



December 16, 2019

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

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

SUBJECT: Issues and Decision Memorandum for the Final Results in the
2016-2018 Antidumping Duty Administrative Review of Carbon
and Alloy Steel Cut-to-Length Plate from the Republic of Korea

I. Summary

On July 17, 2019, the Department of Commerce (Commerce) published the *Preliminary Results* of the 2016/18 antidumping duty administrative review of carbon and alloy steel cut-to-length plate (CTL plate) from the Republic of Korea (Korea).¹ The period of review (POR) is November 14, 2016 through April 30, 2018. We analyzed the case and rebuttal briefs that interested parties submitted on the record. Based on our analysis of comments received, we made certain changes to the *Preliminary Results*. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

Below is a complete list of the issues for which we received comments from parties:

- Comment 1: Collapsing POSCO with Certain Affiliated Companies
- Comment 2: Treatment of Collapsed Company Names
- Comment 3: Double-Counting of Freight Revenue
- Comment 4: CEP Offset
- Comment 5: Sales to Affiliated Parties
- Comment 6: Miscellaneous Income Offset to General and Administrative Expenses
- Comment 7: Purchases from Affiliated Suppliers
- Comment 8: Costs Related to Greenhouse Gases
- Comment 9: Cost Averaging Adjustments
- Comment 10: Revaluation of Defective Slabs
- Comment 11: Hyundai’s No-Shipment Claims

¹ See *Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2018*, 84 FR 34119 (July 17, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

II. Background

On July 12, 2018, Commerce initiated this administrative review of the antidumping duty order on CTL plate from Korea.² Commerce exercised its discretion to toll deadlines affected by the partial government closure from December 22, 2018 through the resumption of operations on January 29, 2019.³ On July 17, 2019, Commerce published the *Preliminary Results*. We invited parties to comment on the *Preliminary Results*. On August 23, 2019, Hyundai Steel Company (Hyundai Steel), POSCO, and the petitioners⁴ filed case briefs.⁵ On September 4, 2019, POSCO and the petitioners filed rebuttal briefs.⁶ On November 26, 2019, we issued a letter to POSCO requesting that it withdraw its request for business proprietary treatment of the names of certain affiliated companies which were preliminarily collapsed with it, in the event that Commerce continues to collapse the companies in the final results.⁷ On December 3, 2019, POSCO filed a letter granting permission to disclose the names of these companies in the event of collapsing.⁸

III. Changes from the Preliminary Results

1. We used POSCO's reported PROVALH instead of its reported GRSUPRH as the starting price variable in our calculation of normal value (NV). *See* Comment 3.
2. We excluded all of POSCO's reported home market sales of CTL plate to its affiliates which we have collapsed into the POSCO single entity. *See* Comment 5.⁹
3. We adjusted POSCO's reported general and administrative (G&A) expenses to exclude an offset for miscellaneous income and other miscellaneous gains. *See* Comment 6.

² *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 32270 (July 12, 2018).

³ *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.

⁴ The petitioners are ArcelorMittal USA LLC (AMUSA), Nucor Corporation, and SSAB Enterprises LLC. However, only AMUSA filed a case brief.

⁵ *See* Hyundai Steel's Letter, "Carbon and Alloy Steel Cut-to-Length Plate from Korea – Case Brief" (Hyundai Steel's Case Brief); POSCO's Letter, "Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Case Brief of POSCO" (POSCO's Case Brief); and Petitioners' Letter, "Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Petitioners' Case Brief" (Petitioners' Case Brief), all dated August 23, 2019.

⁶ *See* POSCO's Letter, "Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea – Rebuttal Brief of POSCO" (POSCO's Rebuttal Brief); and Petitioners' Letter, "Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Petitioners' Rebuttal Brief" (Petitioners' Rebuttal Brief), both dated September 4, 2019.

⁷ *See* Commerce's Letter, "2016-2018 Administrative Review of Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea," dated November 26, 2019.

⁸ *See* POSCO's Letter, "Carbon and Alloy Steel Cut-to-Length Plate from Korea: POSCO's Response to the Department Letter to Withdraw Request for Proprietary Treatment of Certain POSCO Customers," dated December 3, 2019 (POSCO's Consent Letter).

⁹ *See* Memorandum, "Final Results Calculation for POSCO in the Antidumping Duty Administrative Review of Certain Carbon and Alloy Steel Cut to Length Plate from the Republic of Korea," dated concurrently with this Memorandum (Final Sales Calculation Memorandum).

4. We weight-averaged POSCO's reported OTHDIRMAT for certain CONNUMs.¹⁰ *See* Comment 9.¹¹
5. We found that Hyundai Steel and Hyundai Glovis Co. Ltd. (Hyundai Glovis) made no shipments to the United States during the POR.

IV. Discussion of Issues

Comment 1: Collapsing of POSCO with Certain Affiliated Companies

*POSCO's Case Brief.*¹²

- Commerce's preliminary decision to collapse POSCO with 16 affiliated entities appears to conflate the concept of collapsing with Commerce's sales reporting requirements concerning affiliated customers. POSCO does not dispute its obligations to report downstream sales of affiliated resellers. However, Commerce's decision to "collapse" POSCO with its affiliated home market customers is erroneous and POSCO requests Commerce to revisit this decision in the final results.
- Under its regulations, Commerce analyzes whether affiliated producers of subject merchandise should be treated as a single entity ("collapsed") for antidumping purposes by looking to the level of affiliation and whether there is "significant potential for manipulation of price or production" between the parties.¹³
- In the *Preliminary Results*, Commerce applied this framework and determined that "the record continues to indicate" that POSCO is affiliated with the 16 companies "because POSCO continues to hold a greater than 5 percent equity interest in {each company}."¹⁴
- POSCO continues to challenge this overly broad application of the regulatory framework. As a general matter, Commerce has made clear that its general practice is not to collapse affiliated parties except in certain relatively unusual situations when the type and degree of relationship is so significant there is a strong possibility of price manipulation.¹⁵
- Here, the record confirms that the nature of these companies' operations, the level of affiliation among the parties, and the limited transactions with POSCO do not justify collapsing these companies with POSCO.
- With respect to the eight affiliated customers that do not process or resell CTL plate products, the record demonstrates that these entities do not meet the criteria for collapsing as established in 19 CFR 351.401(f), and therefore, Commerce should not collapse these companies with POSCO in the final results.

¹⁰ A product control number (CONNUM) is the concatenation of the reported physical characteristic codes which define a unique product for the purposes of Commerce's dumping analysis.

¹¹ *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Results – POSCO and Daewoo International Co., Ltd.," dated concurrently with this Memorandum (Final Cost Calculation Memorandum).

¹² *See* POSCO's Case Brief at 3-33.

¹³ *Id.* at 4 (citing 19 CFR 351.401(f)).

¹⁴ *Id.* (citing 19 U.S.C. 1677(33)(E) and Memorandum, "2016-2018 Antidumping Duty Administrative Review of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: POSCO Affiliation and Collapsing," dated July 17, 2019 at 2 (Preliminary Collapsing Memorandum)).

¹⁵ *Id.* (citing *Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany*, 54 FR 18992 (May 3, 1989)).

- Specifically, Commerce’s regulations require that, to collapse two entities, Commerce must find, as a threshold matter, that the producers at issue “have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities.”¹⁶
- It is evident from the record that none of these companies is a producer or reseller of CTL plate, and thus it would require substantial retooling to restructure manufacturing priorities at these companies to conduct the same manufacturing operations as POSCO.¹⁷
- Commerce has previously determined not to collapse companies that are not producers, stating that: “[i]t is undisputed that {the affiliate in question} is not a producer of subject merchandise or any other product. For this reason, Commerce’s regulations do not apply to the question of collapsing {the respondent} and {the affiliate} into a single entity for purposes of this antidumping investigation.”¹⁸
- Commerce has similarly declined to collapse entities which “no longer ha{ve} the ability or intention to produce or export similar or identical products,”¹⁹ and stated in its preliminary collapsing analysis that “Commerce’s regulations do not address the treatment of non-producing entities (e.g., exporters).”²⁰
- Commerce should also decline to collapse these eight companies because they fail the remainder of Commerce’s regulatory criteria which dictate the collapsing analysis, namely, those that require the affiliated producers demonstrate “significant potential for manipulation.”²¹ Specifically, Commerce has not established that the eight companies at issue here meet the regulatory criteria regarding common ownership, management, and operations.
 - Regarding common ownership, the small level of ownership overall in these companies does not rise to the level of significant common ownership as required by the regulations.
 - Commerce has found that there must be “significant” potential for price and cost manipulation, which goes beyond the potential for manipulation that arises due to affiliation.²²
 - With respect to management, Commerce did not discuss this criterion and made no finding with regard to this criterion in the *Preliminary Results*. Commerce has not relied on this criterion in its collapsing decision, and there is no record of shared employees or managers among POSCO and the eight affiliated customers.
 - Lastly, concerning operations, Commerce summarily concluded, without explanation or analysis, that it “continue{s} to find that there are intertwined operations through sharing of sales information, involvement in production and pricing decisions, and significant transactions between affiliated producers.”²³

¹⁶ *Id.* at 6-7 (citing 19 CFR 351.401(f)).

¹⁷ *Id.* at 7-8 (citing POSCO’s Section A Questionnaire Response (POSCO’s AQR) at Exhibit A-4-B, A-12, Appendix I and Preliminary Collapsing Memorandum at 2).

¹⁸ *Id.* at 9 (citing *Light-Walled Rectangular Pipe and Tube from Turkey: Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53675 (September 2, 2004), and accompanying Issues and Decision Memorandum (IDM) at Comment 5).

¹⁹ *Id.* (citing *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission*, 73 FR 15479 (March 24, 2008) (*Certain Frozen Fish Fillets from Vietnam*), and accompanying IDM at Comment 5).

²⁰ *Id.* (citing Preliminary Collapsing Memorandum at 3).

²¹ *Id.* at 10 (citing 19 CFR 351.401(f)(2)).

²² *Id.* at 11 (citing *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27345 (May 19, 1997)).

²³ *Id.* at 12 (citing Preliminary Collapsing Memorandum).

- However, there is no record evidence of intertwined operations between POSCO and any of the 16 affiliates, let alone for the eight affiliates which do not produce or resell subject merchandise.
 - Further, even assuming the operations are intertwined, there is nothing on the record to suggest a significant potential for manipulation of prices or costs as the companies neither producer nor sell subject merchandise.
- POSCO challenges Commerce’s collapsing determination with respect to its two affiliated home market resellers, POSCO Processing & Service Co., Ltd. (POSCO P&S) and POSCO Daewoo Corporation (PDW).
 - Specifically, the resellers are not producers of subject merchandise and would require substantial retooling to produce subject merchandise. 19 CFR 351.401(f) expressly refers to “affiliated producers” only, not to pure resellers.
 - None of the cases cited by Commerce in the *Preliminary Results* as support for its assertion that “Commerce has considered {non-producing} affiliated entities (where appropriate), as a single entity” are analogous to the issue here.²⁴
 - Namely, in both *Certain Hot Rolled Flat Steel Products from Australia* and *Certain Welded Carbon Steel Standard Pressure Pipes and Tubes from India*, Commerce merely addressed an affiliated processor and affiliated toller, respectively, rather than a pure reseller.²⁵
 - In fact, in *Certain Welded Carbon Steel Standard Pressure Pipes and Tubes from India*, Commerce chose not to collapse another affiliated company which was “not involved in the sale of subject merchandise” because Commerce determined that the affiliate could not produce subject merchandise without substantial retooling.²⁶
 - Like the above affiliated reseller, neither POSCO P&S nor PDW could produce the merchandise without substantial retooling, and neither company is a processor or manufacturer.
- POSCO challenges Commerce’s collapsing determination with respect to the four affiliated home market service center customers.
 - First, despite Commerce’s finding in the *Preliminary Results*, the service centers are not producers of subject merchandise and to the extent they are, they would require substantial retooling.
 - The service centers’ role with respect to the production of subject merchandise relates solely to minimal further processing in the form of slitting or shearing hot rolled coils produced by POSCO into CTL plate.²⁷ These activities do not establish that the service centers are “producers” for purposes of collapsing.²⁸

²⁴ *Id.* at 15 (citing Preliminary Collapsing Memorandum at 2-3).

²⁵ *Id.* at 16-19 (citing *Certain Hot Rolled Steel Flat Products from Australia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 15241 (March 22, 2016) (*Certain Hot Rolled Flat Steel Products from Australia*) (citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004)); and *Certain Welded Carbon Steel Standard Pressure Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 33578 (June 14, 2010) (*Certain Welded Carbon Steel Standard Pressure Pipes and Tubes from India*)).

²⁶ *Id.* at 18-19 (citing *Certain Welded Carbon Steel Standard Pressure Pipes and Tubes from India*, 75 FR at 33580-81).

²⁷ *Id.* at 22 (citing POSCO’s AQR at A-15).

²⁸ *Id.* (citing 19 CFR 351.401(f)).

- Commerce has previously found, where affiliated companies did not create subject merchandise, but instead “purchase... from other sources and may further process it,” such companies “do not have the capability to ‘produce’ the merchandise under consideration” and accordingly were not “producers” within the regulation.²⁹
- The same situation is presented here, as the service centers at issue do not have the capacity to produce subject merchandise, but rather, they must purchase steel produced from suppliers, such as POSCO, “and may further process it.”³⁰
- Even if Commerce considers the affiliated service centers to be “producers” by virtue of cutting hot rolled steel into CTL plate, the record establishes that the service centers are involved in the processing of only a minor subpart of POSCO’s subject merchandise and would need to undergo substantial retooling to produce the full range of CTL plate products that POSCO produces and sells.³¹
- The rest of the regulatory criteria do not suggest a significant potential for manipulation of price or production with respect to the affiliated service centers; specifically, POSCO owns only a minority share of these four entities, there is no record evidence of shared management or intertwined operations, and the several entities’ transactions account for an insignificant share of POSCO’s total home market sales of subject merchandise.³²
- Lastly, the record demonstrates that POSCO owns a minimal interest (*i.e.*, under five percent) in the remaining home market customers at issue, and pursuant to the statutory definition of an affiliated entity, this company is not affiliated with POSCO.³³
- Commerce provided no explanation as to why it considered as part of POSCO in the *Preliminary Results*.

*Petitioners’ Rebuttal Brief:*³⁴

- Commerce’s collapsing regulation is not limited to producers or resellers of “subject merchandise.” Rather the regulations require affiliates to have facilities for “similar or identical products” that would not require substantial retooling of either facility in order to restructure manufacturing priorities.”³⁵ Commerce rejected the same argument in *Aluminum Foil from China*.³⁶
- POSCO’s reliance on *Certain Cold-Rolled Carbon Steel Products from France*³⁷ is inapposite as that case did not deal with collapsing producers of “similar or identical”

²⁹ *Id.* (citing *Notice of Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from France*, 67 FR 62114 (October 3, 2002) (*Certain Cold-Rolled Carbon Steel Flat Products from France*), and accompanying IDM at comment 25; and *Stainless Steel Sheet and Strip in Coils from Taiwan: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 71 FR 45521 (August 9, 2006) (*Stainless Steel Sheet and Strip in Coils from Taiwan*)).

³⁰ *Id.* at 23 (citing POSCO’s AQR at A-15).

³¹ *Id.* (citing POSCO’s AQR at A-6 and A-15).

³² *Id.* at 25-27 (citing POSCO’s AQR at Exhibit A-5-C, POSCO’s April 5, 2019 Supplemental Section D Questionnaire Response (POSCO’s SDQR) at Exhibit SD-9, and POSCO’s May 13, 2019 Supplemental Sections A-C Questionnaire Response (POSCO’s SABCQR at SA-7)).

³³ *Id.* at 27-28 (citing 19 U.S.C. 1677(33) and 19 CFR 351.401(f)).

³⁴ *See* Petitioners’ Rebuttal Brief at 1-26.

³⁵ *Id.* at 5 (citing 19 CFR 351.401(f)(1)).

³⁶ *Id.* at 6 (citing *Certain Aluminum Foil from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018) (*Aluminum Foil from China*) and accompanying IDM at 25-26).

³⁷ *Id.* at 6 (citing POSCO’s Case Brief at 22 (citing *Certain Cold-Rolled Carbon Steel Flat Products from France*, 67 FR at 62114 and accompanying IDM at comment 25 (*CRS from France* IDM)).

merchandise, but instead examined “the cost of producing the subject merchandise.” It is thus inapplicable to Commerce’s collapsing regulation.³⁸

- POSCO’s reliance on *Stainless Steel Sheet and Strip in Coils from Taiwan*³⁹ is also inapposite. In that case, Commerce assessed whether a respondent was the producer of certain products for purposes of calculating NV. The collapsing regulation was not at issue, and Commerce was not required to determine whether the respondent was a producer of “similar or identical” merchandise.
- Affiliates need not be “producers” to be collapsed. Commerce has a long-established practice of collapsing non-producing entities, such as resellers, to prevent the manipulation of pricing and production.
- For example, in *NOES from Korea*,⁴⁰ Commerce specifically noted that while 19 CFR 351.401(f)(1) “applies only to producers,” the agency “finds it to be instructive in determining whether non-producers should be collapsed,”⁴¹ as well. Indeed, Commerce there collapsed POSCO with an affiliate, despite that affiliate qualifying as a non-producer,⁴² and the agency has done so in other cases as well.⁴³
- The U.S. Court of International Trade (CIT) has also sustained the agency’s practice of collapsing affiliated producers with non-producers in *U.S. Steel Corp.*⁴⁴
- POSCO’s reliance on the determination in *LWR Pipe and Tube from Turkey*⁴⁵ is misplaced. Therein, Commerce considered whether to collapse a respondent with an affiliated input supplier for purposes of calculating the respondent’s cost of production, instead of applying the major input rule with respect to the affiliate’s transfers of raw materials to the respondent.⁴⁶ That determination is consistent with Commerce’s authority to collapse producers of “similar” products *and* non-producers. Thus, Commerce should reject POSCO’s claim that only “producers” can be collapsed.
- POSCO’s claim that service centers cannot be collapsed because they are only involved in a “minimal further processing” part of the production process is wrong. Commerce is not required to find substantial retooling in both directions. The focus of the determination is on what products can be produced rather than whether retooling is

³⁸ *Id.* at 7 (citing *CRS from France* IDM at 35).

³⁹ *Id.* (citing POSCO’s Case Brief at 22 (citing *Stainless Steel Sheet and Strip in Coils from Taiwan*, 71 FR at 45527)).

⁴⁰ *Id.* at 8 (citing *Non-Oriented Electrical Steel from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 79 FR 29426 (May 22, 2014) (*NOES from Korea*), and accompanying PDM (*NOES from Korea* PDM), unchanged in the *Final Results*, 79 FR 61612 (October 14, 2014) and accompanying IDM (*NOES from Korea* IDM)).

⁴¹ *Id.* (citing *NOES from Korea* PDM at 1-11).

⁴² *Id.* (citing *NOES from Korea* IDM at 1).

⁴³ *Id.* (citing *Forged Steel Fittings from the People’s Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 83 FR 22948 (May 17, 2018), and *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 FR 44395 (July 31, 2014)).

⁴⁴ *Id.* at 9 (citing *United States Steel Corp. v. United States*, 179 F. Supp. 3d 1114, 1135-42 (CIT 2016) (*U.S. Steel Corp.*) at 1135-36).

⁴⁵ *Id.* at 10 (citing *Light-Walled Rectangular Pipe and Tube from Turkey: Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53675 (September 2, 2004) (*LWR Pipe and Tube from Turkey*), and accompanying IDM (*LWR Pipe and Tube from Turkey* IDM)).

⁴⁶ *Id.* (citing *LWR Pipe and Tube from Turkey* IDM at 21).

needed to be equivalent. Minimal retooling need only flow in one direction for there to be potential for manipulation.

- The U.S. Court of Appeals for the Federal Circuit (CAFC) has held that Commerce’s collapsing regulation requires two affiliated producers to produce similar products, not have similar production facilities.⁴⁷ Thus, because the service centers make similar products, *i.e.*, in-scope CTL plate, as does POSCO, the regulation is satisfied.
- Commerce has repeatedly found the Korean steel market to be distorted by “strategic alliances,” many involving POSCO itself.⁴⁸ This underlying environment, coupled with POSCO’s ownership of its affiliated customers, and the intertwined sales and production operations of these affiliates, demonstrate that Commerce should continue to collapse.
- It is a commercial reality that Korean companies cooperate and collaborate so extensively that they produce and perpetuate a particular market situation. Commerce is properly vigilant in recognizing corporate groupings where domestic sales, export sales, and production costs may be distorted by equity and non-equity relationships.⁴⁹
- There is no better illustration of the systemic nature of POSCO’s intensive relationship, control, and strategic planning with and through its affiliates than the multi-stage absorption of various related parties, whereby the legacy affiliates of POSCO subsidiaries and the legacy Daewoo International Corp. companies were systematically reorganized and merged.⁵⁰
- POSCO objects to the collapsing of its affiliated parties that did not produce or resell subject merchandise during the POR but consumed it. However, all of these companies are owned or controlled by POSCO and are steel companies. Therefore, both production and reselling activities would not require substantial retooling of facilities.
 - POSCO’s reliance on *Certain Frozen Fish Fillets from Vietnam*,⁵¹ where fish-processing companies no longer had the ability to produce or export similar or identical fish products, is misplaced because each of the affiliates here that consumed subject merchandise had the ability to produce or resell it.
 - POSCO is also incorrect to dismiss the potential for manipulation due to the level of POSCO’s equity ownership. With respect to three of the companies, POSCO has a majority interest, while POSCO has the power to influence and control the rest.⁵²
 - Many of the companies in question are doubly intertwined in POSCO’s operations. As shown in Exhibit A-3-A certain companies are designated as

⁴⁷ *Id.* at 11 (citing *Viraj Group v. United States*, 476 F.3d 1349 (CAFC 2007) (*Viraj Group*)).

⁴⁸ *Id.* at 12 (citing *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 3; and *Preliminary Results of the Antidumping Duty Administrative Review: Certain Oil Country Tubular Goods from Korea*, 81 FR 24800 (October 5, 2016), and accompanying IDM at 5, 7.

⁴⁹ *Id.* (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 17146 (April 11, 2018), and accompanying IDM at 15).

⁵⁰ *Id.* at 14 (citing POSCO’s December 6, 2018 Sections B, C and D Questionnaire Response (POSCO’s BCDQR) at B-31).

⁵¹ *Id.* at 15 (citing *Certain Frozen Fish Fillets from Vietnam*, 73 FR at 15479, and accompanying IDM at comment 5.C).

⁵² *Id.* at 16 (citing POSCO’s Case Brief at 11).

- involved in the subject merchandise operations and also are shown as affiliated suppliers of goods and services in the cost response.⁵³
- POSCO objects to being collapsed with its affiliated resellers because they are not also producers.
 - POSCO recognizes that in *Certain Hot Rolled Steel Flat Products from Australia*, Commerce collapsed related entities, noting that 19 CFR 351.401(f) was “instructive in determining whether non-producers should be collapsed,” but claims the expanded collapsing exercise in that case is “not analogous” to this review.⁵⁴ However, that is directly contradicted by Commerce’s language in *Certain Hot Rolled Steel Flat Products from Australia*, which clearly states that 19 CFR 351.401(f) applies in cases where non-producers are collapsed.
 - POSCO’s affiliated resellers PDW and POSCO P&S account for a significant volume of all home market POR mill direct sales by POSCO.⁵⁵
 - The history of both of these companies is also critical. PDW is the result of the POSCO group’s multi-year absorption of the formerly independent Daewoo group of companies. There can be no clearer evidence of both the intent and ability of POSCO to exert maximum control over all channels of production, sales and processing as the transformations that led to the new PDW.
 - These affiliated resellers are also doubly involved in POSCO’s operations both as resellers and suppliers of goods and services, as reported in the cost response.⁵⁶ POSCO’s engagement with each of these companies occurs for both domestic and export sales.⁵⁷
 - POSCO’s attempt to minimize the potential for manipulation on the stance that there is an absence of board members between the companies is without merit. The presence of board members is considered as a complementary element of control when ownership is not significant. Here, the affiliated resellers are absolutely under majority control of POSCO. The parent company can exercise control or restraint on both a *de facto* and *de jure* basis based on its equity stakes alone.
 - POSCO fails to deny all evidence of intertwined operations simply because POSCO, PDW and POSCO P&S have separate physical facilities.⁵⁸ The record is replete with evidence regarding the remaining elements of intertwined operations, including the sharing of sales information, involvement in production and pricing decisions, etc.⁵⁹
 - POSCO objects to being collapsed with its affiliated service centers.⁶⁰ POSCO has provided no new factual basis to change the analysis that resulted in collapsing in the original investigation.⁶¹

⁵³ *Id.* at 17 (citing POSCO’s April 5, 2019 Supplemental Section D Questionnaire Response (POSCO’s SDQR) at Exhibit SD-3B).

⁵⁴ *Id.* (citing POSCO’s April 8, 2019 Supplemental Sections B-C Questionnaire Response (POSCO’s SBCQR) at 2 and 17, SB-2, Exhibit SB-Q1-A (POSHM02 sales database)).

⁵⁵ *Id.* at 18 (citing POSCO’s POSHM02 sales database).

⁵⁶ *Id.* at 20 (citing POSCO’s SDQR at Exhibit SD-3B).

⁵⁷ *Id.* at 21 (citing POSCO’s AQR at A-12 and A-13).

⁵⁸ *Id.* (citing to POSCO’s Case Brief at 20).

⁵⁹ *Id.* (citing to Petitioners’ Case Brief at 62-67).

⁶⁰ *Id.* at 22 (citing to POSCO’s Case Brief at 20-26).

⁶¹ *Id.* at 23 (citing to *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Final*

- As reported in the original investigation, the affiliated service centers manufacture subject merchandise from the slitting of coils; therefore, no retooling at all is necessary to restructure the manufacturing priorities. Accordingly, collapsing is again “necessary in order to avoid the potential for manipulation of price or production,” as set forth in 19 CFR 351.401(f).
- POSCO’s argument that retooling is necessary rests on the incorrect assumption that the service centers must replicate the full line of production of the foreign like product, *i.e.*, it must be able to impart steel chemistry via melting and casting, citing to *Certain Cold-Rolled Carbon Steel Flat Products from France* and *Stainless Steel Sheet and Strip in Coils from Taiwan*.⁶² But POSCO completely ignores the distinction that in neither of those proceedings did the affiliated service center give rise to the merchandise under consideration.
- As detailed in *Viraj Group*,⁶³ the regulation does not require the facilities of all parties to be the same, rather the test is satisfied if any one of the facilities can be retooled to produce subject merchandise. In this situation, POSCO’s affiliated service centers transform a non-subject good, *i.e.*, hot-rolled steel coils, into the subject merchandise by cutting the coil to length. This requires no retooling.
- POSCO argues that these service centers also do not meet Commerce’s criteria for relationships that indicate a significant potential for manipulation of price or production, claiming no evidence of shared managers.⁶⁴ POSCO completely ignores the other means of its intertwined operations. These service centers have contracted with POSCO for decades and billions of Korean Won worth of operations as shown in its various questionnaire responses, financial statements, charts of accounts, and proprietary internal organization charts.⁶⁵
- The intertwined ownership and operations of these companies is clear from POSCO’s responses showing cross ownership and shared management among many of the affiliates.⁶⁶
- POSCO asks Commerce to reverse its inclusion of one company Shilla Steel, as an affiliate because POSCO owns less than five percent of the company directly.⁶⁷ However, record evidence indicates that another of POSCO’s affiliated producers holds a controlling interest in this company and the company in question likewise holds a controlling interest in another of POSCO’s affiliated service centers.⁶⁸ Given these multiple links, and the degree of duopoly control over integrated steel production, *i.e.*, of hot-rolled steel, by POSCO, it is prudent for Commerce to continue to include this company as an affiliated party and part of the collapsed entity.
- If Commerce, *arguendo*, does not collapse any of the affiliates at issue, it should subject sales to each company to the arms-length test, for inclusion or exclusion according to the test’s results.

Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination, 82 FR 16369 (April 4, 2017) (*CTL Plate from Korea*) and accompanying IDM (*CTL Plate from Korea IDM*) at comment 7).

⁶² *Id.* (citing to POSCO’s Case Brief at 22).

⁶³ *Id.* at 24 (citing *Viraj Group*, 476 F.3d at 1349).

⁶⁴ *Id.* (citing POSCO’s Case Brief at 25-27).

⁶⁵ *Id.* at 25 (citing POSCO’s AQR at Appendix III).

⁶⁶ *Id.* (citing POSCO’s AQR at Exhibit A-5-C; and POSCO’s BCDQR at Exhibit B-8).

⁶⁷ *Id.* (citing POSCO’s Case Brief at 27-28).

⁶⁸ *Id.* (citing POSCO’s BCDQR at Exhibit B-8).

Commerce's Position

We agree with the petitioners. In the *Preliminary Results*, we collapsed POSCO with certain affiliated distributors, to or through which, POSCO sold CTL plate: PDW, POSCO P&S and SPFC, Co., Ltd. (SPFC).⁶⁹ We also collapsed POSCO with certain affiliated service centers that purchased hot-rolled coil from POSCO or an affiliated distributor, and which subsequently slit or sheared the coil into CTL plate: Dae Dong Steel Co., Ltd. (Dae Dong Steel), Moonbae Steel Co., Ltd. (Moonbae Steel), Shilla Steel Co., Ltd. (Shilla Steel), Taechang Steel Co., Ltd. (Taechang Steel), and Winsteel Co., Ltd. (Winsteel).⁷⁰ Lastly, we collapsed POSCO with certain affiliated consumer-resellers who accounted for a significant amount of POSCO's transactions during the POR: Steel Flower Co., Ltd., TC-Tech, Shinjin Esco, Co., Ltd., POSCO Plantec, Ltd., POSCO Engineering and Construction, Co., Ltd., Hi Steel Co., Ltd., Miju Steel, and POSCO Eng. In these final results, we continue to find that collapsing POSCO with each of the affiliated entities identified above (*i.e.*, the POSCO single entity) is warranted, in accordance with 19 CFR 351.401(f).

Pursuant to 19 CFR 351.401(f)(1), Commerce collapses affiliated producers into "a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and... there is a significant potential for the manipulation of price or production." Pursuant to 19 CFR 351.401(f)(2), in identifying a significant potential for the manipulation of price or production, the factors that Commerce may consider include: (i) the level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

We continue to find that the regulatory requirements under 19 CFR 351.401(f)(1) are met with respect to the collapsed entities. With respect to the entities in question, record evidence demonstrates that POSCO has, directly or indirectly, a greater than five percent equity holding in each of the companies, and thus that they are affiliated within the meaning of section 771(33)(E) of the Act. Additionally, the requirement of similar or identical merchandise production that would not require substantial retooling is met because these companies have the ability to manufacture CTL plate from the slitting or shearing of steel coils, making significant retooling unnecessary to restructure manufacturing priorities.⁷¹ We disagree with POSCO's assertion that these companies are not "producers" of CTL plate, absent substantial retooling of POSCO's production facilities. While POSCO has cited *Certain Cold-Rolled Carbon Steel Flat Products*

⁶⁹ See Preliminary Collapsing Memorandum. We note that during the POR, the relevant business units of POSCO P&S and SPFC were acquired by and merged into PDW. While PDW is primarily a trading company, both POSCO P&S and SPFC acted as both traders and processor-resellers during the POR. See POSCO's AQR at A-11 and Exhibits A-2-C and A-2-D.

⁷⁰ *Id.* We note that while POSCO argues Commerce found no affiliation with respect to Shilla Steel, this company is in fact indirectly owned by POSCO in part through PDW and POSCO P&S, and we therefore continue to include this company in our reference to "affiliated service centers" herein. See Preliminary Collapsing Memorandum at Attachment n.2.

⁷¹ See POSCO's AQR at A-40, POSCO's February 12, 2019 Supplemental Section A Questionnaire Response (POSCO's SAQR) at SA-7, and Preliminary Collapsing Memorandum at Attachment 1.

from France to support its argument that its affiliates are not “producers” of CTL plate,⁷² the facts in that proceeding are distinguishable from those in the instant review. In *Certain Cold-Rolled Carbon Steel Flat Products from France*, we determined that affiliated resellers “cannot create cold-rolled subject merchandise from either hot-rolled coils or from slab” and instead performed “slitting and other processing functions” which in itself did not provide the defining feature of the merchandise being cold rolled to a specific gauge.⁷³ Here, however, the step of shearing or slitting coils into steel plate that POSCO’s affiliates perform creates a saleable product which itself is subject to the scope of this proceeding.

Record evidence also indicates that the second collapsing prong (potential for manipulation of price or production) is met with respect to POSCO’s affiliates. First, POSCO has, directly or indirectly, a greater than five percent equity holding in each of the affiliates in question, indicating that common ownership exists among POSCO and each of these entities.⁷⁴ Second, the operations of POSCO and each of these companies are “intertwined” through their sale of a substantial portion of POSCO’s CTL plate in the home market.⁷⁵ Third, and as noted in the Preliminary Collapsing Memorandum, in several instances, directors of POSCO sat on the board of directors of each of these affiliates, and in at least one other instance, a director of one affiliate sat on the board of directors of another affiliate.⁷⁶ As a result, we continue to find that there exists a significant potential for manipulation of price or production within the meaning of 19 CFR 351.401(f)(2).

As noted in the Preliminary Collapsing Memorandum, the *Preamble* clarifies that the factors applied under 19 CFR 351.401(f) are “non-exhaustive.”⁷⁷ The *Preamble* also states that “[t]he Department has not adopted the suggestion that it will collapse only in ‘extraordinary’ circumstances.”⁷⁸ Commerce’s determination in this case is consistent with the statement in the *Preamble* that the “significant potential” criteria provided in 19 CFR 351.401(f) are non-exhaustive. In *Carbon Steel Pipes from India*, Commerce stated that “[n]ot all of these criteria must be met in a particular case; the requirement is that Commerce determine that the affiliated companies are sufficiently related to create the potential of price or production manipulation.”⁷⁹ Moreover, Commerce’s determination to collapse is based on the “totality of the circumstances.”⁸⁰

⁷² See *CRS from France* IDM at comment 2.

⁷³ *Id.*

⁷⁴ See POSCO’s AQR at Exhibits A-4-A and A-4-B; POSCO’s SAQR at Exhibits SA-Q6, SA-Q10, and SA-Q28; and Preliminary Collapsing Memorandum at Attachment 1.

⁷⁵ See POSCO’s AQR at Exhibits SA-Q3 and SA-Q10.

⁷⁶ See Preliminary Collapsing Memorandum at Attachment 1.

⁷⁷ See Preliminary Collapsing Memorandum at Attachment 1 (citing *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27345 (May 19, 1997) (*Preamble*)).

⁷⁸ *Id.*

⁷⁹ See *Certain Welded Carbon Standard Steel Pipes and Tubes from India; Final Results of New Shipper Antidumping Duty Administration Review*, 62 FR 47632, 47638 (September 10, 1997) (*Carbon Steel Pipes from India*).

⁸⁰ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51436 (October 1, 1997) (*Nails from Taiwan*) (“The totality of the circumstances presented by these facts indicate that the two companies operate under common control of the same individual/family with respect to sales and production decisions.”).

Here, our determination is consistent with prior determinations, such as *Carbon Steel Pipes from India* and *Nails from Taiwan*, because we have based our collapsing analysis on the “totality of circumstances” concerning the potential for the manipulation of price or production associated with POSCO’s business operation and found that collapsing is appropriate even though one of the factors identified in 19 CFR 351.401(f)(2) (common board members or managers) is not present with respect to every affiliate.⁸¹ We continue to find, as further explained in the Preliminary Collapsing Memorandum, that the similarity of production facilities between POSCO and its affiliates, along with the volume of transactions that POSCO had with the relevant affiliates, creates significant potential for the manipulation of price and production.⁸²

POSCO also argues that Commerce should not collapse it with the eight affiliated consumer-resellers which it claims do not produce or resell CTL plate products. We disagree with POSCO and continue to find that it is appropriate to treat POSCO and these companies as a single entity pursuant to 19 CFR 351.401(f). While these companies are primarily manufacturers or resellers of non-subject merchandise, the record demonstrates that they are capable of producing and/or reselling CTL plate, as they do when incorporating CTL plate into various other products.⁸³ Therefore, regardless of whether these affiliates are in the primary business of producing and/or reselling CTL plate, such a finding is not required by 19 CFR 341.401(f)(1).

Commerce’s determination in this investigation to collapse these entities is consistent with prior determinations in which we included non-producers as part of a collapsed entity. As we explained in *Certain Hot Rolled Flat Steel Products from Australia*,⁸⁴ Commerce has long recognized that it is appropriate to treat certain groups of companies as a single entity and to determine a single weighted-average dumping margin for that entity to ensure an accurate and effective remedy, and to prevent manipulation that would undermine the effectiveness of the antidumping law. While 19 CFR 351.401(f) explicitly applies to producers, Commerce has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria outlined in the regulation in its analysis. In a number of other proceedings, Commerce has treated exporting companies as a single entity,⁸⁵ as well as producers and exporters as a single entity.⁸⁶

Furthermore, the CIT has upheld Commerce’s practice of collapsing two entities that were sufficiently related, to prevent the possibility of price manipulation, even when those entities were not both producers.⁸⁷ For example, in *Hontex II*,⁸⁸ the CIT held that, once a finding of

⁸¹ See *Nails from Taiwan*, at 51436.

⁸² See Preliminary Collapsing Memorandum at Attachment 1; see also 19 CFR 351.401(f)(1).

⁸³ See, e.g., POSCO’s AQR at A-40 and POSCO’s SAQR at SA-7.

⁸⁴ See *Certain Hot Rolled Steel Flat Products from Australia* and accompanying Preliminary Decision Memorandum (PDM) at 7-8, unchanged in *Certain Hot Rolled Steel Flat Products from Australia: Final Determination of Sales at Less Than Fair Value*, 81 FR 53406, 53407 (August 12, 2016).

⁸⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004), and accompanying IDM at Comment 5.

⁸⁶ See *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 33578, 33580-33581 (June 14, 2010), unchanged in *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 69626 (November 15, 2010).

⁸⁷ See *Queen’s Flowers de Colon v. United States*, 981 F. Supp. 617, 628 (CIT 1997).

⁸⁸ See *Hontex Enterprises v. United States*, 342 F. Supp. 2d 1225, 1230-34 (CIT 2004) (*Hontex II*).

affiliation is made, affiliated exporters can be considered a single entity where their relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise.⁸⁹

Because we continue to find that the regulatory requirements in 19 CFR 351.401(f) are met, we continue to find that it is appropriate to treat POSCO and its affiliates as a single entity for purposes of this administrative review.

Comment 2: Treatment of Collapsed Company Names

*POSCO's Case Brief.*⁹⁰

- Commerce's regulations explicitly provide that Commerce normally will consider "{n}ames of particular customers, distributors, or suppliers" to be business proprietary information (BPI), if so designated by the submitter.⁹¹
- POSCO has consistently designated the identities of these customers as BPI throughout this first review as well as throughout the underlying investigation – during which Commerce did not request withdrawal of POSCO's request for proprietary treatment.
- Maintaining proprietary treatment is wholly consistent with Commerce's governing regulation, its practice in this proceeding, and prior Commerce practice. Specifically, Commerce has previously maintained proprietary treatment of affiliated customers that were involved in other commercial roles with the respondent.⁹²
- Where a petitioner sought the public disclosure of an affiliated customer that was involved commercially with the respondent as a selling agent, Commerce declined to make the entity's name public.⁹³
- In affirming Commerce's decision to keep the identity of the affiliated customer proprietary, the CIT explained that the affiliation relationship "does not mean that {Commerce} cannot keep its confidential treatment designated as an 'affiliated customer.'"⁹⁴
- With regard to collapsed entities specifically, Commerce has an established practice of maintaining the business proprietary treatment of collapsed company names, including in administrative reviews.⁹⁵
- To the extent that Commerce considers it necessary to disclose the entities that have been collapsed into a single entity, 19 CFR 351.105(c)(6) presents a further reason why it is

⁸⁹ *Id.*

⁹⁰ See POSCO's Case Brief at 28-32.

⁹¹ *Id.* at 29 (citing 19 CFR 351.105(c)(6)).

⁹² *Id.* at 29-30 (citing *Chia Far Indus. Factory Co. v. United States*, 28 CIT 1337, 1360 (2004) (*Chia Far Indus. Factory Co.*)).

⁹³ *Id.* at 30 (citing *Stainless Steel Sheet and Strip from Taiwan: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 6682 (February 13, 2002)).

⁹⁴ *Id.* (citing *Chia Far Indus. Factory Co.*, 28 CIT at 1359-60).

⁹⁵ *Id.* at 30-31 (citing *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom*, 73 FR 25654 (May 7, 2008), unchanged in *Final Results*, 73 FR 52823 (September 11, 2008); *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom*, 72 FR 31271 (June 6, 2007), unchanged in *Final Results*, 72 FR 58053 (October 12, 2007); *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 71 FR 53387 (Sep. 11, 2006), unchanged in *Final Results*, 72 FR 13242 (March 21, 2007); *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom*, 71 FR 12170 (March 9, 2006), unchanged in *Final Results*, 71 FR 40064 (July 7, 2006)).

not appropriate to collapse the affiliated customers with POSCO, as doing so would necessitate action contrary to Commerce's express regulations.

- Additionally, disclosure of these entities' identities would cause substantial harm to POSCO's competitive position, and the information should accordingly remain proprietary pursuant to 19 CFR 351.105(c)(11).
- POSCO appreciates that Commerce could consider a need to identify any collapsed entities publicly for purposes of cash deposit instructions; however, no party requested a review of these 16 entities, and they do not export to the United States.
- Thus, this situation is distinguishable from other instances where Commerce has sought to publicly identify exporting parties. POSCO is unaware of any situation where Commerce has required that a respondent publicly identify its home market customers.

Commerce's Position

POSCO's arguments primarily hinge on treating its affiliates as merely customers, while as noted above, we are continuing to treat these companies as part of a single POSCO entity. Therefore, in light of our decision to continue to collapse these companies with POSCO, and POSCO's subsequent consent to the disclosure of the collapsed company names,⁹⁶ we have disclosed the company names in these final results, consistent with our normal practice.⁹⁷ We find that the importing public has a right to notice of the business entities that comprise a collapsed respondent, including those located in the home market, that could potentially export subject merchandise to the United States. This notice ensures that the public (*e.g.*, importers) is aware of what companies are subject to the POSCO single entity cash deposit rate.

Comment 3: Double Counting of Freight Revenue

*POSCO's Case Brief:*⁹⁸

- POSCO reported the sum of the "product value" and "freight revenue" in the gross unit price (GRSUPRH) field, and separately reported the portion of the price attributable to the product in the product value (PROVALH) field and the portion attributable to freight revenue in the FRTREVVH field.⁹⁹
- In using GRSUPRH rather than PROVALH, Commerce's preliminary calculations double-counted freight revenue when the capped freight revenue was added back into the full price (GRSUPRH) that was inclusive of freight revenue.
- In order to correct this calculation error, consistent with other cases where POSCO has used this same reporting approach, Commerce should use PROVALH (the price net of freight revenue) as the starting point in its calculations.

⁹⁶ See POSCO's Consent Letter.

⁹⁷ See *Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 94 (January 2, 2014) at n. 2.

⁹⁸ See POSCO's Case Brief at 39-40.

⁹⁹ *Id.* (citing POSCO's BCDQR and POSHM02 sales database).

Commerce's Position

We agree with POSCO and we have made the necessary change to the margin calculations to correct this error.¹⁰⁰

Comment 4: CEP Offset

*POSCO's Case Brief:*¹⁰¹

- In the *Preliminary Results*, Commerce found that POSCO did not qualify for a CEP offset, stating that POSCO's selling functions in the home market are "virtually the same" as those performed in the U.S. market.
- Commerce's *Preliminary Results* were contrary to prior determinations where Commerce did grant POSCO a CEP offset and also overlooked key facts and the record as it pertains to POSCO's selling functions.
- In particular, the record demonstrates that 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, signifying a different and more advanced level of trade in the home market.
- In conducting the prescribed analysis, Commerce compares the selling functions performed by the respondent in selling to its unaffiliated home market customers to the functions performed in selling to the U.S. market, where U.S. affiliates act on the respondent's behalf to sell to unaffiliated customers.
- In light of these considerations, Commerce typically analyzes selling functions based on four general selling function categories: (1) sales and marketing activities; (2) freight and delivery; (3) inventory maintenance and warehousing; and (4) warranty and technical support.
- In its submissions, POSCO identified and described its selling functions and detailed the level of intensity it and its affiliates performed the functions in selling to the home and U.S. market in each category.¹⁰² These descriptions confirm that POSCO undertakes significantly greater efforts in selling to its home market customers than it does in selling to its U.S. affiliates.
- Confirming that POSCO qualifies for a CEP offset would be consistent with other prior determinations where Commerce has analyzed POSCO's selling functions.¹⁰³ Despite the fact that Commerce may have denied this offset in the investigation and other recent proceedings, the record of this review confirms that POSCO qualifies for a CEP offset.

*Petitioners' Rebuttal Brief:*¹⁰⁴

- Commerce should continue to deny POSCO a CEP offset because Commerce's *Preliminary Results* are based on record evidence (or lack thereof).

¹⁰⁰ See Final Sales Calculation Memorandum.

¹⁰¹ See POSCO's Case Brief at 41-45.

¹⁰² *Id.* at 42-44 (citing POSCO's AQR at A-26 – A-29, A-31 – A-32 and POSCO's May 30, 2019 Pre-Preliminary Comments at 19-30) (POSCO's Pre-Prelim Comments).

¹⁰³ *Id.* at 44-45 (citing *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results of the Seventeenth Antidumping Duty Administrative Review*, 76 FR 55004, 55009 (September 6, 2011), unchanged in *Final Results*, 77 FR 14501 (March 12, 2012)).

¹⁰⁴ See Petitioners' Rebuttal Brief at 40-67.

- Contrary to POSCO's claims, the facts of this review most closely resemble those in recent determinations where Commerce found a CEP offset was unwarranted with regards to POSCO.
- POSCO understates or ignores the complexity of selling functions to support CEP transactions. POSCO in Korea was responsible for multiple different activities for the multiple stages required to export to the United States.
- For example, POSCO supported the sales to the U.S. CEP affiliates as reported in the domestic indirect selling expense data field DINDIRSIU. For the additional CEP transactions reported, the intermediate Korean trading company, POSCO Daewoo, also supported the sale to the U.S. CEP affiliate, POSCO Daewoo America, as reported in the domestic indirect selling expense data field DINDIRS2U.¹⁰⁵
- POSCO arranged for merchandise loading and unloading, and brokerage expenses related to Korean customs clearance for export, as reflected in the DBROKU data field.¹⁰⁶
- POSCO was responsible for ocean freight as the shipper, as reflected in the INTNFRU data field.¹⁰⁷ Even if international freight expenses for occasional CEP shipments were *recorded* on a U.S. affiliate's books, as only generally indicated in the response, the actual physical export selling *function* required the engagement of POSCO personnel, and their services in Korea.
- POSCO was responsible for inventorying CTL plate in Korea to prepare for timely shipment in support of those CEP sales, as reported under the DINVCARU data field.¹⁰⁸
- POSCO was also responsible for arranging freight forwarding to the port in Korea separately from international freight, as reported under the DINLFTPU data field.¹⁰⁹
- Despite the substantial sales support provided by POSCO for its CEP transactions, POSCO reports that selling functions in the home market were always higher than those for CEP sales, without providing any quantitative or qualitative evidence.¹¹⁰
- POSCO claims that it performed order processing and provided direct sales personnel at a high level for home market sales but not at all for CEP sales.¹¹¹ However, POSCO has an automated sales system in the home market for auctioned sales, presumably for the same home market customers. This indicates that these selling functions would be performed less frequently due to longstanding relationships and automation. It further defies logic that processing orders from the CEP affiliates would not involve POSCO, as the orders from CEP affiliates could not be filled without some processing in Korea by POSCO.
- It is implausible that POSCO must undertake high or even medium levels of any direct sales negotiating to convince its home market affiliates to buy POSCO steel. Additionally, POSCO has the ability to dictate pricing to unaffiliated customers, requiring little to no contact outside of an initial meeting.
- POSCO has provided no basis as to why sales forecasting should be considered "high" for sales to unaffiliated customers in Korea. Unlike direct sales, sales forecasting normally looks at industry supply and demand and is an aggregate company exercise that benefits all sales.

¹⁰⁵ *Id.* at 41-42 (citing POSCO's AQR at A-23 – A-25, POSCO's BCDQR at C-46, C-47, and POSCO's SBCQR at Exhibit SC-QI (POSUS02 sales database)).

¹⁰⁶ *Id.* at 42 (citing POSCO's BCDQR at C-35, and POSUS02 sales database).

¹⁰⁷ *Id.* (citing POSCO's BCDQR at C-36).

¹⁰⁸ *Id.* (citing POSCO's BCDQR at C-49, and POSUS02 sales database).

¹⁰⁹ *Id.* (citing POSCO's BCDQR at C-34, and POSUS02 sales database).

¹¹⁰ *Id.* at 43 (citing POSCO's AQR at A-26 – A-29 and Exhibit A-8).

¹¹¹ *Id.* (citing POSCO's Case Brief at 43 and POSCO's AQR at A-29 and Exhibit A-8).

- It begs credulity that POSCO performs sales forecasting and strategic planning for transfer price sales to affiliated home market customers at a "medium" level of intensity, particularly for resellers such as POSCO P&S, but performs these functions only at a "low" level of intensity for similar transfer price sales to affiliated customers in the United States, given that POSCO is undertaking the same fundamental task as its Korean resellers -- serving POSCO America Corporation (POSAM) and POSCO Daewoo America (PDWA) in support of their sales to the ultimate unaffiliated customer.
- It is also commercially absurd to claim that selling functions for home market sales in Channel 3, for "cyber transactions," are more advanced than sales support provided to the U.S. CEP affiliates, as these home market sales are for overruns, non-prime material, and other "remaining" inventory that is electronically auctioned over the internet.¹¹²
- POSCO has provided no basis as to why the level of intensity for strategic or economic planning should be considered as "high" for sales to unaffiliated customers in Korea. Unlike direct sales contact activity (*e.g.* contact between a salesperson and customer), corporate strategy normally looks at broad, corporate policy, a company exercise that benefits all sales.
- With respect to strategic/economic planning, both POSCO and POSCO Daewoo's historical filings with the Korean SEC (under its former name "DWI") indicates that regarding universal sales strategies for growth in sales in all markets, the company's strategy was to: "{a}ctively produce synergic effect with POSCO families" of companies and thus "{p}erform a role of window for foreign marketing in family companies."¹¹³
- Similarly, POSCO Daewoo's general ability to amass information about the overseas markets to which it sells, including the United States, is highlighted in its report, which states that, in order to ensure "competition predominance" it possesses "the ability to gather {necessary} information," and that "the creation of synergy is expected in the process of carrying out projects through collaboration with affiliates," such as its network of trading companies.¹¹⁴
- While POSCO asserts that it maintains a "significant sales network" with "extensive IT and other systems" with respect to domestic sales and shifted said functions to POSAM and PDWA with respect to U.S. sales, the record and commercial realities do not support this assertion.¹¹⁵
- POSCO's offices, office equipment, supplies, sales people, and sales systems should work equally well and be just as intensively applied whether a salesperson is supporting a transaction to an unaffiliated domestic customer, an affiliated domestic customer, an unaffiliated U.S. customer or an affiliated U.S. customer.
- Further, while POSCO argues that POSCO undertakes general research regarding market conditions and activities in support of home market sales and shifted said functions to its CEP agencies with respect to U.S. sales, the record and commercial realities, again, do not support this claim.¹¹⁶

¹¹² *Id.* at 48 (citing POSCO's AQR at A-22).

¹¹³ *Id.* at 50 (citing Petitioners' May 16, 2019 New Factual Information (NFI) Letter at Attachment 1; and POSCO's AQR at Exhibit A-14).

¹¹⁴ *Id.* at 51-52 (citing Petitioners' May 16, 2019 NFI Letter at Attachment 1).

¹¹⁵ *Id.* at 52 (citing POSCO's Case Brief at 43).

¹¹⁶ *Id.* at 53 (citing POSCO's Case Brief at 44).

- POSCO further argues that POSCO engages in regular training programs for its home market personnel, but not for its U.S. sales personnel.¹¹⁷ POSCO, however, provided no evidence of these different levels of personnel training and/or exchange, or why its personnel for any particular channel of distribution would be better trained than others.
- With respect to advertising, sales promotion, and engineering services, POSCO claims a medium intensity level for home market sales, and a low intensity level for supporting CEP sales. However, the record does not support these claims with respect to home market sales.¹¹⁸
- POSCO's case brief also glosses over those selling functions that are similar between markets, simply noting that it packs products, holds a "small portion" of sales products for sale from inventory, provides technical services, provides warranties from POSCO in both markets, and arranges for freight by sales channel.¹¹⁹
- For Commerce to grant a CEP offset, the facts in this review must support the finding that a CEP offset is warranted. Commerce is not bound by its decision to grant POSCO a CEP offset in a different proceeding based on a different factual record. Commerce has stated, and the courts have upheld, that each administrative review is a separate segment of proceedings with its own unique facts.¹²⁰
- Commerce's findings in the original investigations of cold-rolled steel and CTL plate involving POSCO and POSCO Daewoo with regard to the selling functions are instructive in this administrative review. In each of these situations, Commerce did not find a basis to warrant a CEP offset for selling functions grouped under each of the following categories: Sales and Marketing, Inventory Maintenance and Warehousing, Freight and Delivery, and Warranty and Technical Support.¹²¹
- A CEP offset is similarly unwarranted in this review. Considering all three home market sales channels, sales activities are functionally equivalent in intensity for home market sales and U.S. sales. The selling functions for home market sales are not significantly more intense than for CEP sales. Although POSAM, PDWA and POSCO Daewoo Germany may have taken on some supporting efforts, they did not substitute for efforts by the parent company POSCO in Korea, and the supplemental efforts of POSCO Daewoo, to complete the transfer transactions from Korea to the U.S. subsidiaries.

¹¹⁷ *Id.* at 54 (citing POSCO's Case Brief at 43).

¹¹⁸ *Id.* at 55-60 (citing POSCO's Case Brief at 43-44 and POSCO AQR at A-22, A-27 – A-28).

¹¹⁹ *Id.* at 60 (citing POSCO's Case Brief at 43-44.)

¹²⁰ *Id.* at 60-62 (citing *Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review* (April 8, 2015) 80 FR 19633 (April 13, 2015), and accompanying IDM at 3.; and *Shandong Huarong Mach. Co. v. United States*, 29 CIT 484, 491 (2005). Also citing *Ad Hoc Shrimp*, 616 F. Supp. 2d at 1373-74, *Pakfood Public Co. v. United States*, 724 F. Supp. 2d 1327, 1342 (CIT 2010), and *Alloy Piping Products v. United States*, (unpublished) No. 08-00027, 2009 WL 983078 at *6 (CIT 2009).

¹²¹ *Id.* at 62-65 (citing to *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) (*Certain Cold Rolled Steel Flat Products from Korea*), and accompanying IDM at 33-37, *Certain Carbon and Alloy Steel Cut-To-Length Plate From the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 79441 (November 14, 2016) and accompanying PDM (*CTL Plate from Korea PDM*) at 15-16, and *CTL Plate from Korea* IDM at 30).

Commerce's Position

As we noted in the *Preliminary Results*, Commerce will grant a CEP offset under section 773(a)(7)(B) of the Act, if it determines that the NV level of trade (LOT) is at a more advanced stage of distribution than the CEP LOT and there is no basis to quantify a LOT adjustment (*i.e.*, no LOT adjustment is possible).¹²² In these final results, we continue to find that the minor differences in the selling functions among the various entities do not indicate a significant difference between the home market and CEP LOTs, such that a CEP offset under section 773(a)(7)(B) of the Act is warranted.¹²³

POSCO provided sales support to its CEP affiliates through a number of home market entities which were themselves supported by POSCO in Korea.¹²⁴ The role of these multiple entities in the sales process suggests that sales and marketing, freight and delivery, inventory maintenance, and warranty and technical support varied across both CEP and home market channels while the actual services provided show no distinct difference between the two markets. Based on the foregoing, and consistent with our finding in *Certain Cold Rolled Steel Flat Products from Korea*, we continue to find from our examination of POSCO's home market and CEP selling activities that POSCO's home market sales are not more advanced than POSCO's CEP sales.¹²⁵

As the petitioners have noted, for CEP sales, both POSCO and POSCO Daewoo provide sales support which benefits both POSCO America (POSAM) and POSCO Daewoo America at functionally equivalent levels to that of the home market sales support provided.¹²⁶ Also, we note that some of the selling activities POSCO references in support of its claimed CEP offset (*e.g.* economic planning) involve overall corporate policy rather than contact between a salesperson and POSCO's customer.¹²⁷ As such, we maintain that such activities benefit both home market customers and CEP affiliates. Moreover, as we noted in the Preliminary Decision Memorandum, within the home market, POSCO makes sales to end users, sales through affiliated resellers, and sales through "cyber-transactions, which are typically made to unaffiliated end users and usually involve sales of overrun and "non-prime merchandise."¹²⁸ POSCO's sales activities with regard to such cyber-transactions are functionally similar to those performed for its other home market sales channels and CEP direct sales channel. While sales activities with regard to the other CEP sales channels are performed at a higher intensity for some sales, we dispute POSCO's assertion that it consistently provides a greater degree of sales support for home market transactions than for CEP sales transactions.

¹²² See *Preliminary Results* and accompanying PDM at 16-18.

¹²³ *Id.*; as noted in the PDM, in recent cases Commerce has grouped selling expenses into the four categories of: (1) sales and marketing, (2) freight and delivery, (3) inventory maintenance and (4) warranty and technical support for purposes of conducting its LOT analysis. See, *e.g.*, *Certain Cold Rolled Steel Flat Products from the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 11757 (March 7, 2016), and accompanying PDM at 19, unchanged in *Certain Cold Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value* 81 FR 49953 (July 29, 2016) (*Certain Cold Rolled Steel Flat Products from Korea*).

¹²⁴ See POSCO's AQR, at A-1, A-26 – A-39, and Exhibit A-8; see also POSCO's SAQR at SA-18 – SA-19 and Exhibit SA-Q-24.

¹²⁵ See *Certain Cold Rolled Steel Flat Products from Korea* and accompanying IDM at comment 19.

¹²⁶ See Petitioners' Rebuttal Brief at 41-67.

¹²⁷ See POSCO's AQR at Exhibit A-8.

¹²⁸ *Id.* at A-22 – A-23.

Based on our examination of the selling functions reported by POSCO for its home market and CEP sales, we continue to find insufficient evidence to suggest that the home market LOT is different and at a more advanced stage of distribution than the CEP LOT to warrant granting POSCO a CEP offset. Accordingly, we have continued to make no CEP offset in the final results.¹²⁹

Comment 5: Home Market Sales to Affiliated Parties

*Petitioners' Case Brief:*¹³⁰

- Although Commerce is correct that it obtained, and used, the applicable affiliated parties' downstream sales, it still inadvertently relied on the sales to affiliated resellers and service centers as well. That is because the primary home market data contained the sales between affiliated entities, and Commerce did not remove them as intended. The POSCO primary, mill-direct sales data still contains sales to affiliates, sales that require elimination by either the arms'-length test or by direct elimination.¹³¹
- As POSCO has noted, the affiliated-party sales in the direct mill POSCO data should simply be dropped, as they will be replaced by the downstream sales.¹³² Accordingly, Commerce should correct this error for the final results.

*POSCO's Rebuttal Brief:*¹³³

- The petitioners' suggestion that Commerce should adjust the *Preliminary Results* by removing sales to affiliated resellers from the home market sales data would apply only in a "fully-collapsed" scenario, and, for the reasons discussed in POSCO's case brief, Commerce should reconsider its collapsing decision in the final results.
- Rather, Commerce should not collapse POSCO with the 16 home market customers, and consistent with normal practice, Commerce should then subject the non-collapsed affiliates' sales to the arm's-length test and only exclude from the data those sales that fail the arm's-length test.

Commerce's Position

In light of our decision to collapse the affiliated POSCO entities, as discussed above, we agree with the petitioners and POSCO that sales to these affiliated resellers should be excluded from the home market sales data and we have done so for the final results.

¹²⁹ This is consistent with our findings in other cases. See, e.g., *Certain Cold Rolled Steel Flat Products from Korea, and Silicomanganese from Australia: Final Determination of Sales at Less Than Fair Value*, 81 FR 8682 (February 22, 2016), and accompanying IDM at comment 2.

¹³⁰ See Petitioners' Case Brief at 2-4.

¹³¹ *Id.* at 2 (citing to POSCO BQR at B-3 and SBQR at SB-1-2).

¹³² *Id.* at 3 (citing to POSCO's Pre-Prelim Comments at 3).

¹³³ See POSCO's Rebuttal Brief at 3.

Comment 6: Miscellaneous Income Offset to General and Administrative Expenses

*POSCO's Case Brief:*¹³⁴

- Commerce normally includes non-operating expenses and income amounts related to the company's general operations, including miscellaneous gains and losses, in the G&A expense ratio calculation.
- While the total amount of miscellaneous gains largely consists of the value added tax (VAT) penalty refund, it was not the only amount recorded in the account in question.
- If Commerce does not accept POSCO's G&A calculation as submitted, it should at a minimum include the miscellaneous gains other than the VAT penalty refund in the G&A expense ratio calculation.

*Petitioners' Rebuttal Brief:*¹³⁵

- The miscellaneous gain is related to a prior period, which under Commerce's long-standing practice is not permissible.
- POSCO did not provide any citation to support its claim, in either its case brief or in its supplemental Section D response, where it initially made this claim.
- Commerce should reject POSCO's argument that Commerce should allow an offset for the remaining miscellaneous gain amounts, because POSCO withheld information requested by Commerce regarding the other amounts included in the miscellaneous gain.

Commerce's Position

We agree with the petitioners and for the final results have not included POSCO's miscellaneous income offset to the G&A expenses. A majority of the miscellaneous income at issue relates to a VAT refund resulting from an appeal and a review of prior period tax audits.¹³⁶ Our practice regarding gains and losses from prior periods is explained in *Carbon Steel Flanges from India*, wherein Commerce excluded "gains and losses related to periods other than the period under consideration."¹³⁷ In *Rebar from Turkey*¹³⁸ and *Melamine from Trinidad and Tobago*,¹³⁹ Commerce also described its practice of excluding gains and losses related to periods other than the period under consideration. In *Rebar from Turkey*, Commerce excluded interest expenses related to periods prior to the POR; in *Melamine from Trinidad and Tobago* Commerce disallowed income from insurance proceeds related to expenses recognized prior to the POI. Thus, because the VAT refund income relates to the period prior to the POR, for the final results we continue to exclude this income from the G&A expenses.

¹³⁴ See POSCO's Case Brief at 33-35.

¹³⁵ See Petitioners' Rebuttal Brief at 27-30.

¹³⁶ See POSCO's AQR at Appendix I (POSCO unconsolidated 2017 financial statement) at n. 32.

¹³⁷ See *Finished Carbon Steel Flanges from India: Final Determination of Sales at Less Than Fair Value*, 82 FR 29483 (June 29, 2017) at comment 3. (*Carbon Steel Flanges from India*) ("While we agree with Norma that Commerce may include income offsets that are related to the general operations of the company in the calculation of the G&A expense ratio, we disagree that it would be reasonable in this case to offset current costs because the income item relates to costs incurred in a prior period.")

¹³⁸ See *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 from Turkey*) and accompanying IDM at comment 49.

¹³⁹ 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*), and accompanying IDM at comment 3.

We also agree with the petitioners that the residual miscellaneous gains should also be excluded. In our supplemental section D questionnaire regarding these miscellaneous gains, we requested that POSCO demonstrate that the corresponding expenses were included in the reported costs, which POSCO failed to do.¹⁴⁰ Therefore, we have not allowed the offset to the G&A expenses for other miscellaneous gains.

Comment 7: Purchases from Affiliated Suppliers

*POSCO's Case Brief:*¹⁴¹

- POSCO's purchases of inputs from affiliated parties demonstrate exactly what would be expected of purchases at market value - sometimes the prices from affiliated suppliers are slightly less than those from unaffiliated suppliers. But many times, prices from affiliated suppliers substantially exceed those from affiliated suppliers. Therefore, Commerce should not make an adjustment for purchases from affiliated suppliers.

*Petitioners' Rebuttal Brief:*¹⁴²

- Under the transactions disregarded test in accordance with section 773(f)(2) of the Act, Commerce's analysis confirmed that the prices paid by POSCO to affiliated parties were not made at market prices; therefore, the adjustment is warranted.

Commerce's Position

We agree with the petitioners. Section 773(f)(2) of the Act states that “{a} transaction directly or indirectly between affiliated persons may be disregarded, if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the results of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.” Thus, the statute directs Commerce to test the arm's-length nature of affiliated transactions to determine whether they reflect a market value.

In our transactions disregarded test in this review, we consider it reasonable to compare the average prices paid to affiliated and unaffiliated suppliers of the inputs to determine whether affiliated purchases were at arm's-length prices.¹⁴³ Consequently, where average prices for an input purchased from affiliated suppliers were below the prices paid to unaffiliated suppliers, for the final results we continued to adjust the cost of such input to reflect its market value, in accordance with section 773(f)(2) of the Act.

¹⁴⁰ See Commerce's March 13, 2019 Supplemental Section D Questionnaire at question 27.

¹⁴¹ See POSCO's Case Brief at 35-36.

¹⁴² See Petitioners' Case Brief at 30-32.

¹⁴³ See POSCO's SDQR at SD-32 – SD-33.

Comment 8: Costs Related to Greenhouse Gases

*POSCO's Case Brief:*¹⁴⁴

- In calculating its reported costs of production POSCO excluded amounts recorded in a cost of goods sold (COGS) account related to greenhouse gases.
- In 2017 and 2018, as POSCO's cost reconciliation demonstrates, POSCO recorded these allowances in a completely separate COGS account, having nothing to do with the cost of manufacturing. Moreover, POSCO reversed these allowances at the end of 2016, 2017, and 2018 because POSCO did not emit carbon in excess of the emission rights assigned to it.
- As POSCO demonstrated in its response, the ending balance of this account in 2017 and 2018 was zero at the end of each year.¹⁴⁵ Thus, because these expenses were ultimately offset by credits at the end of each fiscal year, POSCO never incurred an expense, and it should not be included in the reported costs.

*Petitioners' Rebuttal Brief:*¹⁴⁶

- POSCO was required to report its costs of manufacturing for the POR in its cost data.
- POSCO recorded these costs in its normal books and records. Thus, those costs are reflected in the financial statements and should be included in the reported POR costs.

Commerce's Position

We agree with the petitioners that these expenses should be included in POR costs. According to section 773(f)(1)(A) of the Act, "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise." Clearly, POSCO's normal books and records report these expenses as part of its COGS.¹⁴⁷ Contrary to POSCO's claim that "POSCO reversed these allowances at the end of 2016, 2017, and 2018..." in its reconciliation there is a balance for greenhouse gases expenses for fiscal year 2016.¹⁴⁸ The POR covers the period November 14, 2016 through April 30, 2018, *i.e.*, almost 18 months, and includes two fiscal year ends. POSCO's reconciliation shows a balance for this account for fiscal year 2016, a zero balance for 2017, and the end of the fiscal year 2018 is not represented in the reconciliation, as it is outside the POR.¹⁴⁹

By arguing that the expenses for greenhouse gases are reversed at fiscal year-end and therefore should be excluded from reported costs, POSCO in essence treats these expenses as period expenses such as G&A expenses which are normally calculated based on the fiscal year financial statements. However, in POSCO's normal books these expenses are classified as part of COGS, and as such, there is a POR balance in this account which would be reasonable to include in the reported costs as any other POR operating expense. While POSCO claims that it reversed the

¹⁴⁴ See POSCO's Case Brief at 36-38.

¹⁴⁵ See POSCO's SDQR at SD-20 and Exhibit SD-18A (identifying the accounting entries for the allowances); see also POSCO's AQR at Exhibit A-13.

¹⁴⁶ See Petitioners' Rebuttal Brief at 32-34.

¹⁴⁷ See POSCO's SDQR at Exhibit SD-19 (Reconciliation "Non-Manufacturing cost of sales").

¹⁴⁸ *Id.* We note that fiscal year end 2018 is not reported in this exhibit as it is not part of the POR.

¹⁴⁹ *Id.*

greenhouse expenses at the end of its most recent fiscal years, the record is not clear as to when such reversals are made, and because the fiscal year and the POR are different, there will always be uncertainty whether the expenses recorded during the POR subsequently would be completely reversed. Moreover, based on POSCO's statement above, the amount for greenhouse gases recorded during 18 months of the POR includes not only expenses but also two reversals (income items) made at the end of fiscal years 2016 and 2017, which supposedly were made to eliminate these expenses for the two full years. Thus, we consider it reasonable to follow POSCO's normal books and records and to include in the reported costs both the expenses and income (reversals) related to greenhouse gases as recorded in POSCO's normal books and records during the POR.

POSCO further claims that these expenses should be excluded because the company records these expenses "in a completely separate cost of goods sold account, having nothing to do with the cost of manufacturing." We note, however, that POSCO is primarily a steel manufacturer and it has failed to demonstrate that these expenses are related to anything other than manufacturing steel products. Therefore, for the final results we continued to include expenses for greenhouse gases in the reported cost of manufacturing.

Comment 9: Cost Averaging Adjustments

*POSCO's Case Brief.*¹⁵⁰

- In the *Preliminary Results* Commerce "smoothed" POSCO's reported conversion costs by weight-averaging costs for CONNUMs with identical product characteristics for thickness, heat treatment, width and form, observing that POSCO's reported costs reflected differences in conversion costs that were unrelated to the product's physical characteristics. Commerce should eliminate this conversion cost smoothing adjustment for the final results.
- In calculating its reported costs, POSCO relied on the product-specific costs as recorded in its normal accounting records, weight-averaged on a CONNUM-specific basis.
- Commerce's CONNUMs combine several different specifications into a single variable. However, steel specifications impact not only the cost of input materials, which Commerce reviewed and declined to adjust, but also the processing steps and time required to produce the finished product.
- The production processes needed to manufacture CTL plate from slab versus from hot-rolled sheet (which is simply cut from coil) are significantly different.¹⁵¹ Smoothing costs of these significantly different products--notwithstanding the fact that they may fall under the same CONNUM--is incorrect.

*Petitioners' Rebuttal Brief.*¹⁵²

- POSCO has imbedded in its costs various factors, such as time variances, differences by item number, use of incorrect slab input values, plant and or line-specific costs, that are not related to differences in physical characteristics and which have introduced

¹⁵⁰ See POSCO's Case Brief at 38-39.

¹⁵¹ Hot-rolled sheet products that exceed 4.75 MM thickness fall within scope of this order.

¹⁵² See Petitioners' Rebuttal Brief at 34-40.

inconsistency in the cost data.¹⁵³ Thus, the adjustment to POSCO's reported costs is required.

- POSCO's incorrect calculation of direct material costs cannot be fully remedied by a non-adverse-facts-available adjustment, such as smoothing of material costs. Therefore, Commerce should apply, as partial adverse facts available (AFA), the highest direct materials cost (DIRMAT) reported by QUALITY characteristic. The "other direct materials" field (OTHDIRMAT) may be smoothed based on the multiple characteristics indicative of total product chemistry.
- As for the conversion costs, Commerce should apply partial AFA by assigning the highest labor costs (DIRLAB) and variable overhead (VOH) by processing, as proposed by the petitioners.
- Should Commerce decide not to apply AFA and continue to smooth the conversion costs, it should then expand that methodology by also applying it to the material costs reported in DIRMAT and other materials costs reported in OTHDIRMAT.

Commerce's Position

We disagree with the petitioners that the application of partial AFA with regard to POSCO's reported material and conversion costs is warranted. Section 776(a) of the Act provides, in general, that Commerce may resort to facts available if necessary information is not available on the record or if an interested party withholds information that has been requested, fails to provide such information by the established deadlines or in the form and manner requested, significantly impedes a proceeding, or if such information cannot be verified. Further, section 776(b) states that adverse inferences may be applied in selecting from the facts available if an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. In this case, we find that the use of facts available is not warranted because POSCO reported all of its material and conversion costs based on its books and records. We also find that the use of AFA is not warranted because POSCO cooperated to the best of its ability with Commerce's requests for information, and timely responded to all of Commerce's questionnaires. However, we agree with the petitioners, in part, that certain adjustments to POSCO's reported conversion and materials costs should be made, as discussed below.

POSCO maintains its accounting records in compliance with Korean generally accepted accounting principles (GAAP) and POSCO derived the reported CONNUM costs directly from its accounting records. Pursuant to section 773(f)(1)(A) of the Act, "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise." Accordingly, we are instructed by the Act to rely on the 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 review, POSCO's reported CONNUM-specific costs were based on the company's normal books and records that were kept in accordance with Korean GAAP. Thus, the question facing Commerce is whether the CONNUM-specific per-unit costs from POSCO's normal books reasonably reflect the cost to produce and sell CTL plate.

¹⁵³ *Id.* at 34 (citing POSCO's SDQR at SD-14 – SD-16).

At the outset of this investigation Commerce identified the physical characteristics that are most significant in identifying price and/or cost differences between products, and the reported codes for these physical characteristics are used to establish each product control number, or CONNUM. These are the physical characteristics that define unique products for the fair comparison of U.S. prices with NV, and establish the level of detail needed to capture the important differences between distinct products in Commerce’s dumping analysis. Thus, under sections 773(f)(1)(A) and 773(a)(6)(C)(ii) and (iii) of the Act, a respondent’s costs should reflect meaningful cost differences attributable to these different physical characteristics. This ensures that the product-specific production costs that Commerce determines for the merchandise under consideration and uses, for example, for the sales-below-cost test, constructed value (CV), and the difference in merchandise adjustment (DIFMER), accurately reflect the physical characteristics deemed important in establishing the prices of the products. Therefore, Commerce normally does not rely on a respondent’s reported costs where significant cost differences between CONNUMs are driven by factors other than the products’ physical characteristics, such as production timing differences, routing variations, or cost system conventions.¹⁵⁴ For example, in *Large Diameter Welded Pipe from Korea* we found that “Because the large cost differences between similar products were unrelated to the products’ physical characteristics (*e.g.*, fluctuation of raw material prices, inefficient production runs, limited production of specific CONNUMs, *etc.*), we do not consider such costs to reasonably reflect the actual production costs of the merchandise.” Accordingly, in that case we weight-averaged respondent’s costs to mitigate the cost differences not related to physical characteristics.¹⁵⁵

POSCO admits that there are various factors contributing to the cost differences for similar CONNUMs, such as timing of production, line-specific speeds and costs, different processes and inputs, and the re-introduction of reworked defective slab, which are not related to the differences in physical characteristics.¹⁵⁶ Therefore, we analyzed cost differences for products with similar physical characteristics to determine whether POSCO’s reporting of product-specific costs was reasonable. With regard to conversion costs, we found significant differences in conversion costs between similar CONNUMs with identical physical characteristics that most affected conversion costs (*i.e.*, thickness, heat, width, and form), and such significant cost differences affected a large number of CONNUMs.¹⁵⁷ To mitigate these unreasonable and distortive conversion cost differences unrelated to the products’ physical characteristics, for the final results we weight-averaged the reported conversion costs for CONNUMs that have identical product physical characteristics that most affect conversion costs.

¹⁵⁴ See *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) (*Welded Pipe from Korea*), and accompanying IDM at comment 5.

¹⁵⁵ See *Large Diameter Welded Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 84 FR 6374, dated February 27, 2019 (*Large Diameter Welded Pipe from Korea*), and accompanying IDM at Comment 6.

¹⁵⁶ See POSCO SDQR at SD-14 – SD-16 (“...with respect to differences among specifications that nonetheless fall within a limited range of CONNUMs, not only may the input materials differ amongst specifications, but the processing steps and time then required to meet those specifications may also differ, which in turn is reflected in differences among products’ conversion costs.”).

¹⁵⁷ See Memorandum, “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – POSCO and Daewoo International Co., Ltd.,” dated July 10, 2019, at 2 and Attachment 4.

As for the material cost, POSCO reported two cost fields for materials - DIRMAT (which includes the cost of coal, iron ore, transportation and import duties) and OTHDIRMAT (which includes the cost of alloys and reintroduced defective slab, as discussed in Comment 10 below).¹⁵⁸ Consequently, for the final results, we analyzed DIRMAT and OTHDIRMAT cost fields separately. We found that the steel (DIRMAT) cost for similar CONNUMs with identical chemistry characteristics (*i.e.*, QUALITY, CARBON, CHROMIUM, NICKEL, TUNGSTEN, COBALT, MOLYBDENUM, VANADIUM, and STRENGTH) did not vary significantly, and the number of CONNUMs affected was small. Therefore, for the final results we are not weight-averaging DIRMAT costs, thereby preserving the steel costs reported by POSCO according to its normal books and records.¹⁵⁹ However, we found significant variations in the cost of alloys (OTHDIRMAT) for similar CONNUMs, even though it would be expected that the cost of alloys for products with identical chemistry would be similar.¹⁶⁰ A contributing factor to these large variations in OTHDIRMAT cost was that in POSCO's normal books and records the reworked slab reintroduced into production is revalued as a whole rather than retaining its separate material and conversion costs components, and the total value of the reworked slab is reclassified as OTHDIRMAT.¹⁶¹ Thus, products that were produced using reworked slab as a production input have significantly higher OTHDIRMAT cost compared to similar products that did not use reworked slab as a production input. Furthermore, because the value of the reworked slab recorded in OTHDIRMAT includes conversion costs to transform input raw materials into slab, the material costs for products produced from reworked slab include additional processing costs not reflected in the material costs of other products with identical chemistry characteristics. This resulted in additional differences reported in the OTHDIRMAT cost field for products with identical chemistry, and such cost differences are extraneous to product characteristics. Therefore, to mitigate these unreasonable differences in costs reported in the OTHDIRMAT field which are unrelated to the product physical characteristics, for the final results we weight-averaged the reported OTHDIRMAT costs for CONNUMs that have identical physical characteristics identifying the chemistry of the product.

Comment 10: Revaluation of Defective Slabs

*Petitioners' Case Brief:*¹⁶²

- POSCO stated that the reasons for the differences in the reported material costs for products with similar physical characteristics included the use of prevailing material purchase prices on a monthly basis,¹⁶³ and the revaluation of defective slabs to the lower market value so that the use thereof in subsequent production lowers production costs.¹⁶⁴
- The valuation of defective slabs at a lower value violates Commerce's policy that prime and non-prime products should bear the same cost if the non-prime products can be used as generally intended.¹⁶⁵

¹⁵⁸ See POSCO's BCDQR at D-44 and POSCO's SDQR at SD-17.

¹⁵⁹ See Final Cost Calculation Memorandum at 1-2 and Attachment 1.

¹⁶⁰ See Final Cost Calculation Memorandum at 1-2 and Attachment 2.

¹⁶¹ This treatment is consistent with the bills of materials provided in Exhibit SD-14-4.

¹⁶² See Petitioners' Case Brief at 4-6.

¹⁶³ *Id.* (citing POSCO's SDQR at SD-14).

¹⁶⁴ *Id.* (citing POSCO's SDQR at SD-16).

¹⁶⁵ See *Welded Pipe from Korea* and accompanying IDM.

- The improper monthly material purchase valuation may be amended, at least in part, by averaging material costs for the entire POR by grade of material.
- In addition, as partial AFA, DIRMAT should be adjusted upward based on the slab revaluation information on the record.
- If Commerce determines that an adverse inference is not warranted, it should at a minimum increase DIRMAT by denying the slab revaluation at the average consumption on the record.¹⁶⁶

*POSCO's Rebuttal Brief.*¹⁶⁷

- The petitioners' claim that defective slabs should be valued as prime slabs, citing to *Welded Pipe from Korea*, is incorrect. *Welded Pipe from Korea* addressed the issue of non-prime finished product, where in this case the issue is the value of an input – slab.
- The law directs Commerce to rely on a company's normal accounting records if they are consistent with the home country GAAP. POSCO's reporting is consistent with the company's records kept in accordance with the appropriate accounting principles.
- In proposing their adjustments, the petitioners use a hypothetical example provided by POSCO where the market value of defective slab was less than the cost of prime slab. However, as this example is purely hypothetical, the adjustment for defective slab could as well reflect an instance in which the market value exceeds the cost of manufacturing the slab, thereby requiring an upward adjustment to the valuation.¹⁶⁸
- POSCO fully accounted for all variances in its reporting, including those generated as a result of slab revaluation at issue here, by allocating all cost variances to the standard manufacturing costs of each product.¹⁶⁹ Therefore, if Commerce were to apply an adjustment to increase the reported material costs, it would necessarily need to apply a counter offsetting adjustment to other cost elements to ensure that the total reported costs remain unchanged.
- There is no reason to apply AFA, as POSCO has cooperated with every request from Commerce. This statutory scheme (section 782(d) of the Act) establishes that Commerce cannot lawfully use facts available without first "promptly inform{ing}" the party of the apparent deficiency and, if practicable, providing an opportunity to cure or explain it.

Commerce's Position

For the reasons stated in Comment 9 above, we disagree with the petitioners that the application of partial AFA is warranted with regard to POSCO's reported costs.

Moreover, the petitioners' proposed AFA adjustments are based on a hypothetical example provided by POSCO rather than on the actual costs incurred by POSCO and recorded in the company's books and records. POSCO produces subject CTL plate from slabs. If a slab is found to be defective, it is reworked and reintroduced into production, at which point it is valued at the market value. To illustrate such revaluation of defective slab, POSCO provided an example, using hypothetical amounts, showing the calculation of the cost of plate produced from the reworked slab. In POSCO's example, the market value of the reworked slab was lower than

¹⁶⁶ The data points are taken from POSCO's SDQR at SD-16 and Exhibit SD-14-3.

¹⁶⁷ See POSCO's Rebuttal Brief at 4-5.

¹⁶⁸ See POSCO's SDQR at Exhibit SD-14-3.

¹⁶⁹ See, e.g., POSCO's BCDQR at D-33.

the cost of a prime slab input, which led to the adjustments proposed by the petitioners. However, as noted by POSCO, for any given transaction, the value of reintroduced slab could as well have been higher than the cost of prime slab, in which case the adjustment proposed by the petitioners would have been to reduce the cost of such slab.

The petitioners further argue that if Commerce determines that the application of AFA is not warranted, Commerce should, at a minimum, increase the cost of materials by denying the downward slab revaluation adjustments for reworked slabs. We disagree. Aside from the fact that such an adjustment proposed by the petitioners would also be based on a hypothetical example provided by POSCO, the record shows that all of POSCO's actual costs are accounted for in the reported costs. As there are no unreported costs, to make an upward adjustment to material costs as proposed by the petitioners would require the application of an offsetting adjustment, so the total costs remain the same. We also disagree with the petitioners that *Welded Pipe from Korea* is applicable here. The petitioners contend that POSCO's accounting for defective slabs is contrary to Commerce's practice with regard to prime and non-prime products as stated in *Welded Pipe from Korea*. However, our prime/non-prime cost methodology discussed in *Welded Pipe from Korea* pertains to the cost of finished subject production, while the issue here is the valuation of material inputs into production of subject merchandise.

For these reasons, for the final results we are not making an adjustment to POSCO's material costs to account for revaluation of slabs, as suggested by the petitioners. Nevertheless, we considered the parties' arguments on this issue in our analysis of POSCO's reported material costs. POSCO reported the cost of steel in the field DIRMAT, and the cost of alloys and revalued slab input in the field OTHDIRMAT (other materials).¹⁷⁰ As discussed in Comment 9 above, based on our analysis we found that the steel (DIRMAT) costs for similar CONNUMs with identical physical characteristics related to the chemistry of the steel do not vary significantly, and that the weight-averaging of the OTHDIRMAT field is necessary to mitigate the unreasonable cost differences among similar CONNUMs with identical physical characteristics related to the chemistry of the steel. As such, our decision to weight-average the cost of other materials, which includes reworked slab, adjusts for some of the concerns raised by the petitioners, as it ensures that products with identical physical characteristics have similar material costs regardless of whether the product was produced from prime or reworked slab.

Comment 11: Hyundai's No-Shipment Claims

*Hyundai Steel's Case Brief*¹⁷¹

- Commerce preliminarily assigned Hyundai Steel and Hyundai Glovis the review-specific average rate of 20.09 percent, which is the same rate that Commerce calculated for the sole mandatory respondent (POSCO).
- However, both of these companies submitted notices of no sales in this administrative review.¹⁷²

¹⁷⁰ See POSCO's BCDQR at D-44 and POSCO's SDQR at SD-17.

¹⁷¹ See Hyundai Steel's Case Brief at 1-3.

¹⁷² *Id.* at 2 (citing Hyundai Steel's Letter, "Carbon and Alloy Steel Cut-to-Length Plate from Korea – Notice of No Sales," dated August 9, 2018; and Hyundai Glovis's Letter, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Korea – Notice of No Exports, Sales, or Entries," dated August 10, 2018).

- In the concurrent countervailing duty administrative review, Commerce preliminarily determined to rescind that review as to Hyundai Steel based on Hyundai Steel's timely submitted no sales certification.¹⁷³
- For these reasons, Commerce should rescind this administrative review with respect to Hyundai Steel and Hyundai Glovis based on their timely submitted certifications of no shipments.

Commerce's Position

Given that both Hyundai Steel and Hyundai Glovis certified as to no shipments of subject merchandise to the United States during the POR, and there is no information calling these claims into question, based on an analysis of the CBP data on the record,¹⁷⁴ we determine that these companies had no shipments of subject merchandise during the POR. However, we disagree with Hyundai Steel's argument that Commerce should rescind this antidumping duty administrative review. Consistent with Commerce's practice in an antidumping duty administrative review, we have not rescinded the review with respect to Hyundai Steel and Hyundai Glovis, but, rather, have made a final determination of no shipments and intend to issue instructions to CBP based on this finding in these final results¹⁷⁵ based on Commerce's established reseller policy.¹⁷⁶

¹⁷³ *Id.* at 3 (citing *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind the Review, in Part*; 2017, 84 FR 34123 (July 10, 2019)).

¹⁷⁴ See Memorandum, "Cut-to-Length Plate, 2016-2018: Placement on the Record of Results of Inquiry to U.S. Customs and Border Protection," dated September 4, 2018, at Attachment.

¹⁷⁵ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments*; 2012-2013, 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review*; 2012-2013, 79 FR at 51306 (August 28, 2014).

¹⁷⁶ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

V. Recommendation

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

☒

Agree

☐

Disagree

12/16/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance