771(33)(G) of the Act provides, *inter alia*, that parties will be considered affiliated when one controls the other. Section 771(33) of the Act further provides that “a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.” Commerce’s regulations at 19 CFR 351.102(b)(3) state that, in finding affiliation based on control, Commerce will consider, among other factors: (i) corporate or family groupings; (ii) franchise or joint venture agreements; (iii) debt financing, and (iv) close supplier relationships. With respect to close supplier relationships, Commerce has determined that the threshold issue is whether either the buyer or seller has, in fact, become reliant on the other.¹⁵³ A “close supplier relationship” is established when a party demonstrates that the relationship is significant and could not be easily replaced.¹⁵⁴ Only if Commerce determines that there is reliance does it evaluate whether one of the parties is in a position to exercise restraint or direction over the other.¹⁵⁵ Commerce will not, however, find affiliation on the basis of this factor unless the relationship has the potential to affect decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.¹⁵⁶

Pursuant to section 771(33) of the Act, we reviewed the record evidence regarding Hyundai Steel’s relationships with certain home market customers. In this review, we have found that there is insufficient evidence to demonstrate reliance for purposes of finding affiliation through control under section 771(33)(G) of the Act.¹⁵⁷

The petitioners argue that because Hyundai Steel was able to provide business proprietary information of its customers during verification, Hyundai Steel has intimate knowledges of its customers operations and sales process.¹⁵⁸ Thus, Hyundai Steel’s conduct at verification demonstrates that it has access to these customer’s books and records, a significant factor demonstrating the ability to exercise restraint or control.¹⁵⁹ We disagree, as Hyundai Steel explained,¹⁶⁰ it has no access to confidential information of either of these companies and has no basis to direct them to provide confidential or proprietary information to Hyundai Steel. However, in an effort to fully cooperate with Commerce’s requests for information, Hyundai Steel’s counsel contacted these companies and requested that they provide certain limited information.¹⁶¹ In response to this request, these companies agreed to provide this information directly to counsel for disclosure to Commerce, on the condition that the information not be

¹⁵³ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (SAA) at 838.

¹⁵⁴ See *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404, 18417 (April 15, 1997).

¹⁵⁵ See *Multilayered Wood Flooring from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011), IDM at Comment 21; and *TIJID, Inc. v. United States*, 366 F. Supp. 2d 1286, 1298-1300 (CIT 2005) (*TIJID*).

¹⁵⁶ See 19 CFR 351.102(b)(3).

¹⁵⁷ See Hyundai Steel’s Sales Verification Report at 3-6.

¹⁵⁸ See Petitioners’ HS Case Brief at 49.

¹⁵⁹ *Id.* at 49-50 (citing Hyundai Steels Sales Verification Report).

¹⁶⁰ See Hyundai Steel’s Rebuttal Brief at 29; and Hyundai Steel’s September 12, 2018 Supplemental Response at 2.

¹⁶¹ *Id.* at 28-29.

shared or disclosed to Hyundai Steel.¹⁶² At verification, Hyundai Steel indeed provided a letter from these companies agreeing to provide this information directly to counsel for disclosure to Commerce, on the condition that the information not be shared or disclosed to Hyundai Steel.¹⁶³ Because Hyundai Steel provided this letter, Commerce was able to confirm that Hyundai Steel does not have access to these companies' business proprietary information. Thus, we find this argument to be without merit.

In addition, the information on the record does not confirm that Hyundai Steel's customers were exclusively bound to purchase from Hyundai and sell to Hyundai affiliates.¹⁶⁴ Assuming, *arguendo*, that the record contained sufficient evidence to determine exclusivity between Hyundai Steel, its affiliates, and each of the customers subject to this allegation, we note that there is a distinction between *de facto* exclusivity and exclusivity based on control.¹⁶⁵ Parties might engage in "exclusive" relationships because of their given situation at a point in time, but that does not mean that they are reliant upon one another or bound to one another by the control of one over the other.¹⁶⁶ For example, a new start-up producer might find that a single customer is able to consume its entire production capacity, and not have any need for additional customers at that time.¹⁶⁷ Or, in the automotive industry, motor companies may rely on the automotive supply chain – outsourcing the manufacture of parts to specialized outside suppliers – to optimize efficiencies of market forces, as the Ford Motor Company does.¹⁶⁸ Further, we note that, even in cases where one party sold all of its output to another, the CIT has found that Commerce reasonably concluded that there was no close supplier relationship because the party was free to sell to other customers.¹⁶⁹

The petitioners' reliance on *OCTG from Korea* to support its close supplier argument is misplaced.¹⁷⁰ In that case, we stated that, given POSCO's involvement in both the production and sales process, POSCO was in a rather unique position to exercise restraint or control over NEXTEEL.¹⁷¹ While Commerce's affiliation decision weighed the importance of the dual-sided operational relationship between the customer and the respondent, Commerce emphasized the uniqueness of POSCO's active and extensive participation in NEXTEEL's production and sales processes. Specifically, POSCO monitored NEXTEEL's inventory; oversaw its finished product shipping; and provided marketing assistance, research and development capacity, management

¹⁶² *Id.* at 29.

¹⁶³ *Id.*

¹⁶⁴ The names of Hyundai Steel's home market customers are considered business proprietary in nature. See Petitioners' HS Case Brief at 44.

¹⁶⁵ See *CORE from Korea*, and accompanying IDM at Comment 11; see also *Notice of Final Results and Rescission, in Part, of the Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 69 FR 12121 (March 15, 2004) (*Wax Candles from China*), and accompanying IDM at 7 (citing *Melamine Institutional Dinnerware Products from Indonesia: Determination of Sales at Less Than Fair Value*, 62 FR 1719 (January 13, 1997) (*Melamine Dinnerware from Indonesia*)).

¹⁶⁶ See *Wax Candles from China*.

¹⁶⁷ *Id.*

¹⁶⁸ See *CORE from Korea*, and accompanying IDM at Comment 11.

¹⁶⁹ See *Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from the Republic of Korea*, 77 FR 75988 (December 26, 2012), and accompanying IDM at Comment 8 (citing *TIJID*, 366 F. Supp. 2d 1286).

¹⁷⁰ See Petitioners' HS Case Brief at 45.

¹⁷¹ See *OCTG from Korea*, and accompanying IDM at 73.

consulting, and production and sales assistance.¹⁷² Moreover, the input purchased by NEXTEEL from POSCO accounted for the vast majority of NEXTEEL's cost of production, granting POSCO significant potential for manipulation with respect to NEXTEEL's production, pricing, or cost.¹⁷³ "There is *no other business relationship* in the Korean OCTG industry like the one between POSCO and NEXTEEL."¹⁷⁴ The considerable presence of POSCO in both NEXTEEL's production and sales processes mirrors the relationship of affiliated parties. Thus, the petitioners' use of *OCTG from Korea* to support the idea that a dual-sided relationship alone is sufficient evidence of affiliation, is an improper comparison.

In the instant review, there is no evidence that Hyundai Steel has extra-commercial involvement with its customers resulting in reliance and control. Notably, excluding the dual-sided relationship, none of the above factors are present between Hyundai and its customers. The relationship between an automotive steel processor like Hyundai Steel and its affiliate (an automotive manufacturer) does not necessitate reliance or control. Furthermore, there is evidence that many of Hyundai Steel's customers were beholden to larger corporate groups with distinct commercial interests separate from Hyundai Steel.¹⁷⁵ In addition, these customers supply to other automotive manufacturers unaffiliated with Hyundai Steel, sell and operate in other regions and countries, and sell and operate in other industries.¹⁷⁶ The petitioners also claim that Hyundai Steel's inability to provide a certain contract with one of these customers, is evidence that Hyundai Steel is impeding this investigation, because of its ability to access other business proprietary information.¹⁷⁷ However, as Hyundai Steel explained, it provided all contracts (*i.e.*, tolling contracts between Hyundai Steel and these customers) in Exhibit B-63.¹⁷⁸ We find the fact that Hyundai Steel could not pinpoint exactly which of several tolling agreements this customer was referencing, does not amount to impeding the investigation.

While Hyundai and its customers cooperate closely, we do not consider this cooperation to be out of the ordinary for the industry, nor demonstrate reliance for purposes of finding affiliation through control under section 771(33)(G) of the Act. The arguments concerning the application of facts available and AFA regarding the potential affiliation between Hyundai and its customers will not be addressed here. *See* Comment 3.B. below.

Comment 3: Application of AFA for Hyundai Steel

A. Application of Total AFA for Hyundai Steel's Cost Reporting

Petitioners' Comments:

- Hyundai Steel was specifically instructed to report CONNUM-specific costs and Commerce twice asked Hyundai Steel to demonstrate that its reported costs reflected the CONNUM's

¹⁷² *Id.* at 69.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *See* Hyundai Steel's Sales Verification Report at VE-47.

¹⁷⁶ *Id.*

¹⁷⁷ *See* Petitioners' HS Case Brief at 56.

¹⁷⁸ *See* Hyundai Steel's September 12, 2018 Supplemental Response at Exhibit B-63.

physical characteristics. While Hyundai Steel repeatedly assured Commerce that it had provided CONNUM-specific cost data, it did not.¹⁷⁹

- Commerce discovered, at verification, that Hyundai Steel also considered other non-CONNUM factors in the reported costs that had not been previously disclosed.¹⁸⁰
- Hyundai Steel withheld requested and necessary data regarding affiliate-supplied major inputs and other affiliate-supplied inputs/services. As a result, Commerce cannot conduct its statutorily mandated major inputs test or transactions disregarded test to determine the proper value of the affiliated-supplied inputs.¹⁸¹
- Hyundai Steel made statements at verification that directly contradicted the record provided by Hyundai Steel regarding various groups of cost centers. This hindered Commerce's ability to analyze and confirm the completeness of the reported cost.¹⁸²
- Applying the statutory standards to the facts of this case demonstrates that Commerce must apply total AFA in determining the dumping margin for Hyundai Steel in the final results.¹⁸³ The record evidence demonstrates that necessary information to calculate an accurate dumping margin for Hyundai Steel is not on the record of this proceeding. There are numerous examples of this as detailed above.¹⁸⁴
- Hyundai Steel's actions during this review satisfy every statutory criterion under section 776 of the Act that mandate Commerce to apply facts available. Specifically, necessary information regarding Hyundai Steel's costs is not on the record of this review, and Hyundai Steel with information requested by Commerce regarding various aspects of its costs, it failed to provide that requested information in the form and manner requested, in doing so it impeded Commerce's investigation of its reported costs, and it provided information that is unverifiable and, in fact, was contradicted at verification. As a result, Commerce does not have the information necessary to calculate an accurate dumping margin for Hyundai Steel and must apply facts available pursuant to Sections 776(a)(1) and (a)(2)(A), (B), (C), and (D) of the Act.¹⁸⁵
- Commerce issued an initial and a supplemental questionnaire to Hyundai Steel on these specific cost issues discussed above. Thus, Hyundai Steel had sufficient opportunity to provide Commerce with accurate and verifiable cost information in a timely manner, yet it failed to do so. Accordingly, Commerce provided Hyundai Steel multiple opportunities to provide accurate, reasonable, and verifiable cost data, pursuant to Sections 782(d)-(e) of the Act.¹⁸⁶
- Hyundai Steel failed to cooperate by not acting to the best of its ability during this review such that an adverse inference is warranted. Here, Hyundai Steel withheld necessary and requested information regarding multiple aspects of its cost reporting and it then provided information at verification that either contradicted its early questionnaire responses or was being provided for the first time.¹⁸⁷

¹⁷⁹ See Petitioners' HS Case Brief at 34.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.* at 34-35.

¹⁸³ *Id.* at 33.

¹⁸⁴ *Id.* at 34.

¹⁸⁵ *Id.* at 35.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 36.

- Commerce should not allow Hyundai Steel to withhold critical cost information from Commerce, submit distortive information, or otherwise impede this review.¹⁸⁸ Hyundai Steel had ample opportunities to submit a useable record, but chose to significantly hinder Commerce’s investigation. Accordingly, total AFA is warranted and appropriate. As AFA, Commerce should assign Hyundai Steel the highest rate alleged in the petition on hot-rolled steel from Korea of 158.93 percent.¹⁸⁹
- Commerce should not apply partial AFA in this review. Hyundai Steel could have reported the cost data in the form and manner required, but it chose not to do so. Any form of partial facts available would only serve to reward Hyundai Steel for its uncooperative behavior.¹⁹⁰
- It is contrary to the general purpose for the use of partial facts available: In general, use of a partial facts available is not appropriate when missing information is core to the antidumping analysis and leaves little room for the substitution of partial facts without undue difficulty.¹⁹¹ Here, the missing or misreported cost information is core to Commerce’s analysis and there is no way for Commerce to calculate an accurate dumping margin.¹⁹²

Hyundai Steel’s Rebuttal:

- The facts of record demonstrate that Hyundai Steel has fully cooperated with Commerce in this review. Hyundai Steel has provided complete and accurate responses to Commerce’s antidumping questionnaire, as well as to the six detailed supplemental questionnaires issued. Furthermore, Hyundai Steel underwent two weeks of verification in Seoul and in Los Angeles, during which Commerce thoroughly verified Hyundai Steel’s responses and noted no discrepancies or omissions in Hyundai Steel’s responses.¹⁹³
- The petitioners’ principal contentions regarding the application of AFA relate to two issues: Hyundai Steel’s methodology for reporting CONNUM-specific COP for section D, and Hyundai Steel’s alleged failure to “report” its affiliation with two home market customers. In both instances, however, Hyundai Steel has fully cooperated with Commerce by providing all requested information.¹⁹⁴
- Commerce verified the accuracy of Hyundai Steel’s CONNUM-specific costs and noted no discrepancies or issues with the manner in which Hyundai Steel reported its per-unit COPs for the merchandise under consideration.¹⁹⁵
- Commerce should find that because Hyundai Steel cooperated and has reported its actual, verified, CONNUM-specific costs, there is no basis for the application of AFA.¹⁹⁶

¹⁸⁸ *Id.* at 38 (citing *Stainless Steel Bar from India: Preliminary Results of Changed Circumstance Review to Reinstate Certain Companies in the Antidumping Duty Order*, 82 FR 48483 (October 18, 2017), and accompanying Preliminary Results Decision Memorandum (PDM), unchanged in *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) (*Stainless Steel Bar from India*); and *Mukand, Ltd. v. United States*, 767 F.3d 1300, 1307 (Fed. Cir. 2014) (*Mukand*)).

¹⁸⁹ See Petitioners’ HS Case Brief at 39.

¹⁹⁰ *Id.* at 40.

¹⁹¹ *Id.* (citing *Mukand*).

¹⁹² *Id.*

¹⁹³ See Hyundai Steel’s Rebuttal Brief at 5-6.

¹⁹⁴ *Id.* at 6-7.

¹⁹⁵ *Id.* at 7.

¹⁹⁶ *Id.* at 11.

Commerce Position: We disagree with the petitioners that the application of total AFA for Hyundai Steel is warranted. The petitioners argue that Hyundai Steel: (1) failed to report CONNUM-specific costs; (2) considered other non-CONNUM factors in the reported costs that had not been previously disclosed; (3) Hyundai Steel withheld requested and necessary data regarding affiliate-supplied major inputs; and (4) made statements at verification that contradicted the record. The record of this review does not support an application of total facts available, let alone total AFA.

Sections 776(a)(1) and 776(a)(2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply facts otherwise available in reaching the applicable determination if necessary information is not on the record, or if an interested party: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act.

Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information.

Section 782(d) of the Act provides that, if Commerce determines that a response to a request for information does not comply with the request, Commerce will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, Commerce may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting from among the facts otherwise available.

With respect to the petitioners' allegation that the application of total AFA is warranted, we find that Hyundai Steel fully cooperated and at no time impeded this administrative review. We did not find any evidence at verification that called into question the reliability of these records or

the completeness of Hyundai Steel's questionnaire responses.¹⁹⁷ Additionally, there is no evidence on the record that Hyundai Steel failed to comply with Commerce's requests for information, nor did we find any such information at verification, such that application of an adverse inference would be warranted under section 776(b) of the Act. Accordingly, we are relying on this information for these Final Results. As previously explained, in Comment 1 subsection A through F:

1. Hyundai Steel reported the actual costs of producing specific products, as reflected in a company's books and records, and assigned them to CONNUMs as direct by Commerce. This methodology has been accepted by Commerce, regarding Hyundai Steel, in prior proceedings and in other cases, such as *CTL Plate from Korea* and *CORE from Korea*. Thus, the petitioners' argument for AFA is without merit and as such, AFA is not warranted. *See* Comment 1.A.
2. Because of the accumulated nature of Hyundai Steel's process cost system, we continue to accept Hyundai Steel reporting methodology, as they are based on product specific costs disaggregated into materials, labor, variable overhead and fixed overhead based on the experience of the company. Thus, Hyundai Steel's constituent ratios are deemed reasonable and AFA is not warranted. *See* Comment 1.B.
3. Hyundai Steel properly included the costs within certain cost centers as either cost or direct selling expenses. Thus, Hyundai Steel did not impede this investigation and AFA is not warranted. *See* Comment 1.C.
4. Hyundai Steel's affiliated inputs and services, as listed in Exhibit D-25 of Hyundai Steel's supplemental response, do not constitute major inputs falling within the realm of section 773(f)(3) of the Act. Thus, the petitioners' AFA argument in this regard is moot, and as such, AFA is not warranted. *See* Comment 1.D.
5. Hyundai Steel fully cooperated at verification and proved every document requested for Commerce to make the necessary adjustments to the G&A and INTEx ratio calculations. Thus, Hyundai Steel did not act in an uncooperative manner, and as such, AFA is not warranted. *See* Comment 1.E., and Comment 1.F.

In addition, we have not found any instance where necessary information is not on the record. Hyundai Steel has not withheld information that has been requested by Commerce, Hyundai Steel has not failed to provide information in a timely manner or in the form or manner requested, Hyundai Steel has not significantly impeded this proceeding, and Hyundai Steel's information has been fully verified. In fact, Hyundai Steel provided complete and accurate responses to the initial questionnaire and six supplemental questionnaires, which we verified in Seoul, South Korea, and Los Angeles, where we found no discrepancies or omissions in Hyundai

¹⁹⁷ *See* Hyundai Steel's Cost Verification Report; Hyundai Steel's Sales Verification Report; and Hyundai Steel's CEP Verification Report.

Steel's responses.¹⁹⁸ Thus, the record does not support applying facts otherwise available or total AFA.¹⁹⁹

Hyundai Steel's responses, to the initial questionnaire and all six supplementals, were submitted by the established deadlines, and we found the information to be complete in a usable manner without undue difficulties, and to the best of Hyundai Steel's ability. Therefore, in accordance with section 782(e) of the Act, we cannot reject Hyundai Steel's data, and in accordance with section 776(b) of the Act, we cannot apply an adverse inference.

We further find that partial AFA should not be applied in this review. The petitioners argue that Hyundai Steel could have reported the cost data in the form and manner required, but it chose not to do so. However, because we accepted the cost data in the form and manner as submitted by Hyundai Steel and found that Hyundai Steel fully cooperated and at no time impeded this review, as explained above, we also find partial AFA is not warranted.

B. Application of Total AFA for Certain Hyundai Steel Home Market Customers

Petitioners' Comments:

- Hyundai Steel refused to respond to numerous questions from Commerce during its attempts to understand the nature of Hyundai Steel's relationship with its home market customers.²⁰⁰
 - Commerce asked Hyundai Steel to explain how Hyundai Steel and its affiliates were introduced to these customers and to explain if any current or past owner/employee of these customers were an employee of Hyundai Steel or its affiliates.²⁰¹
 - Commerce asked Hyundai Steel to explain the relationship between these customers and Hyundai Steel and its affiliates. Hyundai Steel limited its response to a discussion of only Hyundai Steel's relationship with these companies. In fact, there was no discussion of Hyundai Steel's affiliates relationship.²⁰²
 - Despite claiming it could not produce a certain contract between Hyundai Steel and one of these customers, however, Hyundai Steel was able to provide a significant amount of proprietary documentation at verification. Thus, it would seem that Hyundai Steel provided documents that would benefit its argument, while withholding documentation that would likely demonstrate affiliation.²⁰³
 - Hyundai Steel did not respond to the data request, when Commerce asked whether it subcontracts all of these services to these customers, and if not what proportion does it do in-house and what proportion is done by other companies.²⁰⁴
 - Commerce asked Hyundai Steel whether these customers resell subject merchandise. Hyundai Steel gave a vague answer claiming that they may resell subject merchandise, but almost certainly process much if not most of the material purchased.²⁰⁵ As

¹⁹⁸ *Id.*

¹⁹⁹ See sections 776(a)(1) and 776(a)(2)(A), (B), (C), and (D) of the Act.

²⁰⁰ See Petitioners' HS Case Brief at 55.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.* at 56-57.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

demonstrated at verification, Hyundai Steel has access to the purchase, production, and sales system of these companies, therefore, know the exact amount of subject merchandise these customers purchased and sold during the POR.²⁰⁶

- Commerce asked Hyundai Steel to provide evidence of price negotiations for sales and purchases from these customers. Hyundai Steel failed to provide any supporting documentation or evidence regarding price negotiations.²⁰⁷
- Commerce should apply facts available because Hyundai Steel withheld information regarding its relationship with these home market customers, failed to provide information requested by Commerce throughout the questionnaire phase of this review, and thereby significantly impeded the investigation.²⁰⁸
- Hyundai Steel withheld requested information and impeded Commerce's investigation of this affiliation issue, thereby failing to cooperate to the best of its ability, pursuant section 776(b) of the Act.²⁰⁹ Specifically, Hyundai Steel's failure to disclose its affiliation with these companies, and the outright falsehoods stated in its questionnaire responses, has impeded Commerce's investigation and warrants the application of total AFA.²¹⁰
- In *Pipe and Tube from Mexico*, Commerce applied partial AFA to respondent Prolamsa for its failure to report downstream sales databases for its affiliated home market customers.²¹¹ As partial AFA, Commerce "assigned, to the affiliated resellers that failed the arm's-length test, the highest gross unit price of comparable merchandise sold to another customer that passed the arm's length test."
- Thus, if Commerce declines to apply total AFA to Hyundai Steel, Commerce should assign to all sales to these customers the highest gross unit price of comparable merchandise as partial AFA.²¹²
- If Commerce declines to apply either partial or total AFA to Hyundai Steel, then it should treat Hyundai Steel's sales to these customers as outside the ordinary course of trade and exclude them from the dumping calculation.²¹³

Hyundai Steel's Rebuttal:

- The facts of record demonstrate that Hyundai Steel has fully cooperated with Commerce in this review. Hyundai Steel has provided complete and accurate responses to Commerce's antidumping questionnaire, as well as to the six detailed supplemental questionnaires issued. Furthermore, Hyundai Steel underwent two weeks of verification in Seoul and in Los Angeles, during which Commerce thoroughly verified Hyundai Steel's responses and noted no discrepancies or omissions in Hyundai Steel's responses.²¹⁴
- The petitioners' principal contentions regarding the application of AFA relate to two issues: Hyundai Steel's methodology for reporting CONNUM-specific COP for section D, and

²⁰⁶ *Id.* at 57-58.

²⁰⁷ *Id.* at 58.

²⁰⁸ *Id.*

²⁰⁹ *Id.* at 60.

²¹⁰ *Id.*

²¹¹ *Id.* at 61 (citing *Light-Walled Rectangular Pipe and Tube from Mexico: Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53677 (September 2, 2004) and accompanying IDM (*Pipe and Tube from Mexico*)).

²¹² *Id.*

²¹³ *Id.* at 62.

²¹⁴ See Hyundai Steel's Rebuttal Brief at 5-6.

Hyundai Steel's alleged failure to "report" its affiliation with two home market customers. In both instances, however, Hyundai Steel has fully cooperated with Commerce by providing all requested information.²¹⁵

- The petitioners alleged that these companies should be deemed to be affiliated based on "control" arising from a "close supplier relationship" pursuant to 19 U.S.C. 1677(33)(G). However, Hyundai Steel has fully disclosed all of the facts regarding its business dealings with these two home market customers, and Commerce verified these facts during its on-site verification in Korea. Thus, there is no affiliation within the meaning of section 1677(33)(G).²¹⁶
- Additionally, Commerce fully investigated Hyundai Steel's relationship with these customers in the original investigation and found that there is no affiliation within the meaning of section 1677(33)(G).²¹⁷
- Hyundai Steel fully responded to all information requested by Commerce regarding its transactions and dealings with these customers in its questionnaire responses and again at verification. At no time did Commerce instruct Hyundai Steel to change the manner in which it reported its sales to these customers. Thus, petitioners' demand for the application of AFA regarding this issue should be denied.²¹⁸

Commerce Position: Regarding the petitioners' close supplier relationship allegations, we find that Hyundai Steel has no ownership in the home market customers at issue. Further, as explained in Comment 2 above, for a close supplier relationship to rise to the level of "control" such that the parties are affiliated, the SAA and our practice state that one party must be reliant on the other. However, we found that not to be the case between Hyundai Steel and these customers.²¹⁹ Because there is sufficient information to demonstrate that Hyundai Steel is not affiliated, or have a close supplier relationship, with the home market customers at issue, the application of total or partial AFA is not warranted.

Regarding the petitioners' argument that Commerce should treat Hyundai Steel's sales to these customers as outside the ordinary course of trade, we find these allegations without merit. The petitioners simply stated that if Commerce chooses not to apply either total or partial AFA, then it should consider these customers' sales outside the ordinary course of trade and exclude them from the margin calculation.²²⁰ Since the burden of establishing that a particular sale is outside the ordinary course of trade rests on the party making the claim,²²¹ we find that the petitioners failed to demonstrate, and provide supporting documentation, to corroborate its argument because it provided no such evidence.

²¹⁵ *Id.* at 6-7.

²¹⁶ *Id.* at 7-8.

²¹⁷ *Id.* at 8.

²¹⁸ *Id.*

²¹⁹ See Hyundai Steel's Sales Verification Report at 5-6.

²²⁰ See Petitioners' HS Case Brief at 62.

²²¹ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296 (May 19, 1997).

Comment 4: Hyundai Steel's Sales Under TIB

Petitioners' Comments:

- The record demonstrates that Hyundai Steel had sales of hot-rolled steel that were sold through its U.S. affiliate (Hyundai Steel USA) to a Mexican affiliate and were subsequently resold to customers in the United States.²²² Specifically, these sales entered into the U.S. under TIB, and were made pursuant to the IMMEX Maquiladora program, which is a duty deferral program.²²³
- Governing regulations confirm that goods subject to an antidumping duty order entered into the U.S. temporarily under bond that are subsequently entered into a NAFTA member under a duty-deferral program shall “constitute an entry or withdrawal for consumption and the withdrawn good shall be subject to duty.”²²⁴
- Commerce has previously held that if entries of subject merchandise are entered for consumption in the United States, then antidumping duties should be assessed, and if antidumping duties are assessed the eventual sale of the entry must be incorporated in the margin calculation. Because Hyundai Steel's TIB entries were entered for consumption in the United States, Commerce must assess antidumping duties on them.²²⁵
- It does not matter how the merchandise was further manufactured after importation into the U.S. (*i.e.*, whether the merchandise was further manufactured into non-subject merchandise), the eventual sale remains subject to the Commerce's review.²²⁶
- Hyundai Steel made inconsistent statements regarding the arrangements for and destination of the hot-rolled steel that entered into the U.S. under TIB, and these statements served to impede Commerce's assessment of this issue and understanding of the nature of these sales.²²⁷
- Despite Hyundai Steel's response that this was nothing but speculation, Commerce asked Hyundai Steel under what provision the TIB entries are exported to Mexico. Hyundai Steel then conceded that the TIB entries entered Mexico under the IMMEX Maquiladora program.²²⁸
- Because the proper and complete reporting of these sales is absent from the record due to Hyundai Steel's failure to report them, Commerce must apply partial facts available to determine the dumping margin for these sales.²²⁹
- Hyundai Steel impeded Commerce's investigation and failed to cooperate by dragging its feet to report the true nature of these sales. This is surely the type of failure to put forth a

²²² See Petitioners' HS Case Brief at 63.

²²³ *Id.* at 63-64.

²²⁴ *Id.* at 64-66 (citing 19 CFR 181.5(a)(2)(i)(B); and *Oil Country Tubular Goods from Japan; Final Results of Antidumping Duty Administrative Review*, 66 FR 13285 (March 5, 2001), and accompanying IDM (*OCTG from Japan*) ({S}subject merchandise that enters the United States under TIB from a non-NAFTA country for further processing is treated as an entry for consumption upon re-exportation to a NAFTA country.).

²²⁵ *Id.* at 67 (citing *Certain Hot-Rolled Steel Flat Products from Japan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 53409 (August 12, 2016), and accompanying IDM (*Hot-Rolled Steel from Japan*)).

²²⁶ *Id.*

²²⁷ *Id.* at 68.

²²⁸ *Id.* at 69-70.

²²⁹ *Id.* at 70.

maximum effort to provide the requested information as envisioned by *Nippon Steel* and demonstrates that an adverse inference is appropriate.²³⁰

- In *PET Resin from Italy*,²³¹ respondent Ausimont failed to report U.S. sales of further manufactured subject merchandise. In light of its failure to report the further manufactured sales, and its failure to submit a Section E response, Commerce applied the highest calculated margin from any segment of that proceeding to the quantity of unreported sales as partial adverse facts available.²³²
- Accordingly, Commerce should assign partial AFA to this pool of sales by assigning the highest margin alleged in the petition to the unreported value of U.S. sales.²³³

Hyundai Steel's Rebuttal:

- The petitioners' argument fails acknowledge that Hyundai Steel disclosed the existence of these sales at the very beginning of the review, and that at no point did Commerce ask it to include these sales in its Section C database or request a Section E database.²³⁴ This is because there simply are no reportable sales for Commerce to review.²³⁵
- The petitioners cite to *OCTG from Japan*, for the proposition that Hyundai Steel should have reported these TIB sales in its Section C database because they were entered for consumption pursuant to 19 CFR 181.53(a)(2)(i)(B). However, the petitioners ignore a key finding that while subject merchandise that enters the U.S under TIB and is sold to an unaffiliated party in the U.S. would be subject to an antidumping review, subject merchandise that enters the U.S. under TIB but is not sold to an unaffiliated party in the U.S. is not subject to review because in the latter case there would be no export price upon which to base a margin calculation.²³⁶
- The petitioners fail to cite any instance in which Commerce has required a section E response with respect to further processing performed in a third country. More importantly nothing in the antidumping statute permits Commerce to calculate an export price on subject merchandise by starting with the price of non-subject merchandise that was produced in, and imported from, a third country.²³⁷
- Commerce has asked Hyundai Steel multiple questions regarding this small amount of subject merchandise, the quantity and value of which, Commerce has now verified. Unlike in *PET Resin from Italy*, to which the petitioners cite and where Commerce requested that the respondent submit a section E response for sales of in-scope merchandise further manufactured in the U.S., Commerce did not direct Hyundai Steel to submit a Section E response.²³⁸

²³⁰ *Id.* (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1381 (Fed. Cir. 2003) (*Nippon Steel*)).

²³¹ See Notice of Final Results of Antidumping Duty Administrative Review: *Granular Polytetrafluoroethylene Resin from Italy*, 68 FR 2007 (January 15, 2003), and accompanying IDM (*PET Resin from Italy*).

²³² See Petitioners' HS Case Brief at 71.

²³³ *Id.* at 64.

²³⁴ See Hyundai Steel's Rebuttal Brief at 30.

²³⁵ *Id.*

²³⁶ *Id.* at 30-31 (citing *OCTG from Japan*).

²³⁷ *Id.* at 31.

²³⁸ *Id.* at 32.

- The petitioners' argument that any subsequent exportation of that non-subject merchandise into the U.S. would be subject to review is thus reaching, given the lack of any legal basis to require Hyundai Steel to report this miniscule value of sales.²³⁹

Commerce's Position: We disagree with the petitioners for the reasons discussed below. We find that Hyundai Steel's hot-rolled steel was re-exported from the U.S. without ever having been sold to an unaffiliated U.S. customer, thus, there is no U.S. sale for Commerce to analyze in this review.

Article 303.3 of the NAFTA states:

Where a good is imported into the territory of a Party pursuant to a duty deferral program and is subsequently exported to the territory of another Party, or is used as a material in the production of another good that is subsequently exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party, the Party from whose territory the good is exported:

- a) shall assess the customs duties as if the exported good had been withdrawn for domestic consumption; and
- b) may waive or reduce such customs duties to the extent permitted under paragraph 1.

Article 303.3 indicates that merchandise imported under TIB which is subsequently re-exported to a NAFTA country must be treated as if it were entered for consumption.

However, section 772(a) of the Act, provides that where there is an entry and a U.S. price to an unaffiliated purchaser, Commerce can perform a dumping analysis. In this case, we do not have an entry and/or a U.S. price to an unaffiliated U.S. purchaser, and therefore the transaction cannot be subject to a dumping analysis. Furthermore, Hyundai Steel reconciled the quantity that entered under TIB, with the quantity Hyundai Steel USA sold and re-exported to its affiliate in Mexico.²⁴⁰

The petitioners rely in part on *PET Resin from Italy*, where we applied the highest calculated margin from any segment of that proceeding to the quantity of unreported sales as partial adverse facts available, only after asking the respondent, who refused, to submit a section E response. *PET Resin from Italy* was a normal further manufacturing situation that is factually distinct from the present situation, in which subject merchandise enters the U.S. under TIB, but is not sold to an unaffiliated party in the United States.

The present situation is more akin to the situation discussed in *OCTG from Japan*, and as we made clear in that case, subject merchandise that enters the United States under TIB and is sold to an unaffiliated party in the United States would be subject to an antidumping review. In contrast, subject merchandise that enters the U.S. under TIB but is not sold to an unaffiliated

²³⁹ *Id.*

²⁴⁰ See Hyundai Steel's June 26, 2018 Supplemental Response at Exhibit C-25.

U.S. party is not subject to review because, in the latter case, there would be “no export price upon which to base a margin calculation.”²⁴¹ The facts of this case present a similar situation. Hyundai Steel first sold hot-rolled steel, to its U.S. affiliate Hyundai Steel USA, which entered under TIB. Hyundai Steel USA then resold the subject merchandise to an affiliate in Mexico, where the hot-rolled steel was consumed in the production of non-subject merchandise, such as trailers, containers, durable HT Converters (trailer dollies) and container chassis.²⁴² Thus, in this case, consistent with *OCTG from Japan, 1997-98 Review*, no sales of hot-rolled steel were made to unaffiliated parties in or for exportation to the United States. As a result, Commerce has no export price upon which to base a margin calculation.²⁴³

Comment 5: Hyundai Steel’s Overrun Sales

Petitioners’ Comments:

- Attachment 1 of Petitioners’ HS Case Brief demonstrates that Hyundai Steel reported that non-prime merchandise accounts for *de minimis* percent of non-overrun sales, but accounts for over a third of overrun sales. Thus, the quality of Hyundai Steel’s overrun hot-rolled steel is different than that of non-overrun sales of hot-rolled steel.²⁴⁴
- Because of Hyundai Steel reporting of transactions in the sales database by individual coil, the average quantities are only comparing the average coil size of overrun sales to the averages coil size of non-overrun sales. Thus, to properly compare averages transaction quantities, Commerce should aggregate quantity by invoice and compare the average quantity of overrun invoices to that of non-overrun invoices.²⁴⁵ Using this comparison method, the averages quantity of overrun sales and non-overrun sales are different.²⁴⁶
- A comparison of weighted-average net price and profit by CONNUM, in Attachment 1, indicates that net prices and profit for overrun and non-overrun sales are different.²⁴⁷
- Hyundai Steel’s overrun sales are made with unusual terms of sale.²⁴⁸
- The factors that Commerce usually considers in making this determination demonstrate that Hyundai Steel’s sales of overruns are outside the ordinary course of trade. Thus, Commerce should delete Hyundai Steel’s sales of overruns for the final results.²⁴⁹

Hyundai Steel’s Rebuttal:

- The petitioners’ argument fails to account for the fact that the majority of overrun sales are of prime merchandise. To exclude these overrun sales simply because they include a minority of non-prime sales would be to ignore that the vast majority of overrun sales are sales of prime merchandise.²⁵⁰

²⁴¹ See *OCTG from Japan* at Comment 2.

²⁴² See Hyundai Steel’s June 26, 2018 Supplemental Response at 5-6.

²⁴³ See *Oil Country Tubular Goods from Japan; Final Results of Antidumping Duty Administrative Review*, 65 FR 15305 (March 20, 2000), and accompanying IDM (*OCTG from Japan, 1997-98 Review*).

²⁴⁴ See Petitioners’ HS Case Brief at 72.

²⁴⁵ *Id.* at 73.

²⁴⁶ *Id.*

²⁴⁷ *Id.* at 73-74.

²⁴⁸ *Id.* at 74.

²⁴⁹ *Id.*

²⁵⁰ See Hyundai Steel’s Rebuttal Brief at 33.

- Commerce’s dumping margin analysis does not compare prime and non-prime sales under any circumstances. Therefore, the petitioners’ argument fails to present any basis for excluding all overrun sales.²⁵¹
- The petitioners argue that the average invoice quantity for overrun sales is much lower than that for non-overrun sales. However, this is an utterly unremarkable finding given that by their very nature overrun sales consist of excess production over required quantities.
- While the petitioners are correct that, on average, the volume of overrun sales is different than non-overrun sales, the petitioners’ analysis wholly fails to demonstrate that the sales volumes at which overrun sales are made is aberrational or inconsistent with normal commercial terms for sales of hot-rolled steel in the home market.²⁵²
- The petitioners also argue that the weighted-average net price and profit of overrun sales is different because the weighted-average net price for overrun sales was lower than that for non-overrun sales. However, this difference is easily accounted for because overrun sales of non-prime would, naturally, be priced lower than prime sales, which does not warrant the exclusion of all overrun sales from the margin calculation.²⁵³
- The petitioners argue that overrun sales should be excluded because they are made with unusual terms of sale. However, there is nothing unusual about a respondent selling merchandise in multiple sales channels in the home market. Additionally, the petitioners make no attempt to demonstrate that the use of this distinct sales channel is inconsistent with normal commercial terms.²⁵⁴

Commerce’s Position: We agree with the petitioners and find that Hyundai Steel’s overrun sales were outside the ordinary course of trade. Section 773(a)(1)(B)(i) of the Act states, in part, that NV is “the price at which the foreign like product is first sold (or, in absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade....” The term “ordinary course of trade” is defined as “the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind.”²⁵⁵ The SAA clarifies this portion of the statute when it states, “Commerce may consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions generally made in the same market.”²⁵⁶ Thus, the statute and the SAA are clear that a determination of whether sales (other than those specifically addressed in section 771(15) of the Act, *i.e.*, below-cost sales and sales between affiliates that are not at market prices) are in the ordinary course of trade must be based on an analysis comparing the sales in question with sales of merchandise of the same class or kind generally made in the home market. In other words, Commerce must consider whether home-market sales of overrun hot-rolled steel are sales in the ordinary course of trade in comparison with other home-market sales of hot-rolled steel.

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Id.* at 34.

²⁵⁴ *Id.*

²⁵⁵ See section 771(15) of the Act.

²⁵⁶ See SAA at 834.

The purpose of determining whether certain sales are outside of the ordinary course of trade “is to prevent dumping margins from being based on sales which are not representative” of the home market.²⁵⁷ By basing the determination of NV upon representative sales, the provision ensures an appropriate comparison between NV and sales to the United States. Congress has not specified any criteria that the agency should use in determining the appropriate “conditions and practices.” Thus, Commerce, “in its discretion, chooses how best to analyze the many factors involved in a determination of whether sales are made within the ordinary course of trade.”²⁵⁸ In evaluating whether sales of overrun merchandise are outside the ordinary course of trade, Commerce has considered several factors in past cases. These non-dispositive factors include, but are not limited to, the following:

- 1) whether the merchandise is “off-quality” or produced according to unusual specifications;
- 2) the comparative volume of sales and the number of buyers in the home market;
- 3) the average quantity of the overrun and commercial sales;
- 4) the price and profit differentials in the home market.²⁵⁹

In this review, Hyundai Steel reported that its overrun sales occur when “products that are not accepted by the original customer, whether due to excess production volumes or quality issues, and sold to another customer.”²⁶⁰ Thus, the petitioners argue that these sales meet another criterion that Commerce may consider. That is, whether the merchandise is sold according to unusual terms of sale.²⁶¹ Here, we do not find this factor supports the conclusion, that Hyundai Steel’s overrun sales are outside the ordinary course of trade.²⁶²

For the final results, we find that 1) Hyundai Steel’s sales of overrun merchandise are much more likely to be sales of non-prime merchandise than are its non-overrun sales, 2) Hyundai Steel’s sales of overrun merchandise were of comparatively low volume, 3) the average quantity of Hyundai Steel’s sales of overrun merchandise is smaller than the average quantity of its sales of non-overrun merchandise, and 4) the prices and profit levels between overrun and non-overrun sales in the home market were dissimilar.²⁶³ As a result of this analysis, we determine that Hyundai Steel’s overrun sales were not made in the ordinary course of trade.

²⁵⁷ See *Monsanto Co. v. United States*, 698 F. Supp. 275, 278 (CIT 1988).

²⁵⁸ See *Laclede Steel Co. v. United States*, 19 CIT 1076, 1078 (1995).

²⁵⁹ See *China Steel Corp. v. United States*, 264 F. Supp. 2d. 1339, 1364-65 (CIT 2003) (*China Steel*); see also *Certain Cut-to Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 42075 (September 6, 2017), and accompanying IDM (*CTL Plate from Korea, 2015-16*).

²⁶⁰ See Hyundai Steel’s Section B Questionnaire Response at B-11.

²⁶¹ See *China Steel*.

²⁶² Because of the proprietary nature of this argument, see Memorandum, “Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Hyundai Steel Company’s Home Market Overruns,” dated June 21, 2019 (Overrun Memorandum).

²⁶³ See Overrun Memorandum.

Commerce 6: Hyundai Steel Gross Unit Price Variables

Petitioners' Comments:

- For transactions denominated in Korean Won (KRW), GRSUPRH_KRW, has a nonzero value, while GRSUPRH_USD is zero. However, for transactions denominated in U.S. dollars (USD), both GRSUPRH_KRW and GRSUPRH_USD have nonzero values. Similarly, for transactions denominated in USD, both CREDITH_USD and CREDITH_KRW have nonzero values.²⁶⁴
- In the *Preliminary Results*, Commerce appropriately sets GRSUPRH_KRW and CREDITH_KRW to zero for sales denominated in USD. However, by this point in the program, HMGUP and HMCRED had already been set, which double counted the gross unit price for transactions denominated in USD. As a result, the inflated (*i.e.*, doubled) HMGUP was used to calculate home market net prices for conducting the cost test.²⁶⁵
- Commerce should correct this error by moving SAS language at lines 951 and 952 and insert them after line 1011.

Commerce's Position: We agree with the petitioners that HMGUP and HMCRED should only be set equal to GRSUPRH_KRW and CREDITH_KRW after GRSUPRH_KRW and CREDITH_KRW are set to zero for transactions denominated in USD. For the final results, we will make this change.²⁶⁶

Comment 7: Hyundai Steel Late Payment Fees

Petitioners' Comments:

- Hyundai Steel's reported late payment, in field LATEPAYH, are fees collected from the customer and not expenses Hyundai Steel incurred.²⁶⁷ Specifically, late payment is a cash receipt and not a cash disbursement, therefore should be added to home market price.²⁶⁸

Commerce's Position: We agree with the petitioners. We inadvertently subtracted LATEPAYH in the comparison market program for the *Preliminary Results*. For the final results, we will add LATEPAYH to the home market price in the comparison market program.

Comment 8: Whether POSAM's Indirect Selling Expense Ratio Should be Revised

Petitioners' Comments:

- POSCO failed to include all selling expenses in calculating POSAM's indirect selling expense ratio.

²⁶⁴ See Petitioners' HS Case Brief at 75.

²⁶⁵ *Id.* at 76.

²⁶⁶ In its Home Market Database, Hyundai Steel reported variables GRSUPRH_KRW (gross unit price) for transactions denominated in KRW, CREDITH_KRW (credit expense) for transactions denominated in KRW, GRSUPRH_USD (gross unit price) for transactions denominated in USD, and CREDITH_USD (credit expense) for transactions denominated in USD. In the home market program, we set gross unit price as HMGUP and credit expense as HMCRED, to calculate Hyundai Steel's margin.

²⁶⁷ *Id.* at 77.

²⁶⁸ *Id.*

- Because POSAM is exclusively a reseller, all of its administrative and financial expenses should be considered selling expenses under Commerce practice.²⁶⁹
- Commerce should include all of POSAM's general, administrative, and financial expenses, listed in the company's financial statement, as indirect selling expenses.
- For a company like POSAM that is exclusively a reseller, with no manufacturing activity of its own, the operations of the company concern only selling, meaning general expenses should be included in indirect selling expenses.²⁷⁰
- POSCO did not report or describe its sales and administrative expenses as instructed to in the questionnaire issued by Commerce.
- POSCO only stated that POSAM's indirect selling expenses cover all expenses incurred in the POR, but that statement is demonstrably false as POSAM's 2016-2017 financial statement includes several line items that were not included in its reported expenses or as part of the reconciliation that POSCO provided in POSCO's Supplemental Section C&E Response.²⁷¹
- Commerce should use the indirect selling expense ratio calculated by the petitioners for all of POSAM's sales, which include all the line items in POSAM's 2016-2017 financial statements.

POSCO's Rebuttal:

- The petitioners' proposed calculation for the indirect selling expense ratio does not reflect the actual POR expenses as submitted by POSCO, distorts POSAM's indirect selling expense ratio, and leads to the double counting of certain expenses.
- POSCO reported its actual selling expenses incurred during the 18 months of the POR, and reconciled the indirect selling expense calculation directly to POSAM's financial records.
- The petitioners' suggested adjustment is derived from 10 months in 2016 and nine months in 2017, incorrectly increasing the operating expense portion of the indirect selling expense numerator.
- The petitioners have provided no reason to reject the actual expenses in the months of the POR, as reported by POSCO and reconcile to POSAM's financial statement.
- Additional costs identified by the petitioners are reported in POSAM's audited financial statements are already included in the calculation of credit expenses as interest expense, and therefore are already deducted from CEP as a direct selling expense.
- If the interest expense attributable to subject merchandise were to be included both in the calculation of imputed credit and the calculation of the indirect selling expense ratio, Commerce would be double counting the expense.

²⁶⁹ See Petitioners' S&FM Case Brief at 6 (citing *Ripe Olives from Spain: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 28193 (June 18, 2018), and accompanying IDM at Comment 14).

²⁷⁰ *Id.* at 7 (citing *Chlorinated Isocyanurates from Spain: Final Results of Antidumping Duty Administrative Review*, 74 FR 50744 (October 1, 2009), and the accompanying IDM (*Chlorinated Isos from Spain*)).

²⁷¹ *Id.* at 8 (citing Letter from POSCO, "Certain Hot-Rolled Steel Flat Products from Korea, Case No. A-580-883: Response to Sections C & E of Supplemental Sections C-E Questionnaire," (POSCO's Supplemental Section C&E Response) at Exhibit C-67); *see also* Letter from POSCO, "Certain Hot-Rolled Steel Flat Products from Korea, Case No. A-580-883: POSAM's 2017 Financial Statements," dated October 4, 2018 (POSAM's 2017 FS) at Exhibit A-51.

- The petitioners are incorrect in stating that Commerce always includes the finance costs of a U.S. subsidiary in the indirect selling expense ratio.
- Where a subsidiary is only involved in selling products, and to avoid the double counting issue, Commerce has allowed U.S. subsidiaries to exclude finance expense from the calculation of the indirect selling expenses when the finance expense is offset by the reported credits expense related to carrying a receivable once shipped (and reported as a direct selling expense).²⁷²
- As the interest expense allocated to subject merchandise is lower than the credit expense recorded in POSAM's reported Channel 2 sales, POSCO has correctly excluded this expense from the calculation of the indirect selling expense ratio. To include it would severely overstate POSAM's costs.
- In contrast to the petitioners' citation to *Chlorinated Isos from Spain*, no analogous situation occurred for POSCO. In this case, the actions taken by POSCO are not related to the general manufacturing or selling operations of the company.
- The numerator of the indirect selling expense ratio should only be based on expenses incurred in connection with gross sales value.²⁷³
- "The exclusion of the income or expense related to investments is not tied to whether or not the expenses can be allocated to other products, but instead occurs because the investment is unrelated to the production or sale of the subject merchandise."²⁷⁴ Thus, in *Carbon Steel Flat Products from Korea*, Commerce correctly excluded professional fees and bank charges incurred in the respondent's role as an investor.
- The expense identified by the petitioners was unrelated to the production or sale of subject merchandise, and therefore should not be included in POSAM's CEP indirect selling expense ratio.

Commerce's Position: We agree with the petitioners that certain expenses listed in POSAM's 2016-2017 audited financial statement should be included in the indirect selling expense ratio. Generally, it is Commerce's practice to treat all expenses incurred by affiliated resellers as selling expenses.²⁷⁵ In POSCO's Section B/C/D/E Response, POSCO reported POSAM's indirect selling expenses,²⁷⁶ which it reconciled in its supplemental questionnaire response to its financial statement.²⁷⁷ However, this reconciliation was only to one line item within the financial statements.

²⁷² See POSCO's S&FM Rebuttal (citing *Notice of Final Results of Antidumping Duty Administrative Reviews Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea*, 67 FR 11976 (March 18, 2002), and accompanying IDM at Comment 1).

²⁷³ *Id.* at 9 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Korea*, 67 FR 62124 (October 3, 2002) (*Carbon Steel Flat Products from Korea*), and accompanying IDM at Comment 4).

²⁷⁴ *Id.* (citing *Carbon Steel Flat Products from Korea* at Comment 9).

²⁷⁵ See *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 68 FR 6889 (February 11, 2003), and accompanying IDM at Comment 11.

²⁷⁶ See Letter from POSCO, "Certain Hot-Rolled Steel Flat Products from Korea, Case No. A-580-883: Sections B-E Questionnaire Response," dated March 30, 2018 (POSCO's Section B/C/D/E Response) at Exhibit C-25.

²⁷⁷ See POSCO's Supplemental Section C&E Response at Exhibit C-67; see also POSAM's 2017 FS.

Section 772(d)(1)(D) of the Act directs the Department to reduce CEP by the amount of “any selling expenses not deducted under subparagraph (A), (B), or (C).” Administrative expenses incurred by a company that acts only as an affiliated reseller in the United States in the sale of subject merchandise is not covered by section 772(d)(1)(A)-(C) of the Act. Our normal practice is to include such expenses in the indirect selling expense total because these expenses support the selling functions of the reseller.²⁷⁸ POSCO argues that the expenses referenced in POSAM’s proprietary financial statements are already accounted for in calculation of POSAM’s reported credit expenses, as an interest expense, and is therefore already deducted from CEP as a direct selling expense. To attribute an interest expense to both imputed credit expenses and to the calculation of the indirect selling expense ratio would result, therefore, in the double counting of the expense. We do not disagree with POSCO on this point, but we do disagree with its characterization of the expense at issue being accounted for in its imputed credit expenses as CREDITU. In POSCO’s Section B/C/D/E Response, POSCO specifically identified CREDITU as the opportunity cost related to carrying a receivable from the date of shipment to the date of payment, which for Channel 2 is based on POSAM’s short-term borrowing experience during the POR.²⁷⁹ We have reviewed POSAM’s 2016-2017 audited financial statements, including the line item that POSCO has identified as being incorporated into the CREDITU field, as well as the corresponding note that identifies the source of the figure presented in POSAM’s income statement. Our review of the note to this line item in the financial statement leads us to the conclusion that the expenses incurred are not reflected entirely in the CREDITU field, or that they are even the same type of expense, which is to say, the note in the financial statement does not indicate that the line item in question is tied to an opportunity cost as described in POSCO’s Section B/C/D/E Response with respect to CREDITU.²⁸⁰ While POSCO cites to *Cold-Rolled and CORE from Korea* as an instance where we have included the type of expense identified in POSAM’s financial statement as an imputed credit expense, we find that this case does not apply in this situation as POSAM’s financial statement identifies the expense as something other a credit expense related to the carrying of a receivable.

With respect to the second item addressed in POSCO’s brief on the subject of POSAM’s indirect selling expenses,²⁸¹ we agree with POSCO that line items in POSAM’s financial statement that can be specifically tied to non-sales activities can be excluded from the company’s indirect selling expenses, as it is apparent that POSAM’s activities in this matter are largely passive, and this finding is supported by the notes to POSAM’s financial statement. However, our examination of the financial notes pertinent to the remaining items in POSAM’s 2016-2017 financial statement do not conclusively demonstrate that the expenses and revenues incurred therein are unrelated to POSAM’s sales activities. As such, we will include these in our recalculation of POSAM’s indirect selling expense for these final results.

Comment 9: Whether Commerce Should Correct Errors Made in the Preliminary Results

Petitioners’ Comments:

²⁷⁸ See *Citric Acid and Certain Citrate Salts From Canada: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 37286 (July 1, 2014), and accompanying IDM at Comment 3.

²⁷⁹ See POSCO’s Section B/C/D/E Response at C-44.

²⁸⁰ See POSAM’s 2017 FS at Exhibit A-51.

²⁸¹ See POSCO’s S&FM Rebuttal at 8.

- Commerce should correct the window period in the comparison market program, to ensure that the BEGINDAY and ENDDAY macro variables comply with 19 CFR 351.414(f).
- If Commerce continues to use quarterly cost for the final results, Commerce must correctly define QTRH and QTRU.
- Commerce should correct its treatment of POSCO's late payment fees, to ensure that such fees are treated as receipts and not expenses.

POSCO's Comments:

- In the Preliminary Results, Commerce mistakenly treated a billing adjustment related to freight revenue, as reported in Field BILLADJ2H, as a discount to be deducted from home market gross unit price rather than as a price adjustment to be added to freight revenue in field FRTREVVH, just as it did for billing adjustments associated with the product price in field GRSUPRH.
- Billing adjustments related to freight revenue are not discounts, but should instead be treated as an addition to the gross unit price.
- Despite explaining in the Preliminary Results PDM that it calculated normal value by offsetting "movement expenses with reported freight revenue, with the latter capped at no higher than the sum of the movement expenses," Commerce did not cap the home market freight revenue offset by the amount of the home market freight expense.

Petitioners' Rebuttal:

- Commerce may only cap home market freight revenues if it also caps U.S. market freight revenues.
- POSCO received freight revenues in the United States that incorporated in the gross unit price, instead of reporting such revenues separately, and failed to disclose this fact to Commerce.
- Because POSCO did not separately report freight revenues it received in the United States, these revenues cannot be capped by the related expenses, consistent with Commerce's practice.
- POSCO did however separately report freight revenues for the home market, and as such, these revenues can be capped by the related expenses.
- Given these facts, Commerce's capping practices benefits POSCO in the home market because it limits the upward adjustment of normal value, while it acts to POSCO's detriment in the U.S. market because it would limit the upward adjustment to U.S. price.
- Given its inconsistent and selective reporting of freight revenues, it is inappropriate for POSCO to request that Commerce revise its Comparison Market Program to cap freight revenues in the home market, as POSCO has made it impossible for Commerce to apply its capping practice consistently in both markets.
- Commerce should not allow POSCO to benefit from its selective reporting of freight revenues.

- Commerce has previously defended its use of capping service-related revenues as “fair and equitable” because it applied the practice in both the home market and the U.S. market, regardless of whether U.S. net prices or normal value are affected.²⁸²
- As such, Commerce can only meet its own “fair and equitable” standard if it continues to apply its capping methodology consistently in both the home and U.S. markets.
- Capping POSCO’s home market freight revenues, but failing to do so for U.S. freight revenues, would unjustly prejudice the margin calculation in POSCO’s favor.
- Commerce should only cap POSCO’s home market freight revenues if it likewise caps POSCO’s U.S. freight revenues.
- If Commerce does cap POSCO’s home market freight revenues, then it should modify the home market freight revenue cap to include additional relevant expenses.
- For instance, in *CRS from Korea*, Commerce included warehousing expenses as part of the total movement expenses used in the calculation of the freight revenue cap. Similar facts exist in this case.²⁸³

Commerce’s Position: We agree that the three errors identified by the petitioners should be corrected for the final results, and we have adjusted the programs accordingly. We also agree that POSCO’s billing adjustments in BILLADJ2H should be treated as an addition to the gross unit price.

With respect to the capping the freight revenue in POSCO’s home market sales database, we agree with POSCO that the margin program should be corrected so that home market freight revenues should be capped by the associated expenses. To address the petitioners’ rebuttal comments, as discussed in Comment 10, below, we have also made certain downward adjustments to the gross unit price in the U.S. market sales database for UPI’s Channel 4 sales.

Comment 10: Whether POSCO Incorrectly Included Freight Revenues in the Gross Unit Price for UPI’s Sales

Petitioners’ Comments:

- POSCO improperly included freight revenue in UPI’s reported gross unit price, inflating the gross unit prices reported in GRSUPRU.
- The second preselected sale that Commerce examined at verification indicated that UPI charged the customer freight revenues, and Commerce noted that “the pre-paid freight and the final invoiced amount from the transportation provided netted out to zero.” However, Commerce should not extrapolate from this one sale that freight revenue will always be equal to freight expenses.

²⁸² See Petitioners’ Rebuttal Brief at 5 (citing *Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (*Orange Juice from Brazil 2010*), and accompanying IDM at Comment 2; and *Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 63291 (October 16, 2012) (*Orange Juice from Brazil 2012*), and accompanying IDM at Comment 6).

²⁸³ *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) (*CRS from Korea*), and accompanying IDM at Comment 8).

- POSCO should have reported all freight revenues and expenses separately for each sale so that Commerce could cap the service revenues by their associated expenses.
- Commerce examined at verification a breakdown of pre-paid freight (PPF) and freight expenses for the fiscal year and the POR, which indicates that, in the aggregate, the pre-paid freight charged by UPI differed from freight expenses.
- Commerce found at verification that for some sales, pre-paid freight does not consist entirely of actual freight revenue, and that it is in fact a component of the actual price that UPI only separates for internal accounting purposes.
- For other sales, UPI does separately charge the customer for freight services as a distinct line item on UPI's invoice.
- Information provided by UPI at verification, in Exhibit VE-16, displays PPF on a company-wide basis, and therefore fails to distinguish between PPF that is actual freight revenue (separately charged to customers on invoices) and that which is not actual freight revenue (not separately charged to customers on invoices, but separated from price only for internal financial accounting purposes). Thus, the relationship between freight expenses and freight revenue is unclear.
- The chart provided at VE-16 is an aggregate of company-wide pre-paid freight revenues, and cannot distinguish between subject and non-subject merchandise.
- To reconcile UPI's sales value, POSCO had to remove merchandise further manufactured from inputs produced by companies other than POSCO, merchandise further manufactured from non-subject merchandise, and further manufactured merchandise sold to countries other than the United States.
- POSCO's failure to separately report UPI's freight revenue is not immaterial. POSCO should have separately reported freight revenues so that the revenues can be capped by the directly-related expense, in accordance with Commerce's practice.
- Commerce policy is to cap service-related revenues, such as freight revenues, by the associated expense, so that service-related revenues cannot be used to increase the U.S. price and instead only offset directly associated sales expenses.²⁸⁴
- If a respondent separately identifies the value of services on invoices or purchase orders, such revenues have to be separately reported and are not allowed as upward adjustments to U.S. price.²⁸⁵
- The record indicates that in this review, for certain sales UPI's sales documentation lists freight revenue as a separate line item on the invoice. Nonetheless, POSCO did not use the product prices indicated on these invoices to report GRSUPRU for these sales, instead allocating the invoices' total freight revenues to individual product line items, and thus inflating the gross unit price in the U.S. sales database.
- The sales documentation relating to the pre-selected sale examined by Commerce at verification indicates that the actual gross-unit price differed from that reported by POSCO, which erroneously included service-related revenues.

²⁸⁴ See Petitioners' S&FM Case Brief at 20-21 (citing *Large Power Transformers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 13432 (March 13, 2017), and accompanying IDM at Comment 1.A (*LPTs from Korea*); and *Orange Juice from Brazil 2012* at Comment 6).

²⁸⁵ *Id.* (citing *LPTs from Korea* at Comment 1.A).

- The freight revenue component, separately charged to the customer as a distinct line item on the invoice, should have been reported in a separate field so that it can be appropriately capped in accordance with Commerce practice.
- Commerce instructed POSCO to report unit prices as they appear on the invoice. Instead of doing so, POSCO allocated additional revenues related to freight into the gross unit price of the sale that it reported in the U.S. sales database.
- POSCO did not indicate in POSCO's Section B/C/D/E Response that it included freight revenues in the gross unit price, and also failed to disclose that it received freight revenue in its supplemental questionnaire responses.
- POSCO was aware that it was required to separately report freight revenue, and did so in its home market sales databases, where Commerce's capping practice benefits it.
- POSCO has failed to act to the best of its ability by failing to disclose that it received freight revenues in the U.S. market and for failing to separately report those revenues.
- POSCO separately reported freight revenues in the home market where Commerce's capping methodology benefits it by limiting the upward adjustment to normal value, but failed to separately report freight revenue in the U.S. market, where that same capping methodology acts to its detriment by limiting the upward adjustment to U.S. net prices.
- If Commerce does not apply an adverse inference, POSCO will improperly benefit through its selective reporting of freight revenues.
- To ensure that POSCO does not obtain a more favorable result from its failure to cooperate by reporting the gross unit price as Commerce instructed, Commerce should apply an adverse inference to POSCO in the final results.
- Because POSCO failed to separately report freight revenues in the U.S. sales database, Commerce does not have information on which transactions in the U.S. sales database received freight revenue. For those transactions that did receive freight revenues, Commerce does not have information on what portion of the gross unit prices reflect the price of the subject merchandise, and which represents the portion of POSCO's provision of freight-related services.
- There is no evidence on the record that indicates the number or portion of UPI's sales for which UPI charged its customers freight revenues on its invoices. Therefore, it is not possible to assess the number of transactions affected by POSCO's failure to separately report freight revenues.
- Commerce has applied adverse inferences in prior proceedings when respondents misreport freight revenues.²⁸⁶
- Commerce should not grant POSCO's claimed freight adjustment because the company failed to separately report freight revenues, resulting in an inability to distinguish freight revenue from the gross-unit price reported by POSCO in the U.S. sales database.
- As an adverse inference, Commerce should assume that all Channel 4 sales by UPI with delivery terms indicating the inclusion of freight revenue should be capped. Commerce should then lower the gross-unit price by the amount of the proposed cap using a separate variable, FRTREVU.

²⁸⁶ *Id.* (citing *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia: Final Determination of Sales at Less Than Fair Value*, 75 FR 59223 (September 27, 2010), and accompanying IDM at Comment 13).

POSCO's Rebuttal:

- Commerce confirmed at verification that freight amounts are only listed separately on a small number of invoices, usually as a result of a customer's request or a change in delivery terms between the order and invoice dates.
- Commerce verified that the pre-paid freight and the final invoices amount of freight expenses from the transportation provided netted out to zero in the second pre-selected sale at the further manufacturing verification, supporting the breakdown of PPF and freight expense for the fiscal year and the POR, which demonstrates that in the aggregate, the freight expense exceeds the freight revenue received.
- Commerce noted in the UPI FM Verification Report that the freight portion of revenue is calculated for all sales, based on standards maintained by the freight department.
- The only difference between certain delivered sales is that the customer requested that the freight amount be listed separately on the invoice, but there is no difference as to how that amount is calculated.
- The only differences in the manner in which UPI reported freight revenues is that sometimes the freight revenue is split solely for accounting purposes, and sometimes it is split for both accounting purposes and because the customer has requested that it be listed separately on the invoice.
- The freight chart referenced by the petitioners is not meant to distinguish between subject and non-subject merchandise; it merely supports the evidence already on the record, such as the second pre-selected sale, which demonstrates that the freight revenue and expense net to zero, or that the freight expense is higher than the revenue.
- The petitioners' citation to previous cases in which Commerce applied AFA due to issues with freight revenue are not applicable here. In *Coated Paper from Indonesia*, respondents failed to provide the documentation requested by Commerce, whereas in *LPTs from Korea*, Commerce specifically requested that the respondent separately report service-related revenues and expenses, which the respondent failed to do.
- Despite the petitioners' arguments, POSCO explained that the gross unit price was properly reported and that on a small number of Channel 4 delivered sales, customers requested that the freight amount is listed separately on the invoice. Commerce did not ask any questions regarding this aspect of UPI's gross unit price, nor did it issue any questionnaires addressing this point.

Commerce's Position: We agree with the petitioners that UPI's freight charges constitute charges for a service and are distinct from the sale price of merchandise, and that it is Commerce's well-established practice to cap these additional services, *i.e.*, not to increase the U.S. price by any excess expenses.²⁸⁷ Commerce has articulated its rationale for capping freight revenue on numerous occasions, stating,

Based on the plain language of the law and the Department's regulations, it has been the Department's stated practice to decline to treat freight-related revenue as an addition to U.S. price under section 772(c)(1) of the Act or as a price

²⁸⁷ See *Large Diameter Welded Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 84 FR 6374 (February 27, 2019), and accompanying IDM at Comment 20 (*Welded Pipe from Korea*); see also *Large Diameter Welded Pipe From Canada: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 6378 (February 27, 2019), and accompanying IDM at Comment 3.

adjustment under 19 CFR 351.102(b)(38). The term “price adjustment” is defined at 19 CFR 351.102(b)(38) as “any change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser’s net outlay.” The Department has stated that, although we will offset freight expenses with freight revenue, where freight revenue earned by a respondent exceeds the freight charge incurred for the same type of activity, the Department will cap freight revenue at the corresponding amount of freight charges incurred because it is inappropriate to increase gross unit selling price for subject merchandise as a result of profit earned on the sale of services (*i.e.*, freight).²⁸⁸

The record demonstrates that in some instances, UPI includes the freight charged to customers in the total price of the goods as listed in the invoice, whereas for some sales, the freight charge is listed separately on the invoice.²⁸⁹ While POSCO has made much of the fact that the freight revenue listed in one of the pre-selected sales traces was offset completely by the freight expenses, we agree with the petitioners that we cannot extrapolate from this one sale that POSCO’s freight expenses exceeded its freight revenues in all sales. We discussed the issue of freight revenue with UPI at the further manufacturing verification, and we place greater emphasis on the aggregate comparison between UPI’s pre-paid freight revenues and its freight expenses that was examined as part of our sales reconciliation for UPI, which demonstrates that over the course of the POR, freight expenses exceeded freight revenues. However, it is not true for all months of the POR, and we observed at verification that in some months, freight revenues exceeded freight expenses.

Normally, Commerce requires a respondent to separately report freight revenue in its sales database. The petitioners argue that POSCO’s failure to do so in this review warrants the application of adverse facts available, because POSCO failed to follow the instructions for reporting GRSUPRU in the Section C questionnaire issued by Commerce. We disagree with the assertion that the application of adverse facts available is appropriate here, as we did not notify POSCO that its reporting of freight revenue was not in accordance with our request for information, nor did we request additional information to correct deficiencies on the record. We cannot therefore conclude that POSCO failed to cooperate to the best of its ability within the meaning of section 776(b)(1) of the Act. However, we find that the information necessary to cap UPI’s freight revenues with its associated freight expenses on a transaction-specific basis is not on the record, and that the application of facts available is therefore warranted under section 776(a)(1) of the Act to ensure that GRSUPRU is not overstated. We find that it is therefore appropriate to adjust GRSUPRU for UPI’s Channel 4 sales in the months where record information indicates that, in the aggregate, freight revenues exceeded freight expenses within a certain month. We recognize that the aggregate information we have on the record does not distinguish between UPI’s sales of subject and non-subject merchandise sales, or whether the goods sold were produced with Korean inputs. Nonetheless, we find that the aggregate revenue and expense data we have is the best information on the record and are therefore applying it to UPI’s Channel 4 sales in the months where, in the aggregate, freight revenues exceeded freight expenses.

²⁸⁸ See *Welded Pipe from Korea* at Comment 20.

²⁸⁹ See UPI FM Verification Report at 10, and FM Verification Exhibits 18, 19, and 26.

Comment 11: Whether Commerce Should Apply Partial AFA to POSCO's U.S. Inventory Carrying Costs

Petitioners' Comments:

- POSCO calculated the inventory carrying period for Channel 4 sales as the average days in inventory from production at UPI to shipment to the unaffiliated customer, plus the average number of days between shipment from Korea and arrival in the United States, using sample sales.
- POSCO was instructed to report INVCARU as specifically as possible (*e.g.*, by sale, model, product group, *etc.*) in both the original and supplemental questionnaire, but failed to do so.
- Commerce confirmed at verification that UPI keeps product inventory by material code, which can also be used to calculate the inventory carrying period.
- Because UPI keeps inventory records by model in its normal course of business, it could have reported specific inventory carrying costs by each product.
- Despite being provided with an opportunity to confirm that it provided Commerce with an inventory carrying period on the most specific basis possible, POSCO failed to do so with regard to Channel 4 sales despite UPI's maintaining specific inventory records.
- Because UPI's inventory records are not available on the record, despite being provided with multiple opportunities to provide this information, Commerce should apply an adverse inference in the final results by assigning all Channel 4 sales the highest INVCARU in the U.S. sales database.

POSCO's Rebuttal:

- The application of AFA to POSCO's reported inventory carrying costs in any of its sales channels is unwarranted.
- POSCO reported UPI's inventory carrying days using the average inventory turnover, a methodology that is often used to calculate the opportunity cost related to carrying inventory.
- The method used by POSCO to calculate inventory carrying costs was also used and verified in the original investigation.
- POSCO explained that calculating inventory carrying cost by product code would not have been more precise than the average used, because it was not possible to identify the input of each product code that would allow the calculation of the period for the product codes that contained POSCO inputs as opposed to inputs from other steel producers.
- Commerce verified UPI's reported inventory carrying costs and noted no discrepancies.²⁹⁰

Commerce's Position: We agree with POSCO that we should not apply partial AFA to calculate the U.S. inventory carrying costs for Channel 4 sales by UPI. As the petitioners note, POSCO's calculation of its inventory carrying costs for its Channel 4 sales consisted of two components: (1) the average days inventory from production at UPI to shipment to the unaffiliated customer, plus (2) the average number of days between shipment from Korea and the arrival in the United States of input material. While the petitioners are correct in noting that UPI's inventory ledgers track beginning and ending inventories based on material codes, they do

²⁹⁰ See POSCO's S&FM Rebuttal (citing UPI FM Verification Report at 18).

not explain how material code inventories should be split between goods using POSCO-sourced inputs, and those sourced from other companies.

As such, we find that POSCO did report its days-in-inventory portion of its inventory carrying costs in as precise a manner as possible, by using the production and ending inventory balances that are inclusive of all material codes produced during the POR. It is not apparent from UPI's inventory ledger that the company tracks material codes separately based on source inputs in the normal course of its business operations. The application of partial AFA in this scenario is therefore unwarranted.

Comment 12: Whether Commerce Should Revise UPI's Further Manufacturing G&A Expense Ratio

Petitioners' Comments:

- UPI's cost of goods sold reported in its audited financial statements consist of seven trial balance accounts, including: (1) cost of sales (variable cost); (2) inventory variance; (3) wage profit sharing accrual; (4) manage bonus plan accrual; (5) shipment rate variance; (6) TA&GE (fixed cost); and (7) variable cost – PPF.
- Not all of the elements listed in the trial balance were used to reconcile POSCO's further manufacturing costs for UPI, and are further not incorporated in G&A expenses in the calculation of the G&A expenses ratio.
- Two of the remaining elements are components of the cost of goods sold in UPI's audited financial statements, and should be included in the numerator used to calculate the G&A expense ratio.

POSCO's Comments:

- In the Preliminary Results, Commerce incorrectly included an inventory adjustment (variance) amount in the G&A expense ratio calculated for UPI, which was then applied to UPI's total cost of production.
- This inventory adjustment was unrelated to the reported production costs at UPI.
- In order to reconcile the cost of sales to the audit report for 2017, UPI includes a lower of cost or market inventory (LCM) adjustment. However, in the overall reconciliation of further manufacturing costs, UPI reported the total actual further manufacturing costs incurred at UPI, and those actual costs were not adjusted by a lower of cost or market adjustment.
- Commerce verified in the cost reconciliation that the variable and fixed costs reported in Section E were the actual costs recorded prior to any inventory adjustment made for financial reporting purposes.
- Commerce further verified the costs incurred in each of the processes through which a particular product passed during the production process. If there had been an inventory adjustment, each cost element would have included such an adjustment.
- It is appropriate to include an inventory adjustment in the cost of production only when the cost of inventory in the cost accounting system has been lowered to reflect the market value, *i.e.*, when the actual costs have been adjusted by a LCM adjustment. In these cases, the inclusion of the adjustment to market value is required to derive the actual cost of the inventory and the cost of production. Conversely, when the inventory in the cost accounting

system does not include a LCM adjustment, the inventory value already reflects the actual cost, and the inclusion of the adjustment would result in an overstatement of the overall cost of production. UPI did not use the inventory value to calculate the further manufacturing costs because that inventory value.

- Commerce has previously determined that it is unnecessary to include an LCM adjustment when the reported costs are not affected by the inventory adjustment.²⁹¹
- In the Final Results, Commerce should revise its calculation of UPI's G&A expense ratio to remove this inventory adjustment.

POSCO's Rebuttal:

- The elements identified by the petitioners should not be included in the manufacturing G&A expense ratio.
- Commerce verified UPI's G&A expenses and tied those amounts to the financial statement and trial balance, noting no discrepancies.²⁹²
- Therefore, the additional expense identified by the petitioners is not related to general and administrative expenses, but is properly recorded as a cost of goods sold.

Petitioners' Rebuttal:

- In the *Preliminary Results*, Commerce correctly incorporated UPI's inventory adjustment losses in UPI's further manufacturing G&A expense ratio.
- Commerce's established practice regarding inventory adjustments or write-downs to the lower of cost or market are a component of a respondent's cost of production.²⁹³
- Where a respondent does not incorporate losses on raw material or work-in-progress inventory write-downs in its reported cost of manufacture, Commerce incorporates such losses in the respondent's cost of production by including them in the G&A expenses.²⁹⁴
- The facts in this case mirror those in *OCTG in Korea 2016-17*, as UPI includes an inventory adjustment to the lower of cost or market on its audited income statement, and these audited statements are prepared according to U.S. GAAP.

²⁹¹ See POSCO's S&FM Case Brief at 6 (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 2 (*Steel Pipe from Korea*); and *Certain Welded Stainless Steel Pipes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 75 FR 27987 (May 19, 2010), and accompanying IDM at Comment 2).

²⁹² See POSCO's S&FM Rebuttal at 14-15 (citing UPI FM Verification Report at 22).

²⁹³ See Petitioners' S&FM Rebuttal at 9 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above ("DRAMs") From Taiwan*, 64 FR 56308, 56326 (October 19, 1999)).

²⁹⁴ *Id.* at 10 (citing *Certain Oil Country Tubular Goods From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 24085 (May 24, 2019), and accompanying IDM at Comment 8 (*OCTG from Korea 2016-17*); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Taiwan*, 65 FR 34658 (May 31, 2000); *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Antidumping Duty Order: Brass Sheet and Strip From the Netherlands*, 65 FR 742, 749 (January 6, 2000); and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Italy*, 63 FR 40422 (July 29, 1998)).

- Where a respondent failed to separate finished goods inventory adjustments from WIP and raw material inventory adjustments, Commerce includes the entire inventory adjustment in the cost of production.²⁹⁵
- As POSCO failed to provide record evidence regarding which component of the inventory adjustment related to finished goods, and which related to raw materials and WIP, Commerce should include the entire inventory adjustment in POSCO's G&A expenses.
- Because POSCO failed to include UPI's loss on inventory revaluations in UPI's cost of manufacturing, these costs should be included in G&A expenses.
- Commerce considers the loss on inventory write-downs to be part of the reported cost of production.
- As POSCO did not incorporate UPI's loss on its inventory revaluations in UPI's cost of manufacture, the loss should be incorporated in UPI's cost of production by including it in G&A expenses.
- It is Commerce's practice to consider losses on inventory revaluations as period expenses related to the general operations of a company that are appropriately incorporated in the G&A expense.
- POSCO's reliance on *Steel Pipe from Korea* was previously addressed and rejected by Commerce in *OCTG from Korea 2016-17*, where the respondent made the same argument.²⁹⁶
- Commerce found in *OCTG from Korea 2016-17* that such inventory adjustments are period expenses and unrelated to current manufacturing costs, and as such are related to the general operations of the company that should be incorporated in the G&A expense ratio.
- There is no reasonable basis for POSCO's claim that, had UPI written down its inventory, verification of each cost element would have included such an adjustment, and this claim is unsupported by record evidence.
- Commerce explained in *Steel Pipe from Korea* that when a company writes down its inventory, the cost of production in a subsequent period would be lower since raw material or WIP inventories in the subsequent period would be consumed at a lower value.²⁹⁷
- There is no reason to expect that UPI's cost accounting system would separately indicate whether the value of raw materials being consumed was based solely on historical cost, or based on historical cost that was written down in a previous period.
- If UPI writes down its raw material inventories within its cost accounting system, there is no reason to expect that this would be reflected in any other way than the consumed raw material values simply being lower than they would have been had inventories not been written down in a previous period.
- If the values of raw material and WIP inventories that UPI consumed during the POR reflected write-downs, then such inventory adjustments would have been made in a previous period.

²⁹⁵ *Id.* at 12 (citing *Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 19153 (April 12, 2004); and *Stainless Steel Sheet and Strip in Coils From Taiwan: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 76721 (December 13, 2002)).

²⁹⁶ *Id.* at 14 (citing *OCTG from Korea 2016-17* at Comment 8).

²⁹⁷ *Id.* (citing *Steel Pipe from Korea*).

- It is not clear from the verification reports how UPI values its raw material inventory within its cost accounting system, or whether the value of raw material inventories consumed by UPI reflected only the historical value, or a written-down value.
- There is therefore no record evidence for UPI's assertion that it does not write down raw material and WIP inventories within its cost accounting system.

Commerce's Position: In the *Preliminary Results*, in order to calculate UPI's G&A expense ratio, Commerce used the G&A expenses reported by POSCO for UPI in POSCO's Section B/C/D/E Response,²⁹⁸ and added to this figure an inventory variance which is incorporated into UPI's cost of goods sold on its 2016-2017 audited financial statements as an adjustment incorporated in G&A expenses.²⁹⁹ POSCO considers this adjustment to be in error, while the petitioners believe that not only is it correct, but that Commerce erred in not adding an additional line item included in UPI's cost of goods sold figure as an adjustment to UPI's G&A expenses. We agree with the petitioners that both the inventory variance included in the *Preliminary Results*, as well as the additional line item identified by the petitioners, should be included in the numerator used to calculate G&A expense ratio for UPI during the POR.

First, with respect to the inventory variance, POSCO has confirmed that UPI adjusts its inventory on a periodic basis as a write-down to the lower of cost or market value. POSCO also notes that Commerce verified the cost incurred in the further manufacture of goods produced from subject merchandise produced by POSCO, and that the information reviewed by Commerce at verification confirms that UPI's adjustments to inventory value for cost of goods sold are not included in the company's further manufacturing costs. We noted in the UPI FM Verification Report that our review of further manufacturing costs demonstrated yield loss figures, conversion costs, and raw material costs.³⁰⁰ POSCO has identified UPI's raw materials as being the finished product output from a previous production process or as a work in progress.³⁰¹

Notably, however, POSCO did not identify when the inventory losses it incurred took place, namely, whether they occurred with respect to prior-stage finished good that would serve as a raw material into further manufactured merchandise, or to WIP goods. As such, it is impossible for us to confirm that the inventory/raw materials portion of the further manufactured cost examined by Commerce at verification reflected written-down inventories from prior-stage finished goods, or goods consumed in the production of further manufactured merchandise at their full production cost. While POSCO argues that inventory adjustments would have been apparent in each cost element at verification, as we noted in *Steel Pipe from Korea*, "when a company writes down its inventory and actually uses the lower valued inventory in a subsequent period to calculate its COP, to not include the write-down would result in these costs never being recognized."³⁰² The record does not indicate whether the value of raw materials being consumed was based solely on historical cost, or based on historical cost that was written down in a

²⁹⁸ See POSCO's Section B/C/D/E Response at Exhibit E-20.

²⁹⁹ See Memorandum, "Preliminary Results Analysis Memorandum for POSCO in the Antidumping Duty Administrative Review of Certain Hot-Rolled Steel Flat Products from the Republic of Korea," dated November 2, 2018.

³⁰⁰ See UPI FM Verification Report at 19-21.

³⁰¹ See POSCO S&FM Brief at 6, at footnote 13.

³⁰² See *Steel Pipe from Korea* at Comment 2.

previous period. There is no reason to expect that the reduced value of UPI's raw material inventories would be reflected in any other way than the values of the consumed raw materials being lower than they would have been had inventories not been written down in a previous period. In *OCTG from Korea 2016-17*, we found that inventory valuation adjustments are periodic adjustments, which are related to the general operations of the company as a whole.³⁰³ In calculating a G&A expense ratio, we usually include such period expenses, *i.e.*, those that are more related to an accounting period and not directly related to manufacturing merchandise, as they are related to the general operations of the company as a whole.³⁰⁴ UPI's inventory variance, as an adjustment to the lower of cost or market value, is a periodic adjustment that reflects the net loss in the value of inventories that the company is holding at that time, allowing UPI to recognize gains or losses associated with the inventory it is currently holding on its balance sheet, which is not necessarily related to the inventory that was consumed in current production. As a periodic adjustment then, we find that it is appropriate to include UPI's inventory variance in the numerator for the company's G&A expense ratio, as we did in the *Preliminary Results*.

The petitioners have also argued that one of the other items reflected in UPI's cost of goods sold is not included in the numerator for UPI's G&A expense ratio as it should be. This line item relates to the valuation of recoverable scrap, though the exact details of how this is accounted for in UPI's cost of goods sold is proprietary. However, we agree with the petitioners that this line item is appropriately included in the numerator for the G&A expense ratio, as the valuation of scrap is reflected in UPI's trial balance and cost of goods sold.

Comment 13: Whether Commerce Should Revise UPI's G&A and INTEX Ratio Denominators

Petitioners' Comments:

- POSCO made an adjustment to UPI's cost of goods sold denominator to account for the difference between the purchase price and the cost of production of the purchased subject merchandise inputs used in UPI's further manufacturing process, thereby arriving at its reported net cost of goods sold, which was in turn used as the denominator for both UPI's further manufacturing G&A and the interest expense ratio calculations.
- However, such a denominator as used by POSCO is incorrect as it needs to be further adjusted to bring it to the same basis as the per-unit cost of manufacture to which it is applied.
- Commerce practice dictates that the cost of goods sold denominator used to calculate the G&A and INTEX ratios should be on the same basis (*i.e.*, include the same body of expenses) as the reported per-unit cost of manufacturing.³⁰⁵
- As noted in Comment 12, POSCO's reconciliation of UPI's reported cost of further manufacture did not match UPI's cost of goods sold, creating a mismatch between the cost of

³⁰³ See *OCTG from Korea 2016-17* at Comment 8.

³⁰⁴ *Id.*

³⁰⁵ *Id.* at 36 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from Taiwan*, 65 FR 16877 (March 30, 2000), and accompanying IDM at Comment 14; and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India*, 63 FR 72246, 72247 (December 31, 1998)).

goods sold denominator used in the G&A and INTEX ratios and the per-unit costs of further manufacture to which these ratios are applied.

- Commerce should recalculate the cost of goods sold denominator to be on the same basis as UPI's reported cost of further manufacture.
- Commerce should use the corrected denominator to recalculate UPI's G&A and INTEX ratios accordingly.

POSCO did not comment on this issue.

Commerce Position: The purpose of the G&A and interest expense (INTEX) ratios is to allocate all G&A and financial expenses (*i.e.*, the numerators of the ratios) to the cost of all products, and to ensure that the ratios are arithmetically correct, the denominator must be on the same basis as the cost to which the ratios are applied.³⁰⁶ The petitioners have argued that UPI's reported cost of further manufacture is based on line items from UPI's trial balance, which in turn form the basis of the company's cost of goods sold in its audited financial statements, that are not incorporated into the same body of expenses for the company. In accordance with our practice, we are adjusting the denominator used to calculate the G&A and INTEX ratios, to ensure that the per-unit cost of manufacture reported in UPI's cost of goods sold is on the same basis as the expenses incurred in G&A and financing.

Comment 14: Whether Commerce Should Revise the Further Manufacturing Cost of UPI's Non-Prime Products

Petitioners' Comments:

- POSCO incorrectly adjusted the cost of manufacture for UPI's non-prime further manufactured products.
- POSCO previously tried to make a similar adjustment in the *LTFV Investigation*, and has acknowledged that these are the same non-prime products.³⁰⁷
- In the *LTFV Investigation*, Commerce rejected POSCO's method of assigning costs to UPI's non-prime products, applying "the further manufacturing costs for prime merchandise, as reported by POSCO, to the corresponding non-prime merchandise."
- As it did in the *LTFV Investigation*, Commerce should revise the further manufacturing costs of non-prime products by assigning them the full cost of the comparable prime product.

POSCO's Rebuttal:

- UPI's treatment of non-prime material in its normal books and records is in accordance with, and is required by, U.S. GAAP.
- Commerce's past practice of assigning the same cost of manufacturer to all products produced, regardless of grade, has changed to include additional factors to determine if the non-prime merchandise warrants the same cost as prime grade material, such as use.
- Typically, when uses of prime and non-prime materials differ, Commerce will calculate a lower value for the non-prime material.

³⁰⁶ See *Orange Juice from Brazil 2010*, and accompanying IDM at Comment 2.

³⁰⁷ See Petitioners' S&FM Case Brief at 39-40 (citing POSCO's Supplemental Section C&E Response at 58; and *LTFV Investigation* at Comment 6).

- In *Rebar from Turkey*, Commerce rejected an argument that short-length rebar, which was treated as scrap in the normal course of business, should be assigned the same cost as prime grade rebar.³⁰⁸
- The factors applicable to UPI's non-prime merchandise similarly justify the assignment of a lower cost than the prime grade material. POSCO clarified in its supplemental responses that use of non-prime products can vary by end-user and by application.
- The condition of the inputs should not be a determinant in the valuation of non-prime products produced using that input.
- If Commerce assigns the same manufacturing cost to products that are not counted as production in the normal course of business, the cost of prime material is overstated, as it has already absorbed the cost of the non-prime production, and the cost of the non-prime material is well above the cost at which it would be sold to recover the costs.
- Commerce should not make the determination that non-prime products can be used for the same general applications as prime material, when neither UPI nor the customer has made that determination at the time of sale.

Commerce's Position: We agree with the petitioners that non-prime, further manufactured products should be assigned the same further manufacturing costs as those of prime further manufactured products, for the same reasons that we explained in the *LTFV Investigation*.³⁰⁹ Notably, POSCO has confirmed that the non-prime merchandise produced by UPI during the POR is the same as that discussed in Comment 6 of the *LTFV Investigation* IDM. In Comment 6, we noted that all of the input material used is prime subject merchandise, that both prime and non-prime merchandise undergo the same processing, and that the products are used in the same general applications. As such, in the *LTFV Investigation*, we determined that it was appropriate to assign non-prime merchandise the same further manufacturing cost as prime merchandise.

In the instant review, POSCO has argued that Commerce's use analysis dictates that we calculate a lower value for non-prime material when Commerce determines that a non-prime product cannot be used in the same applications as prime material. As POSCO noted, in *Rebar from Turkey* Commerce adopted the practice of examining whether downgraded (*i.e.*, non-prime) products are capable of being used in the same applications as its prime counterparts.³¹⁰ While POSCO's argument regarding use is not misplaced, there is no information on the record that leads us to contradictory conclusion from the *LTFV Investigation*. In POSCO's Supplemental Section C&E Response, POSCO describes the ultimate use of non-prime products:

The use of non-prime products can vary according to the end-user and end-use application. If downgraded due to visible defects, non-prime may be used for products where the quality is not critical, such as invisible construction material and invisible parts of machine. There might be cases in which customers can cut off the defective area and then use the remaining material for the same purpose as

³⁰⁸ See POSCO's S&FM Rebuttal at 12 (citing *Steel Concrete Reinforcing Bar from Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 79 FR 54965 (September 15, 2014) (*Rebar from Turkey*), and accompanying IDM at Comment 15).

³⁰⁹ See *LTFV Investigation*, and accompanying IDM at Comment 6.

³¹⁰ See *Rebar from Turkey*, and accompanying IDM at Comment 15.

prime material, but at the time of sale, neither the customer nor UPI can be certain that it can be used as initially intended. UPI does not guarantee the use of non-prime material and it does not grant any warranty.³¹¹

POSCO reiterated in its rebuttal brief that neither UPI nor the customer has determined how non-prime material is to be used at the time of purchase.³¹² Based on POSCO's own description of the potential uses of non-prime material, we conclude that in some instances non-prime material can serve the same function as prime materials, including uses in construction not visible to the public, internal machine parts, and have the ability to be trimmed and shaped to specific purposes just as prime material would be. Nor do we agree with POSCO's characterization of non-prime materials uses as being unknowable at the time of sale. Clearly, a customer purchasing non-prime materials would have some notion of the uses to which they would be put. As POSCO itself has described, the defective areas of the material could be trimmed for use in accordance with a customer's plans. Moreover, POSCO has not pointed to information on the record that leads us to the conclusion that POSCO is normally informed by its customers of a product's ultimate use. Finally, as we noted earlier, POSCO has confirmed that the same types of non-prime products at issue in this review were previously addressed in Comment 6 of the *LTFV Investigation*, in which we also concluded that the prime and non-prime products at issue are capable of being used in the same general applications.³¹³ Thus, POSCO has not provided us with information that would lead us to conclude differently regarding the use of prime and non-prime further manufactured merchandise in this review.

Comment 15: Whether Commerce Should Revise UPI's U.S. Brokerage and Handling Expenses

Petitioners' Comments:

- POSCO used the average of U.S. brokerage and handling expenses incurred in channels 2, 3, and 3a to report USBROKU for UPI's Channel 4 sales.
- Commerce should remove from that calculation brokerage and handling expenses from other channels that are not related to UPI's sales.

POSCO's Rebuttal:

- Using the average of the brokerage expenses incurred on sales in Channels 2-3a as a surrogate for the brokerage expense on Channel 4 sales is reasonable, and identical to the methodology used in the *LTFV Investigation*.
- U.S. brokerage expenses by their nature do not differ among sales channels, as these expenses consist of flat fees that generally cover multiple transactions.
- POSCO's methodology of basing the brokerage charges on the actual expenses incurred by the importers of the hot-rolled coil in the U.S. in Channels 2-3A is reasonable.

Commerce Position: We agree with the petitioners that for these final results, we should calculate the U.S. brokerage and handling expenses in the most accurate manner possible, by excluding from UPI's brokerage and handling expenses those expenses that could not have been

³¹¹ See POSCO's Supplemental Section C&E Response at 58.

³¹² See POSCO S&FM Rebuttal at 14.

³¹³ See *LTFV Investigation*, and accompanying IDM at Comment 6.

incurred by the company. POSCO explained in POSCO's Section B/C/D/E Response that for sales in Channels 2, 3, and 3a, brokerage costs were reported on a shipment-specific basis for each individual sales channel. However, for UPI's Channel 4 sales, POSCO calculated a weighted average cost in USD/MT based on actual shipment expenses incurred for sales channels 2, 3, and 3a.³¹⁴

In its POSCO's Supplemental Section C&E Response, POSCO confirmed that an affiliated importer that incurred brokerage expenses on behalf of UPI was also responsible for sales in one of the additional U.S. sales channels.³¹⁵ POSCO explained that brokerage expenses do not differ among sales channels, and confirmed that the expenses for all sales channels consist of flat fees, such as handling charges, wharfage, *etc.*³¹⁶ Nonetheless, in calculating the weighted average brokerage and handling costs for UPI, POSCO does not explain how and why the average brokerage expenses for Channels 3 and 3a differ from the average broker expenses for Channel 2.³¹⁷

Commerce's regulations at 19 CFR 351.401(g) govern the allocation of expenses and price adjustments. In the *AD Final Rule*, Commerce stated its intention that "it should attempt to use allocations that are based on the most precise information available in light of a respondent's books and records. Such an approach helps to avoid comparisons that do not reflect the actual prices paid by customers or the actual expenses incurred by respondents."³¹⁸ In other words, in order to calculate accurate dumping margins, Commerce must consider the facts on the record that allow it to accurately measure adjustments to the U.S. price.³¹⁹

In this review, POSCO has identified certain sales channels that have no reasonable bearing on the brokerage and handling expense incurred on UPI's sales. Simply put, the parties responsible for those sales channels do not handle sales to UPI; moreover, record information indicates that their expenses differ from the sales channel of the party that did incur expenses on UPI's behalf. Commerce cannot rely on POSCO's allocation method simply because it is the most convenient method that the respondent's records allow, particularly where a particular allocation method is unreasonably inaccurate or distortive.³²⁰ In this case, we find that the most accurate allocation of UPI's brokerage and handling expenses excludes expenses incurred in sales channels that have no relation UPI's actual brokerage and handling expenses. As such, the sales channel of the importer that incurred brokerage and handling expenses on behalf of UPI represents the most accurate information on the record that can be used to calculate the brokerage and handling expenses of UPI during the POR.

³¹⁴ See POSCO's Section B/C/D/E Response at C-35-36.

³¹⁵ See POSCO's Supplemental C&E Response at 25-26.

³¹⁶ *Id.*

³¹⁷ See POSCO's Section B/C/D/E Response at Exhibit C-14.

³¹⁸ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27348 (*AD Final Rule*).

³¹⁹ *Id.*, 62 FR at 27377 ("the Department has a responsibility to identify and measure dumping accurately and in accordance with the standards set forth in the AD law.").

³²⁰ *Id.*, 62 FR at 27348.

Comment 16: Whether POSCO/UIP Should Receive a CEP Offset

POSCO's Comments:

- Commerce's denial of POSCO's request for a CEP offset in the Preliminary Results is unreasonable and overlooks key facts on the record.
- The failure to allow a CEP offset is unreasonable with respect to sales through UIP, where the merchandise is being further processed by UIP into different downstream products and being sold to entirely different customers from those of the other CEP sales channels. A U.S. manufacturer that is further processing subject merchandise into downstream products is at a different level of trade than POSCO's home market sales.
- The selling functions performed by POSCO in the home market are greater in number and intensity than in selling to its affiliates in the United States, specifically its Channel 4 sales through UIP, and are therefore at a more advanced level of trade.
- Commerce must compare the functions the respondent performs in selling to home market customers to the selling functions the respondent carries out in selling to its affiliates in the United States.
- The record demonstrates that the selling functions performed by POSCO in selling to its unaffiliated home market customers vary significantly from those performed in selling to the U.S. market through its affiliates.
- Commerce fully verified the reported selling functions reported by POSCO in the home market and on export sales through a review of sales process and sales documentation, and noted no discrepancies. Therefore, there is no question that POSCO performs these selling functions as reported.
- Commerce's verification of UIP further demonstrates that POSCO is not performing the selling functions on its U.S. sales, particularly to UIP, that it performs on sales to unaffiliated customers in the home market.
- As POSCO's home market sales are at a more advanced level of trade than POSCO's CEP sales, particularly its Channel 4 sales through UIP, Commerce should grant POSCO's request for a CEP offset in the Final Results.

Petitioners' Rebuttal:

- Commerce should continue to deny POSCO a CEP offset in the final results.
- Commerce determines whether to grant a CEP offset by comparing the level of trade of POSCO's home market sales, to the level of trade of POSCO's sales to its U.S. affiliates.
- The level of trade of UIP's sales to its unaffiliated customers is irrelevant, as are the types of further manufactured products that UIP sells, the customers to whom UIP sells, and POSCO's role in UIP's sales.
- Only the level of trade of POSCO's sales to UIP are relevant to Commerce's determination of whether to grant a CEP offset.
- UIP is an end-user of POSCO's hot-rolled steel, consuming it in the production of other products. POSCO also sells directly to end-users in the home market.
- Both home market users and UIP consume POSCO's hot-rolled steel in the manufacture of different products, which are in turn sold to different customers.

- The selling functions chart from Exhibit A-10 of POSCO's Section A questionnaire response, relied on in POSCO's argument that a CEP offset should be granted, is insufficient evidence for the granting of that CEP offset.
- Commerce requires that respondents demonstrate, with supporting documentation, the types and intensities of selling activities performed in the home market in comparison to the U.S. market; a selling function chart is not sufficient to suggest that the selling functions performed by the respondent at the CEP level of trade and the home market level of trade are significantly different to warrant a finding that differences in the levels of trade.³²¹
- The burden of establishing that a CEP offset is warranted lies with the respondent, and POSCO failed to meet that evidentiary burden.³²²
- POSCO failed to identify any record evidence supporting its claim for a CEP offset other than its selling functions chart. In addition, the POSCO Sales Verification Report noted by POSCO does not describe POSCO's selling functions, while the UPI FM Verification Report only concerns selling functions performed by UPI, which are irrelevant.
- The "inventory maintenance" selling function POSCO identified in its selling function chart for UPI is contradicted by POSCO's sales databases.
- POSCO's reported advertising activities in the sales chart are not supported by the record, wherein POSCO only provided brochures published by POSCO itself, and no separate brochures for its U.S. affiliates.
- POSCO's reported indirect selling expenses contradict its selling functions chart.
- As in the *LTFV Investigation*, there is nothing in the verification reports that adds record evidence supporting POSCO's assertion that its home market sales and its sales to its U.S. affiliates are at different levels of trade.
- Commerce instructed POSCO to provide a narrative description for each instance where the level of function performance or activity varies between channels or markets, but POSCO only describe each selling activity in a few short words, without providing the narrative explanation for how or why the level of selling activities differ between markets or channels of distribution.
- Commerce noted in the *Preliminary Results* that POSCO's descriptions provide no basis for determining that there are any differences in the overall intensity of the selling activities performed in these markets. POSCO has not identified any new record evidence since the *Preliminary Results* that would warrant a different decision in the final results, other than the discussion of UPI's selling functions at the CEP verification, which is insufficient.

Commerce's Position: We continue to find that no CEP offset is warranted for POSCO CEP sales in these final results. Commerce will grant a CEP offset, under section 773(a)(7)(B) of the Act, if it determines that the normal value 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 normal value and CEP affects price comparability (*i.e.*, no LOT adjustment is possible). In these final results, we continue to find

³²¹ See Petitioners' S&FM Rebuttal at 23 (citing *Emulsion Styrene-Butadiene Rubber From Mexico: Final Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 33062 (July 19, 2017), and accompanying IDM at Comment 4).

³²² *Id.* at 24 (citing *Ad Hoc Shrimp Trade Action Comm. v. United States*, 616 F. Supp. 2d 1354, 1374 (CIT 2009); and *Corus Eng'g Steels, Ltd. v. United States*, 27 CIT 1286, 1290 (CIT 2003)).

that the sales functions provided by POSCO in the United States are too insignificant to establish that POSCO CEP and further manufactured sales are at a separate LOT than POSCO home market sales. Moreover, we note that our analysis of POSCO in these final results is consistent with that employed in the *LTFV Investigation*³²³ and recent *CRS from Korea ARI*,³²⁴ wherein we also determined that the selling functions provided by POSCO on its U.S. sales were too insignificant to establish POSCO's CEP sales as separate and distinct from POSCO's other U.S. sales or to POSCO's sales in the home market.

In this review, and consistent with section 773(a)(7)(B) of the Act, we have continued to analyze the sales functions and support services provided by POSCO in both the home market and the United States. Our analysis of these selling functions continues to indicate that POSCO provided sales support to its CEP entities which were supported by POSCO in Korea and that the sales activities undertaken by POSCO in Korea benefited both CEP and Korean sales. Consistent with our finding in the *LTFV Investigation* and the record of this review, we continue to find from our examination of POSCO's home market and CEP selling activities that POSCO's CEP sales are not substantially more advanced than POSCO's home market sales. Accordingly, we have continued to deny POSCO a CEP offset in these final results.

Moreover, as the petitioners have also noted, on CEP sales, POSCO provides certain selling functions (*e.g.*, inventory maintenance and advertising), that benefits its American affiliates.³²⁵ As such, we continue to maintain that such activities benefit both home market and CEP sales activities. Based on our examination of the selling functions reported by POSCO 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 a LOT adjustment. Accordingly, consistent with our approach in other cases (*e.g.*, *LTFV Investigation* and *Silicomanganese from Australia*) we have continued to make no CEP offset in these final results.³²⁶

Comment 17: POSCO's CONNUM-Specific Costs Reporting and Whether to Smooth Cost

Petitioners' Comments:

- Commerce requires respondents to report actual product costs that reflect meaningful cost differences attributable to different physical characteristics in order to conduct its sales-below-cost test, determine similar matches between U.S. and home market sales for price-to-price comparisons, make adjustments for physical differences between similar matches, determine accurate constructed values, and calculate accurate CEP profit and dumping margins.
- Commerce provided POSCO two separate opportunities to report CONNUM-specific costs.

³²³ See *LTFV Investigation*, and accompanying IDM at Comment 3.

³²⁴ See *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 2016, 84 FR 24087 (May 24, 2019) (*CRS from Korea ARI*), and accompanying IDM at Comment 4.

³²⁵ See the Petitioners' S&FM Rebuttal at 25-27 (citing Letter from POSCO, "Certain Hot-Rolled Steel Flat Products from Korea, Case No., A-580-883: Section A Questionnaire Response," dated March 9, 2018 at Exhibit A-10).

³²⁶ See *LTFV Investigation*; see also *CRS from Korea ARI*; *Silicomanganese from Australia: Final Determination of Sales at Less Than Fair Value*, 81 FR 8682 (February 22, 2016), and accompanying IDM at Comment 2.

- Despite POSCO's assurances that it provided CONNUM-specific costs as Commerce requested, POSCO failed to provide the requested and necessary CONNUM-specific cost data.
- POSCO's failed to adequately explain how cost differences for CONNUMs that vary by only one CONNUM characteristic are attributable to that single product characteristic.
- Commerce verified that variations in POSCO's reported costs were not CONNUM-specific, and that the reported costs do not reflect the expected cost trend patterns.
- The use of monthly costs, rather than a weighted average POR cost, resulted in cost differences not attributable to the CONNUM.
- POSCO's calculation of costs based on control number designations that are at finer levels than those designated by Commerce inappropriately created non-CONNUM cost differences, and therefore the reported costs do not reflect solely the distinctions reflected in the control number.
- POSCO incorrectly relied on lower standard costs for physically identical non-prime products, as compared to the standard cost for prime products in the same CONNUM.
- With respect to nearly identical CONNUMs that differ only by the CONNUM characteristic "FORM," the cost for coil form should be lower than the costs for other shapes that undergo additional processing on the coil form, yet POSCO's reporting indicates that the opposite is true.
- Commerce discovered at verification that POSCO introduced both undefined "different specifications" and the "chemical and mechanical composition of the steel" into the cost structure, which resulted in aberrational reported costs with respect to the two CONNUMs differing only by FORM.
- POSCO's introduction of both undefined "different specifications" and "chemical and mechanical composition of the steel" into the cost structure resulted in aberrational reported costs.
- Commerce verified that POSCO could have easily reported accurate CONNUM-specific costs by relying on a single weighted-average cost for the CONNUM, and then adding the additional sheeting costs for the appropriate CONNUM.
- Similar to the FORM issue, above, POSCO reported two nearly identical CONNUMs that differed only by the WIDTH characteristic, and once again expected cost trends were not evident, as the data demonstrates a consistent trend of decreasing costs when moving from narrower-width products to wider-width products.
- When reporting for CONNUMs that only vary by the THICK characteristic, expected cost trends are not present.
- POSCO acknowledged that the costs do not follow the expected pricing trend with respect to thickness because it relied on monthly standard costs and costs that differ by the timing of production.
- Expected costs trends are not present with regard to pickling, the CONNUMs examined by Commerce indicate that the products that underwent the pickling product had lower costs than those that did not undergo the process.
- POSCO incorrectly reported differences in conversion costs with respect to the CARBON and STRENGTH CONNUM characteristics, where none should exist.
- Commerce confirmed at verification that POSCO could have reported accurate CONNUM-specific costs by relying on a single weighted-average cost for the CONNUM.

- POSCO did not report its costs in the form and manner request by Commerce, and each deviation in the reported costs were due to POSCO's use of methodologies that have been consistently rejected by Commerce, such as timing differences, reliance on lower costs for products in the same CONNUM, consideration of other undefined specifications/designations not considered in the CONNUM, etc.
- POSCO was aware that its chosen methodology for reporting costs was wrong and would result in aberrational and inaccurate costs.
- Commerce should conclude that POSCO was required to submit CONNUM-specific costs, and understood how those costs should reflect the CONNUM's physical characteristics, but instead relied on a multitude of methodologies that have been previously rejected.
- The application of total adverse facts available is warranted because POSCO failed to provide necessary and requested information during this review.
- Commerce must assign facts available when a respondent withholds information requested, fails to provide such information in the form or matter requested, or provides information that cannot be verified.
- POSCO's reporting of non-CONNUM-specific costs prevents Commerce from conducting its sales-below-cost test, determining similar matches between the U.S. and home market sales for price-to-price comparisons, adjusting for physical differences between similar matches, determining accurate constructed values for normal value, and calculating accurate CEP profits.
- Without the CONNUM-specific costs requested of POSCO, Commerce cannot calculate an accurate dumping margin in the final results, necessitating the application of facts available.
- POSCO's failure to put forth its maximum effort to provide information as requested has resulted in necessary CONNUM-specific cost information being absent from the record.
- Commerce should, therefore, apply total adverse facts available to POSCO based on the rate published in Commerce's initiation notice, 158.93 percent.³²⁷

POSCO's Rebuttal:

- POSCO maintains a sophisticated standard cost system that calculates a product-specific standard cost by month.
- Products as defined in POSCO's normal accounting system are more detailed than the CONNUMs defined by Commerce.
- Therefore, POSCO must weight-average the standard costs of products as defined in its system by actual production quantity, to which a cost variance is applied, to arrive at a submitted CONNUM-specific cost.
- Products defined in POSCO's system must be divided into CONNUMs as defined by Commerce, with each product comprising a CONNUM bearing its cost.
- POSCO thoroughly explained its reporting methodology in POSCO's Section B/C/D/E Response.
- Commerce verified the CONNUM-specific cost reporting that POSCO described in its response, including cost calculations, raw material costs, and conversion costs, which were all tied to POSCO's accounting records.

³²⁷ See Petitioners' Cost Case Brief at 24 (citing *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair Value Investigations*, 80 FR 54261, 54265 (September 9, 2015)).

- Commerce noted no discrepancies with any of the cost information examined at verification.
- Commerce addressed the petitioners' pre-verification comments about differences in product costs no being on a CONNUM-specific basis.
- Commerce verified that certain cost differences were related to the timing of production, the mill used, or the specification of steel used in production.
- Commerce's CONNUM matching criteria are intended to capture important physical characteristics of products, and do not attempt to "account for every conceivable characteristic."³²⁸
- While there are differences between certain similar CONNUMs, POSCO fully documented and explained why these differences occurred, and these explanations do not make POSCO's submitted costs aberrational or otherwise not CONNUM-specific.
- POSCO's accounting system and cost methodology have been used and verified in multiple antidumping proceedings, including the *LTFV Investigation*.
- Commerce most recently rejected the same arguments from the petitioners in the recent final results of *CRS from Korea AR1*, where POSCO used the same cost methodology.³²⁹
- The cost accounting system, reporting methodology, and level of cooperation from POSCO are the same in this review.
- Nowhere in the POSCO Cost Verification Report does Commerce note that POSCO's costs are aberrational or not accurately reported on a CONNUM-specific basis.

Commerce's Position: We disagree that the facts concerning POSCO's reporting of CONNUM-specific cost merits the application of AFA. Section 776(a) of the Act provides that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" if, inter alia, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information in the form and manner requested by Commerce; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified. Section 776(b) of the Act provides that Commerce may apply an adverse inference when selecting from among the facts otherwise available if an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The issues raised by the petitioners concerning POSCO's reporting of CONNUM-specific costs do not meet these criteria for facts available as defined in section 776(a) of the Act, much less demonstrate that POSCO failed to comply to the best of its ability as defined by 776(b) of the Act.

However, while POSCO did in fact submit CONNUM-specific costs, for these final results, Commerce finds that POSCO's reported per-unit costs exhibited certain significant variations that were unrelated to the physical characteristics of the products under review.³³⁰ Such findings are not unusual in these proceedings because Commerce is directed to use, as a starting point for reporting information, a respondent's normal books and records.³³¹ For large steel companies like POSCO, these books and records are typically generated from computer-based enterprise-

³²⁸ See POSCO's Cost Rebuttal Brief at 4 (citing *Certain Circular Welded Non-Alloy Steel Pipe From Mexico; Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 23886 (May 23, 2018), and accompanying IDM at Comment 3).

³²⁹ *Id.* (citing *CRS from Korea AR1*, and accompanying IDM at Comment 1).

³³⁰ See POSCO Cost Verification Report at 9-15.

³³¹ See section 773(f)(1)(A) of the Act.

wide reporting systems, capable of calculating product costs monthly, or even over certain production runs. Costs captured at specific points in time will naturally vary due to timing differences. When such costs are assigned to specific CONNUMs, some of which had limited production quantities, differences between CONNUM costs arise that will not be related to the physical characteristics designated for an antidumping duty proceeding. To address this issue, Commerce has adopted a practice of smoothing out these differences by weight-averaging certain CONNUMs that share certain key physical characteristics. For example, in *CWP from Korea* Commerce stated:

{T}he Department is instructed to rely on a company's normal books and records if two conditions are met: 1) the books are kept in accordance with the home country's GAAP; and 2) the books reasonably reflect the cost to produce and sell the merchandise. In the instant case, it is unchallenged that the unadjusted per-unit costs are derived from Husteel's normal books and that those books are in accordance with Korean GAAP. Hence, the question facing the Department is whether the per-unit costs from Husteel's normal books reasonably reflect the cost to produce and sell the merchandise under consideration.

Based on an analysis of Husteel's reported cost data, the Department continues to find that the fluctuation in costs between CONNUMs cannot be explained by the differences in the physical characteristics of those CONNUMs.... Based on the foregoing discussion, *i.e.*, the fact that the reported costs for different products do not reflect cost differences that logically result from differences in the products' physical characteristics, the Department finds that Husteel's HRC costs do not reasonably reflect POR average costs.... Thus, for these final results, *the Department reallocated Husteel's reported raw material costs among products of the same pipe grade, nominal pipe size, surface finish, and end finish (coupled-versus non-coupled pipe) and fabrication costs among products of the same thickness, surface finish, and end finish.*³³² (Emphasis added.)

Commerce reiterated this point in *CORE from Korea*.³³³ There Commerce found,

{We} mitigated these distortive cost fluctuations, by smoothing Hyundai's reported per-unit costs by weight-averaging direct material costs among products of the same finish type, reduction process, coating metal, coating weight, coating process, quality, and yield strength. While smoothing out the costs by weight averaging {CONNUMs} over certain characteristics does not eliminate all differences, it balances the need to use cost differences for certain purposes within an antidumping duty proceeding and the requirement to use a respondent's normal books and records as the starting point.³³⁴

³³² See *CWP from Korea*, and accompanying IDM at Comment 1.

³³³ See *CORE from Korea*, and accompanying IDM at Comment 9.

³³⁴ *Id.*

We find it appropriate to mitigate cost fluctuations, by smoothing POSCO's reported unit costs by weight-averaging conversion costs among products of the same nominal thickness, nominal width, and form.³³⁵ Smoothing or weight-averaging ensures that the product specific costs we use for the sales-below-cost test, CV, and the DIFMER adjustment reflect the physical characteristics of the products whose sales prices are used in Commerce's dumping calculations. Smoothing also allows us to rely as much as possible on the respondent's normal books and records. The record shows that POSCO maintains its books and records in accordance with Korea's generally accepted accounting principles, and that POSCO reported CONNUM-specific costs derived from its actual accounting system.³³⁶ As discussed above, POSCO's accounting system is typical for a large integrated steel producer, and we determine that POSCO maintains its books and records in a manner that reasonably reflects the cost associated with the production and sales of the merchandise under review. Therefore, we have continued to use POSCO's reported COP and CV data for the final results. However, we performed an analysis of the per-unit costs to determine the extent of the cost fluctuations.³³⁷ While there were some fluctuations in material costs between similar products, they were not on the whole significant or frequent. For conversion costs, we found significant differences that effected the majority of the reported CONNUMs. Because we find that CONNUM cost differences exist due to the combining of production from multiple mills, differences in timing of production, and production quantities produced in batches, we have smoothed conversion costs.³³⁸ We then recalculated the general and administrative expenses and the financial expenses by applying the corresponding rate to the revised costs.

Comment 18: Whether Commerce Should Apply the Quarterly Cost Methodology to POSCO

Petitioners' Comments:

- Commerce should reject POSCO's request for quarterly costs, because POSCO's claim that "significant fluctuations in POSCO's main raw material costs... affected the finished goods prices"³³⁹ is not support by record evidence.
- Commerce usually makes a two-step analysis before substituting its normal methodology of calculating an annual weight-average cost with an alternative cost reporting methodology.³⁴⁰
- Commerce's two-step analysis requires demonstrating a significant change in cost (defined as a greater than 25 percent change in cost of manufacturing between the high and low quarters during the POR), and then demonstrating a linkage between costs and sales information.
- As the 25 percent threshold is based on a 12-month period of investigation/review, Commerce typically annualizes the 25 percent threshold when the POR is greater than 12 months.³⁴¹

³³⁵ See POSCO's Final Analysis Memorandum.

³³⁶ See POSCO's Section B/C/D/E Response at D-30, "Description of Response Methodology".

³³⁷ See POSCO's Final Analysis Memorandum.

³³⁸ *Id.*

³³⁹ See Petitioners' Cost Case Brief at 35 (citing POSCO's Section B/C/D/E Response at D-3).

³⁴⁰ *Id.* at 35-36 (citing *Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 53428 (August 12, 2016), and accompanying IDM at Comment 6).

³⁴¹ *Id.* at 36 (citing *Stainless-Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008) (*SSPC Belgium Final*), and accompanying IDM at Comment 4).

- POSCO's failure to report CONNUM-specific costs, and its inclusion of timing differences, has led to the distortion of per-unit costs. Without accurate CONNUM-specific costs, Commerce has no means to determine if there is linkage between cost and sales information.
- Even if Commerce does reach the second prong of the analysis, three of the five CONNUMs do not show a link between the sales price and costs.
- POSCO's submitted U.S. sale comparison charts incorrectly compared the costs in Korean won with a U.S. sale price that was exchanged to Korean won.
- For both the U.S. and home market comparison, POSCO incorrectly calculated net U.S. prices and home market prices.
- Commerce does not convert U.S. sales prices to a different currency for its analysis, because it is looking to see if the sale price reflects the same trend shown in the costs.
- Commerce does not rely on "net prices" for the linkage comparison, and instead uses the sale prices.³⁴²
- POSCO's claim that quarterly costs should be used based on significant fluctuations in POSCO's coal and iron ore costs is belied by the inventory movement exhibit for these raw materials that POSCO provided, which demonstrates that POSCO reported standard costs for iron ore and coal inventory values, and not actual costs.
- Reporting its raw material inventory movement using standard cost does not provide Commerce a reasonable basis to determine if POSCO incurred actual and significant fluctuations in coal and iron ore prices.
- POSCO provided new factual information at verification that regarding actual costs that should be disregarded, as it was presented after the record had closed for new information.
- POSCO's new factual information is irrelevant regardless, as POSCO's books and records are maintained in Korean won and Commerce is examining the request for quarterly costs on a Korean won basis.
- Commerce obtained information at verification that demonstrates that the price paid by POSCO for the same type of coal and in the same period varied widely for affiliated and unaffiliated purchases.
- To assess whether there are significant fluctuations in coal prices that are not associated with prices from affiliated parties, Commerce would need to know monthly volume and value totals separately for affiliated and unaffiliated suppliers, and would have to adjust the affiliated party values to market prices.³⁴³
- The other party in this review, Hyundai Steel, makes no claim that quarterly costs are appropriate, even though it consumes the same raw materials and would be subject to the same price fluctuations. It is unlikely that Hyundai Steel and POSCO would have dramatically different raw material prices.

POSCO's Rebuttal:

- Commerce fully verified the quarterly cost issue, and it is appropriate to rely on quarterly costs in this review.

³⁴² *Id.* at 37 (citing *See Steel Pipe from Korea*, and accompanying IDM at Comment 1).

³⁴³ *Id.* at 39 (citing *Grain-Oriented Electrical Steel from the Czech Republic: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 58324 (September 29, 2014) at 20).

- Commerce verified that POSCO's quarterly cost reporting methodology demonstrates "a significant change between the highest and lowest COM between quarters within the POR for the majority of the top five most frequently sold CONNUMs in the U.S. market and the top five most frequently sold CONNUMs in the home market."³⁴⁴
- Commerce further verified that the information provided by POSCO in POSCO's Section B/C/D/E Response "shows a reasonable correlation between the sales prices for these CONNUMs and their costs during the POR."³⁴⁵
- U.S. prices were listed in the information provided by POSCO; Korean won prices were provided as well so that the prices and costs were on the same basis.
- The petitioners' argument regarding POSCO's use of standard costs ignores the fact that POSCO revises its standard costs on a monthly basis, considering the market price and market conditions.
- The accuracy of POSCO's standard cost is confirmed by the variance reported for the fiscal year.
- The petitioners' argument regarding Hyundai Steel's non-use of quarterly costs is irrelevant, as neither the Act nor Commerce's past practice mandates a country-wide determination regarding quarterly costs. Such determinations are based on company-specific information.
- Commerce should reject the petitioners' proposed adjustments to the cost of manufacture for affiliated party purchases that were not at arms'-length prices.
- The petitioners' proposed adjustments are incorrectly calculated, and Commerce verified that all the differences between the prices paid to affiliated and unaffiliated suppliers for the largest inputs were due to differences in the quality of material purchased from the different sources.
- The information POSCO provided in POSCO's Section B/C/D/E Response, as well as the Supplemental Section D Response,³⁴⁶ demonstrates that POSCO receives no benefit when purchasing from affiliated suppliers, as a comparison of average prices, without consideration of timing or quality, demonstrates that prices paid to affiliates were sometimes higher than the price paid to unaffiliated suppliers, and sometimes lower.
- Commerce verified that cost differences related to coal were related to the chemical composition of the coal (*i.e.*, a higher nitrogen or sulfur/volatile matter content), rather than POSCO's relationship to the supplier, or to variations between prices based on contracts and spot transactions.
- Purchases of ferro-alloys demonstrate an even larger spread between affiliated and unaffiliated party prices, which are related to chemical composition or pricing methods.
- The record indicates that POSCO deals with affiliated parties in the same manner in which it deals with unaffiliated parties, and has been verified by Commerce.
- All raw material purchases factor the quality of the material into the negotiated price, which explains why there is no pattern in the comparison between affiliated and unaffiliated party purchases.
- The petitioners erred in their suggested adjustments to the cost of manufacture, mistakenly dividing the total purchases of the input from the affiliated party by the cost of manufacture

³⁴⁴ See POSCO's Cost Rebuttal at 6-7 (citing Cost Verification Report at 9).

³⁴⁵ *Id.*

³⁴⁶ *Id.* at 9 (citing Letter from POSCO, "Certain Hot-Rolled Steel Flat Products from Korea, Case No. A-580-883: Response to Section D of Supplemental Sections C-E Questionnaire," dated September 12, 2018 (Supplemental Section D Response)).

only for hot-rolled products, when POSCO requires the same inputs for other goods that it produces.

- The correct denominator for any adjustment is the total cost of manufacture.
- The petitioners included titanium square ingots and slab/blooms in the proposed calculation adjustment, with 90 percent of the petitioners' proposed adjustment accounted for by slab purchases. Yet there is no record information to justify the inclusion of slab in an affiliated party purchase adjustment in the production of the subject merchandise.
- The miniscule quantity of slab purchased from an unaffiliated supplier, compared to the affiliated party purchase total, strongly suggest that the unaffiliated party purchase was an outlier, not representative of POSCO's purchase history, and not a valid comparison price for affiliated party sales.
- Any adjustment to POSCO's reported purchase prices for coal or ferro-alloy materials should only be applied to the inputs used in the production of the subject merchandise.

Commerce's Position: We find that the continued application of the quarterly cost averaging methodology is warranted in this review, as the use of the alternative quarterly cost-averaging methodology in this case is supported by record evidence and is in accordance with law. Our normal practice is to calculate weighted average costs for the period of investigation (POI) or POR.³⁴⁷ 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.³⁴⁸ 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.³⁴⁹

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

³⁴⁷ 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.

³⁴⁸ 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; and *Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 53428 (August 12, 2016), and accompanying IDM at Comment 6.

³⁴⁹ See *CORE from Taiwan*, and accompanying IDM at Comment 1.

quarter and 6.25 percent for the sixth quarter of the POR), and found that POSCO experienced significant cost changes during the POR.

Since Commerce found changes in POSCO's costs to be significant, we evaluated whether there is evidence of linkage between the cost changes and the sales prices during the shorter cost periods within the POR. Commerce has previously explained that our definition of linkage does not require direct traceability between specific sales and their specific production costs, but rather relies on whether there are elements which would indicate a reasonably positive correlation between the underlying costs and the final sales prices charged by a company.³⁵⁰ Commerce acknowledges that being able to reasonably link sales prices and costs during a shorter cost period is important in deciding whether to depart from our normal annual average cost methodology. However, requiring too strict a standard for linkage would unreasonably preclude this remedy for products where there is no pricing mechanism in place and it may be very difficult to precisely link production costs to specific sales. In this case, we evaluated whether the sales prices during the shorter cost averaging period were reasonably correlated with the COM during the same period. As noted above, our definition of linkage does not require direct traceability between specific sales and their specific production costs. These correlative elements may be measured in a number of ways depending on the associated industry, the overall production process, the inventory tracking systems, company specific sales data, and pricing mechanisms used in the normal course of business (*e.g.*, surcharges, raw material pass through devices).

To facilitate our analysis, we asked POSCO to provide a comparison, by quarter, of the weighted average sales prices for the five most frequently sold CONNUMs in the home market and the five most frequently sold CONNUMs in the U.S. market to the quarterly COM. The information provided by POSCO reveals that sales and costs for each of these CONNUMs generally trended in the same direction for the majority of the products analyzed. Our analysis demonstrates a reasonable correlation between changing costs and sales prices,³⁵¹ and accordingly is sufficient to establish a reasonable link between the changes in POSCO's COM and the changes in sales prices.

Finally, based on our analysis, we agree with the petitioners that prices for certain inputs purchased by POSCO from affiliated suppliers were not at arm's length.³⁵² Therefore, we made the corresponding adjustments to the cost of such inputs to reflect the market price for the inputs.³⁵³

³⁵⁰ See *Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008), and accompanying Issues and Decision Memorandum at Comment 4; see also *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 74 FR 6365 (February 9, 2009), and accompanying Issues and Decision Memorandum at Comment 5; *Certain Pasta from Italy: Notice of Final Results of the Twelfth Administrative Review*, 75 FR 6352 (February 9, 2010) and accompanying Issues and Decision Memorandum at Comment 5; and *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.

³⁵¹ See POSCO's Final Analysis Memorandum.

³⁵² *Id.* at Attachment 1.

³⁵³ *Id.*

VI. RECOMMENDATION

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

☒

☐

Agree

Disagree

6/21/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance