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Rebar Trade Action Coalition v. United States
Court No. 17-00184; Slip Op. 18-114 (CIT 2018)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

I. SUMMARY

The Department of Commerce (Commerce) prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (CIT or the Court), issued on September 7, 2018, in *Rebar Trade Action Coalition v. United States*, Court No. 17-00184; Slip Op. 18-114 (CIT 2018) (*Opinion and Remand Order*). This remand concerns *Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 27233 (June 14, 2017) (*Final Results*) and the accompanying Issues and Decision Memorandum (IDM).

The Court issued its *Opinion and Remand Order* to Commerce to further explain or reconsider the following from the *Final Results*: (1) Commerce's decision not to collapse [ ] fixed asset-owning companies into the entity referred to as Grupo Simec S.A.B. de C.V. (Grupo Simec) under 19 CFR 351.401(f)(2); (2) Commerce's application of the transactions disregarded and major input rules; (3) Commerce's decision not to apply total facts available to Grupo Simec, or facts otherwise available to Grupo Simec's cost reporting; and (4) Commerce's decision not to apply facts available with adverse inferences to Grupo Simec.[1]

[1] *See Opinion and Remand Order* at 3.

As set forth in detail below, in these results, pursuant to the Court's remand order, we: (1) reopened the record and requested additional information from Grupo Simec;[2] (2) continue to not collapse the [ ] fixed asset-owning companies into Grupo Simec; (3) revise the general and administrative (G&A) expense ratios and depreciation in our transactions disregarded analysis; (4) determine that the application of total adverse facts available (AFA) to Grupo Simec is not appropriate. We explain the basis for these determinations below.

II. BACKGROUND

In the *Final Results*, Commerce collapsed Grupo Simec, Orge S.A. de C.V. (Orge), Compania Siderurgica del Pacifico S.A. de C.V. (Sid. Pacifico), Grupo Chant S.A.P.I. de C.V. (Chant), RRLC S.A.P.I. de C.V. (RRLC), Siderurgica del Occidente y Pacifico S.A. de C.V. (Sid. Occidente), Simec International 6 S.A. de C.V. (Simec 6), Simec International 7 S.A. de C.V. (Simec 7), and Simec International 9 S.A. de C.V. (Simec 9) into a single entity (hereinafter referred to as Grupo Simec or the collapsed group) because record evidence indicated there was a significant potential for manipulation of price or production.[3] The petitioner argued for Commerce to collapse [ ] additional affiliated companies that owned the fixed assets of the manufacturing facilities from which Grupo Simec operated its production of subject merchandise during the period of review (POR). In the *Final Results*, Commerce did not collapse the [ ] fixed asset owners at issue, reasoning that these companies were not producers of subject merchandise.[4] Further, Commerce found that the [ ] fixed asset owners [ ] the

[2] *See* Commerce Letter to Grupo Simec, "Draft Remand Redetermination: Steel Concrete Reinforcing Bar from Mexico; Supplemental Questionnaire," dated October 31, 2018 (Remand Questionnaire). *See also* Letter from Grupo Simec, "Draft Remand Redetermination: Steel Concrete Reinforcing Bar from Mexico - Supplemental Questionnaire Response," dated November 14, 2018 (Remand QR).
[3] *See* IDM at 31-33.
[4] *Id*.

production facilities and equipment used to produce the subject merchandise to Grupo Simec, and the [ ] fixed asset owners [

] and thus did not meet the requirements for collapsing.[5] In addition, Commerce adjusted the fixed overhead expenses to include certain depreciation expenses and adjusted the reported value of transactions with affiliated but non-collapsed fixed asset owners in accordance with section 773(f)(2) of the Tariff Act of 1930, as amended (the Act).[6] In the *Final Results*, the petitioner argued, but Commerce disagreed with, the application of total adverse facts available, finding that Grupo Simec acted to the best of its ability in providing Commerce with complete questionnaire responses.[7] The petitioner challenged our findings and appealed the *Final Results*.

III. OPINION AND REMAND ORDER

In the *Opinion and Remand Order*, the Court remanded to Commerce for further explanation or reconsideration Commerce's: (i) decision not to collapse the [ ] fixed asset owning companies affiliated with Grupo Simec under 19 CFR 351.401(f)(2), (ii) application of the transactions disregarded and major input rules, (iii) decision not to apply total facts available to Grupo Simec, or facts otherwise available to Grupo Simec's cost reporting, and (iv) decision not to apply adverse inferences. In accordance with the *Opinion and Remand Order*, Commerce: (1) reopened the record and requested additional information from Grupo Simec;[8] (2) continued to not collapse the [ ] fixed asset-owning companies into Grupo Simec; (3) revised the general and administrative (G&A) expense ratios and depreciation in our transactions disregarded analysis; and (4) determined that the application of total adverse facts available (AFA) to Grupo

[5] *Id.* at 31 – 33. *See also* Memorandum to the File, "Steel Concrete Reinforcing Bar from Mexico: Grupo Simec S.A.B. de C.V. (Grupo Simec) Final Results Sales and Cost Analysis Memorandum," dated June 7, 2017 at 2.
[6] *See* IDM at 29-31.
[7] *Id.* at 24-27.
[8] *See* Remand Questionnaire. *See also* Remand QR.

Simec is not appropriate. On March 1, 2019, Commerce issued the Draft Remand and provided parties until Friday, March 8, 2019, to comment.[9] On March 8, 2019, the Rebar Trade Action Coalition (the petitioner) was the only party to file comments.[10]

IV. ANALYSIS

A. Whether to Collapse the Fixed Asset Owners at Issue

We continue to find that we should not collapse the [ ] non-producing fixed asset owners with Grupo Simec. These companies include [

].[11] The court remanded this issue for further explanation and asked why Commerce had not considered the criteria described in 19 CFR 351.401(f)(2) (the 401(f)(2) criteria) when making our determination.[12]

1. Background

In our *Preliminary Results* and unchanged in the *Final Results*, Commerce determined that the Grupo Simec companies[13] were affiliated persons pursuant to section 771(33)(B), (F) and (G) of the Act.[14] Furthermore, pursuant to section 19 CFR 351.401(f)(1), Commerce determined that the Grupo Simec companies were a single entity because, "the eight {producers

[9] *See* Draft Results of Redetermination Pursuant to Court Remand: Rebar Trade Action Coalition v. United States Court No. 17-00184; Slip Op. 18-114 (CIT 2018), dated March 1, 2019 (Draft Remand).
[10] *See* Letter from Petitioner, "Steel Concrete Reinforcing Bar from Mexico: RTAC's Comments on Draft Results of Remand Redetermination," dated March 8, 2019 (Petitioner Remand Comments).
[11] *See* Letter from Grupo Simec, "Antidumping Duty Administrative Review of Steel Concrete Reinforcing Bar from Mexico – Fifth Supplemental Questionnaire Response," dated November 22, 2016 (5SQR) at Exhibit S5-1.
[12] *Id.* at 8.
[13] The collapsed group.
[14] *See Steel Concrete Reinforcing Bar from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015*, 81 FR 89053 (December 9, 2016) (*Preliminary Results*); Memorandum, "Preliminary Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bar from Mexico; 2014- 2015; Affiliation and Collapsing Memorandum for the Grupo Simec," dated December 5, 2016 (Preliminary Results Collapsing Memorandum); and IDM at Comment 13.

of subject merchandise} operate production facilities which produce substantially the same product and merchandise under consideration during the POR…{m}oreover, record evidence demonstrates a significant potential for manipulation of price and production among {the collapsed group} because of their high degree of affiliation and similar production facilities of rebar."[15] In the *Final Results*, we treated the Grupo Simec companies and the [ ] fixed asset owners as affiliated parties, in accordance with section 771(33)(B), (F) and (G) of the Act, but Commerce did not collapse those fixed asset owners because we found they were not producers of subject merchandise as required by section 19 CFR 351.401(f)(1).[16] The Court did not take issue with this finding.[17] However, at issue on remand is whether the [ ] fixed asset owners nonetheless meet the collapsing criteria of section 351.401(f)(2), despite not being producers.[18] The factors contained within that provision state that to determine if there is a significant potential for the manipulation of price or production, Commerce may consider (1) the level of common ownership, (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, and (3) whether operations are intertwined, including the sharing of sales information, involvement in production and pricing decisions, sharing of facilities and employees, or significant transactions between the affiliates.[19]

In the *Preamble*, Commerce explained why the potential for manipulation must be "significant," noting that "{t}he suggestion that the Department collapse upon finding any potential for price manipulation would lead to collapsing in almost all circumstances in which

[15] *See* Collapsing Memorandum at 9.
[16] *See* IDM at 32.
[17] *See Opinion and Remand Order* at 7.
[18] *See Opinion and Remand Order* at 8.
[19] *See* 19 CFR 351.401(f)(2).

the Department finds producers to be affiliated."[20] The Court has upheld this interpretation of Commerce's collapsing regulations, finding that when making a collapsing determination, Commerce must find "evidence that there is more than the 'mere possibility' that significant potential for manipulation could occur."[21]

As the Court noted in its decision, we have previously found these criteria can be applied outside of the four-corners of the regulation to affiliated non-producing exporters and distributors in certain scenarios. A first scenario, for example, is exemplified in *Shrimp from Brazil*.[22] In that case, an exporter and processor had common ownership, common management, and intertwined operations.[23] We applied these criteria to the affiliated companies in that case because we were concerned that the exporter could have shifted its U.S. sales to the processor, and the processor could have then sold the merchandise to the exporter's U.S. customers without paying duties at the rate assigned to the exporter, thus helping the exporter evade duties.[24] Likewise, in *CTL Plate from Korea*, an affiliated distributor and a producer also had common ownership, common management and intertwined operations.[25] We applied these criteria to the distributor in that case because we were concerned that the producer could have shifted its home market sales to the distributor, which could have helped the producer manipulate its price.[26]

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[20] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27345 (May 19, 1997) (*Preamble*).
[21] *See Hontex Enter., Inc. v. United States*, 248 F. Supp. 2d 1343, 1345 n. 19 (CIT 2002) (*Hontex*) (citing *U.S. Steel Grp. v. United States*, 177 F. Supp. 2d 1325, 1331 (CIT 2001) (addressing the statutory basis for disregarding sales due to a reasonable suspicion of price manipulation pursuant to Section 773(a) of the Act - not the standard for collapsing)).
[22] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004) (*Shrimp from Brazil*) and accompanying issues and decision memorandum (IDM) (Shrimp from Brazil IDM).
[23] *See* Shrimp from Brazil IDM at 13-15.
[24] *Id.* at 15 (citing concerns that the "role of producer and seller could easily switch.").
[25] *See Certain Carbon Alloy Steel Cut-to-Length Plate from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination*, 82 FR 16369 (April 4, 2017) (*CTL Plate from Korea*) and accompanying IDM (CTL Plate from Korea IDM) at 25.
[26] *Id.* at 26.

A third scenario is exemplified by the Court's findings in *Hontex Enters. v. United States*, in which the Court determined that Commerce may also collapse two or more affiliated exporters in non-market economies consistent with the 401(f)(2) criteria.[27] The Court in that case noted that the practice of collapsing such parties was not explicitly authorized by the statute or regulations, and that if Commerce applies the 401(f)(2) criteria to non-producing parties, Commerce must therefore "articulate{} a reasonable set of inquiries for answering the central question, whether parties are sufficiently related to present the possibility of price manipulation."[28] The Court found that Commerce's practice was a reasonable interpretation of the statute because Commerce explained that exporters in non-market economies could "frustrate the purpose of the statute" with respect to granting exporters separate rates if they were able to manipulate each other's "export activities, including pricing."[29]

In each of the three scenarios described above, the affiliated companies that were collapsed made sales during the POR and were involved in setting prices. Therefore, we have considered the 401(f)(2) criteria when analyzing whether to collapse certain non-producing affiliates in certain situations.

a. Application of 401(f)(2) Criteria to This Review

The [ ] fixed asset owners at issue do not satisfy our requirements for collapsing because – unlike the situations in *Shrimp from Brazil*, *CTL Plate from Korea* or *Hontex* – we have determined that there is insufficient evidence on the record to conclude that the fixed asset owners have the significant potential to manipulate price or production. Because the Court has asked us to conduct an analysis under the 401(f)(2) criteria, we reopened the record to gather

[27] *See Hontex*, 248 F. Supp. 2d at 1343.
[28] *Id.* at 1341.
[29] *Id.*

information on the ownership, management, and business operations of the [ ] fixed asset owners. We have explained below why we have determined that the record does not support a finding that the fixed asset owners have the significant potential to manipulate price or production under these criteria.

i. Common Ownership & Management

The first two 401(f)(2) criteria instruct Commerce to consider whether a producer has common ownership and management with the affiliated company.[30] These criteria are instructive when considering whether a producer could have leveraged its transactions with an affiliated exporter or distributor to force the company to participate in manipulation. In *Shrimp from Brazil*, for example, the exporter was owned by a brother and sister who also exerted functional control over the producer.[31] As Commerce explained, the brother and sister may have been able to force the exporter to sell merchandise at a price that helped the producer evade duties as a result of the nature of their relationship in that case. Likewise, in *CTL Plate from Korea*, the producer owned a stake in the distributor, and the two companies shared board members.[32] Commerce determined that the producer, therefore, could have leveraged its control over the distributor to manipulate prices.[33] Finally, this court's decision in *Hontex* found that if one exporter is part of the NME-wide entity and exerts control over another that has obtained a separate rate, the exporter could leverage that control to evade duties.[34]

[30] *See* 19 CFR 351.401(f)(2)(i) and (ii).
[31] *See* Shrimp from Brazil IDM at 13.
[32] *See* CTL Plate from Korea IDM at 25.
[33] *Id.*
[34] *See Hontex Enters., Inc. v. United States*, 248 F. Supp. 2d 1323 (CIT 2002).

The fixed asset owners and Grupo Simec unquestionably share common ownership and overlapping management.[35] However, unlike the cases discussed above, we find that the first two 401(f)(2) criteria dealing with common ownership and management are not instructive when considering the fixed asset owners at issue in this case. While ultimately under the ownership umbrella of Grupo Simec, the fixed assets of each plant are owned and controlled by several entities.[36] That is, the evidence on the record does not suggest that a single company or organized collective of those companies with centralized direction has the ability to control the combination of assets necessary to produce subject merchandise.[37]

As discussed above, in past cases, we have found that the exporters and distributors being examined as part of a collapsing exercise, in tandem with, or exclusive of, producers of subject merchandise could manipulate price or production through their sales and/or control over production decisions. The same reasoning does not apply here, as the evidence on the record does not suggest that the fixed asset owners individually or in combination have the ability to manipulate the potential pricing or production decisions of subject merchandise.

[35] *See* Letter from Grupo Simec, "Antidumping Duty Administrative Review of Steel Concrete Reinforcing Bar from Mexico – Fourth Supplemental Questionnaire Response," November 7, 2016 (4SQR) at Exhibit S4-1a (page 17 of English version of Grupo Simec, S.A.B. de C.V. and subsidiaries, Consolidated Financial Statements, As of December 31, 2015). *See also* Remand QR at Exhibits 1 and 2.
[36] Commerce requested, and Grupo Simec provided a list of the fixed assets that the [ ] fixed asset owners leased to the collapsed producers *Id.* at Exhibit 3.
[37] *Id.*

ii. Intertwined Operations

The third 401(f)(2) criteria is whether operations are intertwined, including the sharing of sales information, involvement in production and pricing decisions, sharing of facilities and employees, or significant transactions between the affiliates.[38]

In this instance, there is no evidence on the record that Grupo Simec shared sales information with the fixed asset owners. Further, Grupo Simec seemingly could not have been involved in the production or pricing decisions of the fixed asset owners because the fixed asset owners only owned certain equipment and facilities, and thus did not themselves produce or sell merchandise during the POR. This situation is therefore unlike the cases cited above where we collapsed affiliated parties, as there is no evidence on the record suggesting that the fixed asset owners and Grupo Simec shared sales information, and the fixed asset owners were not involved in Grupo Simec's production and pricing decisions.

Grupo Simec explained that, through an oral lease with the fixed asset owners, it had exclusive use of the plants and production equipment to produce merchandise, and the fixed asset owners did not have access to the plants or production equipment used to produce subject merchandise during the POR.[39] We have recognized that producers could manipulate prices or production if they had access to the facilities of other *producing* affiliates because the producer could have used those facilities to make subject merchandise at lower costs.[40] Those lower costs would not appear on the books and records of the producer, and the producer could therefore

[38] *See* 19 CFR 351.401(f)(2)(iii).
[39] *See* Remand QR at 5 - 6.
[40] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2013-2014*, 81 FR 1396 (January 12, 2016) (*Tapered Roller Bearings from China*).

manipulate its margin as a result.[41] The collapsing regulation prevents companies from minimizing normal value by sourcing production for sales in comparison markets from their most efficient producers and production for U.S. sales from their less efficient producers.[42] That reasoning does not apply here because the fixed asset owners do not maintain production equipment other than the equipment that is already used by Grupo Simec, and there is no evidence that the fixed asset owners had any production of their own during the POR.

Finally, while there were significant purchases between the fixed asset owners and Grupo Simec during the POR, as Grupo Simec explained in its questionnaire response, the accounts receivable and accounts payable transactions are [

].[43] These transactions do not pertain to the production, price setting, exporting, or marketing of subject merchandise. The criterion of significant transactions is, again, instructive when considering whether a company could have leveraged its transactions with an affiliated company to force the company into participating in manipulation. We accordingly determine that the mere fact that these [ ] companies had these transactions with the affiliated entity is, in this instance, insufficient to establish that it could have manipulated price or production as a result.

While it is hypothetically possible that the fixed asset owners could hire their own production labor force and enter into arrangements with each other to produce subject merchandise in the future, and/or restructure and retain personnel to also begin independently

[41] *Id.*
[42] *Id.*
[43] *See* Remand QR at 4.

selling merchandise and obtaining a customer base in the future, and that Grupo Simec could be involved in decisions about whether they might pursue either or both of those commercial paths, there is no information on the record indicating that any such plans or arrangements were ever discussed, suggested or made during the POR. Indeed, the facts of the instant proceeding are unlike those of *Shrimp from Brazil*, *CTL Plate from Korea*, or *Hontex* because the exporters and distributors in those cases had already established sales relationships with customers.

Instead, based on the record of this proceeding and consistent with the Court's holding in *Hontex*, we find the future ability of these companies to produce or sell merchandise is speculative and demonstrates only the "mere possibility" for manipulation to occur and, thus, does not constitute evidence that is "significant" within the meaning of the regulation.[44] This situation is therefore similar to the one described in the *Preamble* to the regulations, where Commerce sought to avoid collapsing affiliates with "*any* potential for price manipulation," as opposed to the standard for "significant potential" that Commerce ultimately adopted, because an "any potential" approach "would lead to collapsing in almost all circumstances in which the Department finds producers to be affiliated."[45]

For these reasons, we continue to find that the fixed asset owners at issue do not have the significant potential to manipulate price or production under the 401(f)(2) criteria and, accordingly, we continue to find that it was appropriate not to collapse these fixed asset owners into the collapsed Grupo Simec entity.

[44] *See Hontex*, 248 F. Supp. 2d at 1345.
[45] *See Preamble*, 62 FR at 27345.

B. Application of the Transactions Disregarded and Major Input Rules

1. Background

In the *Final Results*, Commerce analyzed the POR transactions between the collapsed Grupo Simec entity and its affiliated fixed asset owners in accordance with section 773(f)(2) of the Act, *i.e.*, the transactions disregarded rule.[46] As a result of this analysis, we "adjusted Grupo Simec's reported fixed overhead costs to reflect the non-collapsed fixed asset owners' costs inclusive of G&A and financial expenses."[47] In doing so, Commerce calculated a G&A expense ratio for the non-collapsed fixed asset owners using the G&A expense rates reported by the collapsed fixed asset owners. For the financial expense rate, we relied on the consolidated financial expense rate reported by Group Simec.

In the *Opinion and Remand Order*, the Court held that Commerce did not explain why it relied on the cost experiences of the collapsed fixed asset owners to adjust the costs of the non-collapsed group.[48] The Court found that, even if it was reasonably discernable that Commerce relied on the cost experiences of certain collapsed fixed asset owners because they served as good comparators for the cost experiences of the non-collapsed companies, that explanation is not supported by the record.[49] The Court further questioned why Commerce chose to rely on the cost experience of certain collapsed fixed asset-owning companies rather than the expenses from the consolidated Grupo Simec financial statements if such statements fully capture the G&A expenses of all [ ] non-producing fixed asset owners.[50] Finally, the Court held that Commerce

[46] During the POR, [ ] of the [ ] total fixed asset owners were also operating companies which were a part of the collapsed Grupo Simec entity. *See* 5SQR at Exhibit S5-1. Therefore, Commerce's analysis was performed on the transactions between the collapsed Grupo Simec entity and the [ ] non-collapsed fixed asset owners.
[47] *See* Final IDM at Comment 12.
[48] *See Opinion and Remand Order* at 13.
[49] *Id*. at 13-14
[50] *Id*. at 15.

failed to explain why under the application of the transactions disregarded rule, which requires use of the higher of transfer or market prices, Commerce valued the affiliated transaction at cost.[51] Therefore, the Court remanded Commerce's application of the transactions disregarded rule for further explanation or reconsideration consistent with this opinion.[52]

2. Analysis

As explained above, in the *Final Results*, Commerce applied the transactions disregarded rule to analyze and adjust Grupo Simec's transactions with its non-collapsed affiliated fixed asset owners to reflect the non-collapsed affiliated fixed asset owners' actual cost of the fixed asset leases. In light of the Court's findings, we have reviewed our analysis and our calculation of the transactions disregarded adjustment which was applied to Grupo Simec's affiliated fixed asset lease transactions. Section 773(f)(2) of the Act, *i.e.*, the transactions disregarded rule, 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 determination 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. Because this section of the statute does not specify a particular methodology for determining market value, Commerce has established a hierarchy for establishing market value in the application of sections 773(f)(2) and (3) of the Act. Commerce's express preference for market value is a respondent's own purchases of the input from unaffiliated suppliers. When no such purchases are available, Commerce looks

[51] *Id*. at 16.
[52] *Id*. at 11-16.

to the affiliated supplier's sales of the input to unaffiliated parties, and, lacking that, to any reasonable source for market value.[53]

In the instant review, Grupo Simec did not lease comparable production equipment or plants from unaffiliated parties, nor did Grupo Simec's fixed asset owners lease their production equipment or plants to unaffiliated parties; consequently, Commerce resorted to the actual costs incurred by the non-collapsed fixed asset owners as a reasonable source for market value. We calculated the non-collapsed fixed asset owners' actual costs using the fixed asset owners' actual depreciation expenses, which were reported in the submitted cost databases under fixed overhead, and then added amounts for G&A and financial expenses. To derive the non-collapsed fixed asset owners' G&A and financial expenses, we looked to the G&A and financial expense ratios reported for Grupo Simec, information that was on the record and readily available in a usable form.[54] We based Grupo Simec's financial expense ratio on the consolidated financial statements of [ ], which, in accordance with Commerce's long-standing practice, represented the highest level of consolidation available.[55] Accordingly, the consolidated financial expense ratio submitted for Grupo Simec's operating companies was also the appropriate financial expense ratio for Grupo Simec's fixed asset owners.[56] With regard to

[53] *See e.g., Certain Hot-Rolled Steel Flat Products from Brazil: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part,* 81 FR 53424 (August 12, 2016) and accompanying Issues and Decision Memorandum at Comment 7; *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17413 (March 26, 2012) and accompanying Issues and Decision Memorandum at Comment 17; and, *Final Results of Antidumping Duty Administrative Review: Silicomanganese from Brazil*, 69 FR 13813 (March 24, 2004) and accompanying Issues and Decision Memorandum at Comment 7.
[54] *See* 4SQR at Exhibits S4-2 and S4-6.
[55] *See, e.g., Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52055 (September 12, 2007), and the accompanying Issues and Decision Memorandum at Comment 25; *Notice of Final Determination of Sales at Less than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Mexico*, 67 FR 55800 (August 30, 2002) and accompanying Issues and Decision Memorandum at Comments 21-22.
[56] Grupo Simec's consolidated results, which are included in [ ]'s consolidated results, include the results of the [ ] non-collapsed fixed asset owners. *See* 4SQR at Exhibit S4-3, and Letter from Grupo Simec, "Antidumping

G&A expenses, Grupo Simec's reported G&A expense ratio included the G&A expenses and cost of goods sold for the [ ] companies that operated Grupo Simec's manufacturing plants during the POR.[57] Using Grupo Simec's reported G&A expense ratio calculation worksheet, we extracted the figures for the [ ] operating companies that were also fixed asset owners assuming that a G&A expense ratio for these [ ] companies would provide a reasonable estimate for the residual fixed asset owners, *i.e.*, the [ ] non-collapsed companies.

After further review of the record and reconsideration of the Court's findings, we agree that it may not be reasonable to assume that the G&A experience of the fixed asset owners that are also involved in manufacturing activities would replicate the experience of the non-collapsed fixed asset owners that did not produce any merchandise. Therefore, in this remand results, we have revised our approach.

On remand, we find that information on the record in the consolidating worksheets submitted by Grupo Simec as support for its G&A expense ratio calculation and its overall cost reconciliation allow us to extract the actual G&A expenses for [ ] of the [ ] non-collapsed fixed asset owners.[58] Consolidating worksheets are tools used to prepare the consolidated financial statements of a parent and its subsidiaries. They indicate the individual values of each company included in the consolidated results, the necessary adjustments and eliminations, and the final consolidated values. Thus, for Grupo Simec, the consolidating worksheets that were submitted for the record list the G&A expenses, depreciation expenses, and cost of goods sold

Duty Administrative Review of Steel Concrete Reinforcing Bar from Mexico – Section A Response," dated February 22, 2016 (AQR) at Exhibit A-2b.

[57] *See* 4SQR at Exhibit S4-2.

[58] *See* Grupo Simec's 4SQR at Exhibit S4-2, and, Letter from Grupo Simec, "Antidumping Duty Administrative Review of Steel Concrete Reinforcing Bar from Mexico – Addendum to Fourth Supplemental Questionnaire Response," dated November 14, 2016 (Addendum 4SQR) at Exhibit 1.

for each Grupo Simec subsidiary.[59] After accounting for elimination entries, *i.e.*, intercompany transactions, the consolidating worksheets totals equal to the respective line items reported on Grupo Simec's fiscal year 2015 audited consolidated financial statements.[60]

The results for the remaining [ ] non-collapsed fixed asset owners are also captured in the consolidated financial statements; however, in the consolidating worksheets, their results are consolidated with Grupo Simec's direct subsidiary [ ], which in total, includes the results for [ ] companies.[61] Therefore, in light of the Court's concern that the G&A expenses used in the final results were not a reasonable proxy for the non-collapsed fixed asset owners' actual experience, we reopened the record to obtain the G&A expenses and cost of goods sold figures for the remaining [ ] non-collapsed fixed asset owners.[62] Using the information contained in the remand questionnaire response,[63] in conjunction with the consolidating worksheets already on the record of the case,[64] we calculated G&A expense ratios for the [ ] additional non-collapsed asset owners.[65]

As result, we now have calculated G&A expense ratios for each of the [ ] non-collapsed fixed asset owners at issue and applied the ratios to their respective depreciation expenses to calculate the total actual costs of the fixed asset leases (depreciation, G&A, and financial expenses) for each of the [ ] non-collapsed fixed asset owners. We relied on the total actual costs of the fixed asset leases as a reasonable approximation of market values for purposes of our transactions disregarded analysis. Because the resulting calculated market values were higher than the transfer prices between the affiliated companies, *i.e.*, the no-cost

[59] *See* 4SQR at Exhibit S4-2.
[60] *Id.* at Exhibit S4-1a.
[61] *See* AQR at Exhibit A-2b.
[62] *See* Remand Questionnaire, and Remand QR.
[63] *See* Remand QR at Exhibits 7 and 8.
[64] *See* 4SQR at Exhibit S4-2.
[65] *See* Remand Calculation Memorandum.

lease transactions, we adjusted Grupo Simec's reported costs to reflect the calculated market values of the leases.

C. Decision Not to Apply Adverse Inferences to Grupo Simec

As discussed above, in this remand results, we have explained why the 401(f)(2) criteria do not apply to the [ ] non-collapsed fixed asset owners at issue and why our decision not to collapse the [ ] fixed asset owners into Grupo Simec is in accordance with the law and is supported by substantial evidence. We have also based our home market and margin calculation on the actual G&A and financial expense data on the record for the [ ] non-collapsed fixed asset owners, and therefore, we are no longer estimating the firms' costs for purposes of applying the transactions disregarded rule. Thus, having addressed these two issues, we find that we need not resort to facts otherwise available as provided under section 776(a) of the Act or on total or partial adverse inferences as provided under section 776(b) of the Act.

Having revised the margin calculations as discussed above, we find the weighted-average margin is 0.00 percent, which is *de minimis*.

V. INTERESTED PARTY COMMENTS

On March 1, 2019, Commerce released the Draft Remand and invited interested parties to comment. The petitioner filed timely comments on March 8, 2019. We have considered the comments received and, based on the analysis above, continue to not collapse the [ ] fixed-asset owners. We address the petitioner's comments below.

A. Commerce Draft Remand Analysis Mischaracterizes Past Precedent

Petitioner's Comments

- In the Draft Remand, Commerce seeks to distinguish past cases in which it collapsed non-producing affiliates on the basis that such affiliates already had sales, the pricing of which

could be manipulated. However, a review of the cited cases does not indicate that Commerce's collapsing determinations in those cases were premised on the non-producer's existing customer relationships.

- In *Shrimp from Brazil*, the respondent had an affiliate that processed shrimp on the respondent's behalf.[66] After finding that the processor was a toller, rather than a producer, Commerce preliminarily applied the major input/transaction disregarded rules, but, for the final determination, instead collapsed the respondent with the processor.[67]
- In that case, Commerce found that because the two firms were co-located, owned and run by the same individuals, and the processor's facilities were already being used to produce goods for the respondent, "the role of producer and seller could easily switch" from one to the other without substantial retooling.[68]
- In *Shrimp from Brazil*, Commerce did not focus on which company had existing sales relationships, but instead focused on the fact that the connection between the collapsed companies was such that sales to the respondent's existing customers could easily be made in the name of either company.[69]
- In *Shrimp from Brazil*, Commerce also found that the respondent and processor were essentially run as a single company regardless of being separately incorporated.[70]
- The facts of the instant proceeding are similar to the facts examined in *Shrimp from Brazil*. Even if the non-collapsed fixed-asset owners did not sell subject merchandise to non-affiliates during the POR, they had affiliates who did so. Further, these affiliates and the

[66] *See Shrimp from Brazil* and accompanying Shrimp from Brazil IDM at 11-15.
[67] *Id*.
[68] *Id*. at 15.
[69] *Id*.
[70] *Id*. at 11-15.

non-collapsed fixed-asset owners [ ] and have [ ].[71]

- Decisions as to transactions between the collapsed companies and non-collapsed fixed asset owning companies are made by these [ ], who could easily share sales information, production, etc. Further, the non-collapsed fixed asset owners formerly sold subject merchandise[72] and, indeed, [ ] the collapsed companies during the POR.[73]
- Additionally, the assets owned by non-collapsed owners were already being used to produce subject merchandise in the names of the collapsed firms during the POR by means of [ ], verbal leasing agreements established between the collapsed and non-collapsed asset owners.
- Thus, as with *Shrimp from Brazil*, in the instant case the "role of producer and seller could easily switch from {manufacturing companies} to the {fixed asset owners} without substantial retooling."[74]
- In *CTL Plate from Korea*, which Commerce also references in the Draft Remand, Commerce's collapsing decision was not driven by the identities of which related party had present sales relationships with outside customers.[75] Rather, in that case, Commerce focused on the fact that the companies being collapsed had common ownership, overlapping management, and entwined operations that would permit one firm to control the others, thus

[71] *See* Petitioner Remand Comments at Exhibit 1; *see also* Preliminary Results Collapsing Memorandum at Attachment 1; *see also* Remand QR at Exhibit 2.
[72] *See* Petitioner Remand Comments at 11.
[73] *Id*.
[74] *See* Shrimp from Brazil IDM at 15.
[75] *See CTL Plate from Korea* and accompanying CTL Plate from Korea IDM.

requiring all the firms at issue to be collapsed[76], conditions that are also present in the proceeding at issue.

- In *Hontex*, an additional case referenced by Commerce in its Draft Remand, Commerce collapsed two non-market economy exporters, evidently on the basis that a single individual appeared to be involved in the activities of both firms.[77] While both firms at issue in *Hontex* had sales of subject merchandise during the POR of that proceeding, the Court's discussion of the facts of that case do not appear to indicate that Commerce was motivated to collapse primarily by the fact that the firms had established sales relationships with customers, but rather because their pricing/sales decisions could potentially be manipulated through common control/management.[78] As noted above, the collapsed companies and the non-collapsed fixed asset owning companies [ ] and have [ ].[79]
- In the instant proceeding, because: (1) there is common ownership among the collapsed companies and the [ ] non-collapsed fixed asset owning companies; (2) [ ] of the "manufacturing" companies are [ ] by the non-collapsed asset owners; (3) there is [ ] in management among the collapsed and non-collapsed firms; and (4) intertwined operations that indicate that they are all, effectively, being run as a single company, Commerce should collapse all of them.
- Absent collapsing all the firms at issue, the facts are such that Simec could easily restructure manufacturing activities to produce subject merchandise in the names of the fixed-asset

[76] *See* CTL Plate from Korea IDM at 25-27.
[77] *See Hontex Enters.* v. *United States*, 248 F. Supp. 2d 1323 (CIT 2003) (*Hontex*).
[78] *See Hontex*, 248 F. Supp 2d at 1354-1347.
[79] *See* Petitioner Remand Comments at Exhibit 1; *see also* Preliminary Results Collapsing Memorandum at Attachment 1; *see also* Remand QR at Exhibit 2.

owners or restructure its sales activities to sell subject merchandise under the names of the non-collapsed fixed asset owning companies.

Commerce Position: We continue to find that the facts of *Shrimp from Brazil* (in which Commerce collapsed an affiliated toller and producer) and *CTL Plate from Korea* (in which Commerce collapsed a distributor and producer) to be distinct from the facts of the proceeding at issue. As explained in the underlying review and Draft Remand (and in the Analysis section above),[80] we find that the non-collapsed fixed asset owners did not individually or in tandem produce subject merchandise during the POR.[81] Because the non-collapsed entities did not produce rebar, did not have a workforce to produce rebar, and there is no evidence indicating that they marketed, distributed, or set prices for rebar during the POR, the record must contain information indicating that the non-collapsed entities had some other means to manipulate price or production or that they have the "significant potential" to manipulate the price or production of rebar in order for Commerce to collapse these [ ] firms with the collective entity referred to as Grupo Simec under 19 CFR 351.401(f)(2). We find that such information is not present on the record of this review, and thus, the facts of the instant case are distinct from the facts of *Shrimp from Brazil* and *CTL Plate from Korea*.

In *Shrimp from Brazil*, Commerce examined whether to collapse a producer (CIDA) and a processor (Produmar), both of which were owned and operated by the same family members.[82]

[80] No analysis from the Draft Remand has changed above, although we have added some clarifying language in response to this specific line of argumentation made by the petitioner.
[81] On this point, the petitioner claims in the narrative of its comments that certain of the non-collapsed fixed asset owners produced subject merchandise and provided subject merchandise to the collapsed entities during the POR. However, the corresponding footnote of the parties' financial statement makes reference to the provision of [ ] or [ ], not subject merchandise. In truth, the record does not identify the nature of those finished articles. As explained elsewhere in this final remand redetermination, we do not find that references to [ ] when placed alongside the totality of evidence in this case, demonstrates that the non-collapsed entities produced subject rebar or sold subject rebar to the collapsed entities during the POR.
[82] *See* Shrimp from Brazil IDM at 11-12.

The facts of *Shrimp from Brazil* further indicate that: (1) two companies shared the same building and administrative space; (2) Produmar had no administrative staff and used the administrative staff of CIDA; (3) CIDA's employees maintained Produmar's books and records; (4) Produmar's production workers took orders from one of CIDA's owners; and (5) the other CIDA owner operated and managed Produmar through a power of attorney executed by Produmar's principal owner.[83] Further, during the period of investigation (POI), Produmar processed shrimp only for CIDA, and CIDA exported shrimp by using Produmar's export sanitary certificate.[84]

In *Shrimp from Brazil*, Commerce looked to 19 CFR 351.401(f)(2) when examining whether to collapse CIDA and Produmar. Concerning 19 CFR 351.401(f)(2)(i) and (ii), which deal with common ownership and management, Commerce determined the criteria were met because the management of Produmar was largely controlled by the two individuals who own and manage CIDA.[85] Concerning 19 CFR 351.401(f)(2)(iii) that deals with intertwined operations, Commerce found that the criteria was met because Produmar had a fully functioning facility for producing the subject merchandise, which was located on the same premises that was controlled by CIDA.[86] Accordingly, Commerce collapsed CIDA and Produmar under 19 CFR 351.401(f)(2).

In *CTL Plate from Korea*, Commerce collapsed affiliated service centers and distributors with the respondent POSCO.[87] Concerning the service centers, Commerce found that 19 CFR 351.401(f)(1) of the collapsing criteria (*e.g.*, similar or identical production that would not

[83] *Id*.
[84] *Id*.
[85] *Id*. at 14.
[86] *Id*. at 14-15.
[87] *See* CTL Plate from Korea IDM at 24-28.

require substantial retooling) was met because the service centers were manufacturing subject merchandise from the slitting of coils, thereby making significant retooling unnecessary to restructure manufacturing priorities.[88] Regarding the distributors examined in *CTL Plate from Korea*, Commerce collapsed them under 19 CFR 351.401(f)(2). In making its collapsing decision, Commerce noted there was significant common ownership between POSCO and the distributors.[89] Commerce also emphasized how the operations of the distributors were intertwined with those of POSCO when concluding that POSCO had the ability to shift sales and/or production to the distributors:

> In this case, we noted in the *Preliminary Collapsing Memorandum* that POSCO either directly or indirectly owns a greater than five percent equity interest in the affiliated distributors, which shows significant common ownership among POSCO and these affiliates during the POI . . . Because these affiliated entities identified by POSCO engaged in the purchase of CTL plate from Korea, and the affiliated distributors in particular purchased significant amounts of CTL plate from POSCO during the POI, we continue to find that the operations of POSCO and the affiliated distributors are "intertwined" through the significant affiliated party transactions. *We continue to find that these intertwined operations give POSCO the ability and the potential to shift sales and/or production among its affiliates*.[90]

While Commerce found significant common ownership/management and extensively intertwined operations in *Shrimp from Brazil* and *CTL Plate from Korea*, the facts of the instant proceeding are different. Here, concerning whether there is the "significant potential" for the manipulation of price or production by means of common ownership, while ultimately under the ownership umbrella of Grupo Simec, the fixed assets that were leased to the collapsed firms that produced rebar during the POR were owned, in part, by various non-collapsed entities (*e.g.*, [

[88] *Id*. at 25. The fact that Commerce collapsed the service centers under (f)(1) of the collapsing criteria distinguishes them from the facts of the instant remand proceeding in which the Court agreed with Commerce's decision not to collapse the [ ] fixed-asset owners under (f)(1).
[89] *Id*.
[90] *Id*. at 27, emphasis added.

]) as well as collapsed entities (*e.g.*, [

]). Thus, these non-collapsed asset owning entities (either individually or together) cannot unilaterally control the assets used to produce subject merchandise because they share ownership of the assets with members of the collapsed entity.[91]

In addition, the petitioner is incorrect that record evidence demonstrates that there were sales of subject merchandise between the collapsed and non-collapsed entities. While there were transactions listed in the financial statements between the collapsed and non-collapsed entities, those financial statements stated at no point that they involved specifically sales of subject rebar (*e.g.*, [

]).[92] Instead, they indicated that there had been sales of [

] or [ ], which could have encompassed an array of products and which we address more fully in section D below.

Thus, there is no evidence indicating such transactions involved "significant" volumes of subject merchandise (as was the case in *CTL Plate from Korea*) (or that they involved any purchases of subject merchandise whatsoever) that would suggest the existence of extensive intermingled operations as found by Commerce in *CTL Plate from Korea*. In fact, [

] non-collapsed asset holders (*e.g.,* [

[91] *See* Remand QR at Exhibit 3.

[92] *See* Letter from Simec, "Antidumping Duty Review of Steel Concrete Reinforcing Bar from Mexico – Section A, B, and D Supplemental Response," dated September 7, 2016 (2SQR) at Exhibit D-26A ([

]) emphasis added; Exhibit D-26B ([

]) emphasis added; and Exhibit D-26E ([

]) emphasis added.

]) had no cost of sales during the POR, which indicates that they had no operations with which to intermingle.[93] Meanwhile, while the two remaining fixed asset holders (*e.g.*, [ ]) had cost of sales, the record indicates these activities were limited to [ ] and did not involve production or sale of subject merchandise, as was the case in *Shrimp from Brazil* and *CTL Plate from Korea*.[94]

Concerning *Hontex*, the petitioner cites to Commerce's finding in the underlying new shipper review rather than the Court's holding to argue that Commerce collapsed the two exporters at issue in that proceeding because their pricing/sales decisions could potentially be manipulated through common control/management. Thus, the petitioner argues, because the non-collapsed entities and collapsed entities in the instant review share common control/management, Commerce should similarly collapse here.[95]

We referenced *Hontex* in the Draft Remand (and in the Analysis section above) to highlight the Court's holding that the future ability of companies to produce or sell merchandise is speculative and demonstrates only the "mere possibility" for manipulation to occur and, therefore, does not constitute evidence for "potential" that is "significant" within the meaning of 19 CFR 351.401(f)(2).[96] We continue to find that the Court's determination on this point is relevant to the litigation at hand.

Further, contrary to the petitioner's arguments, we find that the facts of the *Crawfish from China NSR,* on which the Court based its holding in *Hontex*, support our findings here. In the

[93] *See* Addendum 4SQR at Exhibit 1.
[94] *See* Remand QR at Exhibits 7 and 8.
[95] *See Hontex*, 248 F. Supp. 2d at 1325-1328, citing at *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Administrative Antidumping Duty and New Shipper Reviews, and Final Rescission of New Shipper Review*, 65 FR 20948 (April 19, 2000) (*Crawfish from China NSR*) and accompanying Decision Memorandum (Crawfish from China NS IDM) at Comment 13.
[96] *See Hontex*, 248 F. Supp. 2d at 1345.

Crawfish from China NSR, Commerce found that the two exporters at issue did not operate independently, had intertwined operations that warranted collapsing them, and assigned them a single antidumping duty margin.[97] In reaching this conclusion, Commerce found that the same individual undertook important managerial roles at both firms that involved the sale and exportation of subject merchandise.[98] Commerce also determined that the two producers were "little more than separate distribution channels for the same producer to the same customer."[99] Thus, in *Crawfish from China NSR*, Commerce determined that there was significant potential for manipulation inherent in the relationship between the two firms and, as a result, collapsed the two exporters.[100]

In *Hontex*, the Court found that the essence of Commerce's conclusion was that the particular individual's activities created the "significant potential for manipulation in the relationship" between the two exporters at issue "because their export activities were under common control."[101] In rejecting Commerce's conclusion, the Court noted that there was "no evidence that there was actual manipulation of price or export decisions" during the POR and "no direct evidence that the individual at issue possessed the 'significant potential' to manipulate export or pricing decisions during the POR."[102] The Court added that the "mere employment of the same persons by both Companies, while providing some evidence that the Companies were 'intertwined' does not rise to the level . . . that would be sufficient to support a collapsing determination in a market economy country" or non-market economy country.[103]

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[97] *See Crawfish from China NSR* at Comment 13.
[98] *Id*.
[99] *Id*.
[100] *Id*.
[101] *See Hontex*, 248 F. Supp. 2d at 1345.
[102] *Id*.
[103] *Id*.

Grupo Simec in their certified remand questionnaire response indicated that during the POR, the [ ] non-collapsed fixed asset owners [ ] the collapsed entities used to produce subject merchandise.[104] Further, the transactions that took place between the [ ] non-collapsed fixed asset owners and the collapsed entities during the POR were limited to [ ].[105] The petitioner points to notes in the financial statement that indicate additional transactions – the provision of [ ] from [ ] and [ ] from [ ].[106] We find there is no evidence on the record indicating that these activities were related to the production, pricing, or sale of subject rebar, specifically, during the POR. Furthermore, as noted above, the non-collapsed fixed asset owners had no production operations of any kind during the POR.[107] Thus, we find there is no evidence indicating actual manipulation of price or export decisions during the POR. Further, unlike *Nails from Malaysia CCR*, we find there is no evidence indicating that the non-collapsed fixed asset owners had plans to produce or sell subject merchandise in the future.[108] Therefore, in the absence of "actual manipulation," the lack of any information indicating that the non-collapsed fixed asset owners had the means to produce or sell subject merchandise or the future intent to do so, and consistent with the Court's holding in

[104] *See* Remand QR at 2, 4, 5, and 6.
[105] *Id.* at 4 and Exhibit 5.
[106] *See* Petitioner Remand Comments at 11.
[107] *See* Remand QR at 3 and Exhibit 8. *See also* Addendum 4SQR at Exhibit 1.
[108] *See Certain Steel Nails from Malaysia: Final Results of the Changed Circumstances Review*; 82 FR 3447 (July 25, 2017) (*Nails from Malaysia CCR*) and accompanying IDM.

Hontex that the "mere possibility" for manipulation is not sufficient for determining that "significant potential" for manipulation exists under 19 FR 351.401(f)(2), we continue to find there is no basis for collapsing the [ ] non-collapsed fixed asset owners with the collapsed firms that comprise Grupo Simec.

B. Whether Non-Collapsed Fixed Asset Owners Require Substantial Retooling

Petitioner's Comments

- Commerce's past practice indicates that, regardless of whether the non-collapsed companies had any production or sales during the POR, the focus of the inquiry should be on whether Simec/Grupo Simec could easily restructure manufacturing and selling activities of the collapsed companies and non-collapsed fixed-asset owners to carry out such activities in the name of the non-collapsed fixed-asset owners.[109]
- Commerce cites *Tapered Roller Bearings from China* for the proposition that collapsing may be merited where an affiliate has additional production facilities that a producer could call upon.[110] Commerce has previously recognized, respondents can manipulate pricing and production in ways other than by using previously unused production facilities. In *Shrimp from Brazil*, Commerce found that collapsing was merited because the relationship between affiliates was such that the roles of producer and/or seller could easily be switched from company to company.[111] Here, too, the record evidence here indicates that the presently-collapsed Grupo Simec could leverage its power to conduct production and sales operations in the names of the fixed-asset owners.

[109] *Id*. at 22 – 23.
[110] *See Tapered Roller Bearings from China* and accompanying IDM at Comment 1.
[111] *See* Shrimp from Brazil IDM at 15.

- The informal, undocumented nature of the oral lease arrangements [ ]. Further, the fact that the fixed-asset owner [ ] underscores the lack of any operational boundaries between the collapsed companies and the non-collapsed companies. This [ ] was arranged "through the decision of the management of Grupo Simec, the manufacturing companies, and the asset-owning companies."[112]
- This management is [ ], and there is common control over the "manufacturing" companies [ ] alike. As such, there is nothing about these arrangements that undermines the significant record evidence showing that the presently collapsed group could leverage its power to conduct production and sales operations in the names of the fixed-asset owners.[113]

Commerce's Position: As described in the underlying review and in the Analysis section above, we treated the Grupo Simec companies and the [ ] fixed asset owners as affiliated parties, in accordance with section 771(33)(B), (F) and (G) of the Act, but Commerce did not collapse those fixed asset owners because we found they were not producers of subject merchandise as required by section 19 CFR 351.401(f)(1).[114] In addition, Commerce did not find that there was any evidence on the record that the fixed asset owners could manipulate pricing and sales determinations, as was the case between affiliated exporters in *Hontex*.[115] The Court did not take issue with our finding not to collapse under 19 CFR 351.401(f)(1).[116] Nonetheless, the petitioner argues that Commerce must focus on whether Grupo Simec could

[112] *See* Petitioner Remand Comments at 24 – 25.
[113] *Id.*
[114] *See* IDM at 32.
[115] *Id*.
[116] *See Opinion and Remand Order* at 7.

easily restructure the manufacturing and selling activities of the collapsed companies to start producing in the name of the [ ] non-collapsed fixed asset owners, thereby warranting treating the non-collapsed fixed asset owners and the firms that comprise Grupo Simec as a single entity pursuant to 19 CFR 351.401(f)(1). We describe below how there is an insufficient basis to find that there is a "significant potential" for the operations of the collapsed producers to be shifted to the [ ] non-collapsed fixed asset owners.

Certain equipment and facilities capable of producing subject merchandise were owned, in part, by the [ ] fixed asset owners; however these [ ] asset owners did not themselves produce or sell subject merchandise during the POR.[117] Further, the collapsed producers of Grupo Simec had exclusive use of the plants and production equipment that produced subject merchandise, and the non-collapsed fixed asset owners did not have access to the plants or production equipment during the POR.[118] Under 19 CFR 351.401(f)(1) Commerce, "will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities." Since the [ ] manufacturing facilities were occupied by the production of the collapsed producers of subject merchandise during the POR, the owners of the production equipment and facilities would have to undertake substantial retooling to shift production from the collapsed producers to the [ ] non-collapsed fixed asset owners. Further, each manufacturing facility has multiple fixed asset owners, and each owns different pieces of the equipment. For example, [

[117] *See* Remand QR at 5 - 6.
[118] *Id.*

].[119] Therefore, in order for the production of subject merchandise to shift from collapsed producers to non-collapsed fixed asset owners, the non-collapsed fixed asset owners would have to take their individually-owned equipment and purchase (or lease) the remaining production line, which includes the [

] etc.[120] Additionally, each of the [ ] non-collapsed fixed asset owners would have to acquire their own workforce at both the [ ] in order to produce subject merchandise due to the fact that they did not have any active operations during the POR.[121] This example demonstrates that significant expenditures and retooling would be necessary in order for the [ ] non-collapsed fixed asset owners to begin producing subject merchandise.

As discussed above, in *Shrimp from Brazil,* Commerce collapsed an affiliated processor (Produmar) with the producer (CIDA) because Produmar had a fully functioning facility for producing the subject merchandise, which is distinct from the facts of the instant case where record evidence indicates that the [ ] non-collapsed fixed asset owners did not have any active operations during the POR; the companies only held the fixed assets (not entire facilities) and investment interests.[122] Further, this case is distinct from *Tapered Roller Bearings from China* because the fixed asset owners here do not have additional facilities that a producer can call

[119] *See* 5SQR at Exhibit S5-1 and Remand QR at Exhibit 3. The [ ] has [ ] fixed asset owners; [ ] has [ ] fixed asset owners; the [ ] have [ ] fixed asset owner, respectively.
[120] *Id.*
[121] *See* Remand QR at 3.
[122] *Id*.

upon.[123] Each fixed asset owner owns some equipment, but not all equipment necessary to produce subject merchandise.

The petitioner argues that there is record evidence the non-collapsed fixed-asset owners produced subject merchandise prior to the POR.[124] This statement is misleading because the terms [ ], [ ] and [ ] are not evidence of production of subject merchandise.[125] To the contrary, Grupo Simec stated that [

]. However, there is no record evidence of the [ ] non-collapsed fixed asset owners producing subject merchandise before the POR, during the POR,[126] or any indication that they have any such plans or arrangements had been made during the POR to produce subject merchandise.

Thus, Commerce continues to find that the non-collapsed fixed asset owners were not producers of subject merchandise, would require substantial retooling to produce subject merchandise, and thus there is not a significant potential for manipulation of price or production.

C. Commerce Has Not Adequately Explained or Supported its Minimization of the Ownership/Management Factors of 19 CFR 351.401(f)(2)

Petitioner's Comments

- Noting that the ownership of the productive assets of Grupo Simec's [ ] plants is spread over numerous companies, Commerce concludes that the record does not show that a single company or organized collective of those companies with centralized direction can control

[123] *See Tapered Rolling Bearings from China* at Comment 1.
[124] *See* Petitioner Remand Comments at 23 (citing Remand QR at Exhibit 4 (indicating that [ ] was owed money from Orge relating to [ ].
[125] *Id*. at 39. *See also* 4SQR at Exhibit D-26A (Note 6), Exhibit D-26B (Note 4).
[126] *See* Addendum 4SQR at Exhibit 1.

the assets necessary to produce subject merchandise. Grupo Simec did, in fact, use the productive assets during the POR to produce subject merchandise. These facts, combined with multiple Grupo Simec-affiliated companies' use of the fixed assets to make rebar, only underscore the relevance of the record facts regarding common ownership/control and overlapping management.

- The collapsed "manufacturing" companies and [ ] non-collapsed fixed-asset owners are connected through a parent whose ownership stake is sufficient to give it "the power to govern the financial and operating policies" of [ ]. Further, each of the non-collapsed fixed-asset owners shares [ ] with each of the collapsed companies, as well as the collapsed parent. As such, there is "a single company or collective of companies" that clearly does "control the assets necessary to produce subject merchandise."
- In its Draft Remand analysis, Commerce appears to frame the relevant question as that of whether any of the non-collapsed fixed-asset owners independently have the ability to control the collapsed companies, or the productive/selling operations of Grupo Simec as a whole. Notwithstanding the fact that, in some cases, the non-collapsed companies [

], Commerce's framing ignores the obvious problem of the common parent's ability to direct and control the collapsed "manufacturing" companies and [ ] the non-collapsed fixed-asset owners.
- This framing is quite distinct from the way Commerce approached this problem with respect to the companies that it did collapse. For those companies, Commerce did not find that

anyone of the "manufacturing" companies could control or direct the operations of another, but instead relied on the fact of their common ownership, and on the "shared management and oversight exercised by the parent company."

- Commerce has not explained why it is taking a different approach in considering ownership and management as it regards the [ ] non-collapsed fixed asset owners, and that approach does not appear to be merited by the facts or even to support the agency's conclusion. Commerce merely justifies its different approach on the basis that the non-collapsed fixed-asset owners did not have production or sales during the POR, while the collapsed companies did.

Commerce Position: Commerce acknowledged in its Draft Remand (and in the Analysis section above), that the non-collapsed fixed asset owners and collapsed producers of Grupo Simec share overlapping management and are ultimately under the ownership umbrella of Grupo Simec. However, during the POR, the collapsed producers of Grupo Simec had exclusive use of the [ ] production facilities that produced subject merchandise,[127] the ownership of the assets in question were not owned completely by any single entity but instead were divided up amongst various collapsed and non-collapsed entities, the non-collapsed entities lacked a workforce to produce merchandise and any operations during the POR, and there is no evidence on the record indicating that the non-collapsed asset holders had any plans to begin production in the future.[128] Furthermore, the non-collapsed entities were not in the business of selling subject rebar during the POR and there is no record evidence which suggests that they were intending to hire sales people to find customers and market subject rebar, or any product for that matter. Thus, while the fixed asset owners are ultimately under common control of Grupo Simec, we conclude that to

[127] *See* Remand QR at 5 - 6.
[128] *Id*. at 3 and Exhibit 3. *See also* 5SQR at Exhibit S5-1.

shift production away from the collapsed producers to the non-collapsed fixed-asset owners, Grupo Simec would have to undertake a significant reorganization to do so because no single non-collapsed fixed-asset owner [ ] to produce subject merchandise, and the fixed asset owners would have to acquire a complete workforce to produce, market and sell subject merchandise (as the non-collapsed fixed-asset owners did not have a production or sales workforce during the POR). Thus, contrary to the petitioner's argument that the presently collapsed group could leverage its power to conduct production and sales operations in the names of the fixed-asset owners, we find that it would take substantial steps for Grupo Simec to do so; thus, we find these facts are not sufficient for Commerce to conclude that there is a "significant potential" for manipulation of price or production under 19 CFR 351.401(f)(1) or (2).

D. Commerce's Analysis of Intertwined Operations is Inadequately Explained and Supported

Petitioner's Comments

- Commerce does not account for record evidence reflecting [ ]. Grupo Simec refused to answer the agency's questions as to who takes title or owns the subject merchandise. As a result, there is an open question as to whether any of the collapsed companies in fact qualify as "producers," or whether they are simply tollers (as was the case in *Shrimp from Brazil*).[129]
- Commerce focuses its finding that the non-collapsed fixed asset owners did not sell or produce merchandise in their own right during the POR. There are evidentiary and logical

[129] *See* Petitioner Remand Comments at 21. *See also* Shrimp from Brazil IDM at 11.

issues with that finding that the agency has yet to address,[130] in particular the non-collapsed companies admitted [ ][131] as well as the audited financial statements reflecting POR balances for [ ].[132]

- Commerce's past precedent indicates that the facts here meet the "significant potential" standard. Further, even if one was concerned solely with past acts, the record indicates that the [ ]; the record also indicates that the non-collapsed fixed-asset owners [ ], and [ ].[133]

Commerce Position: With regard to the petitioner's claim that transactions between the collapsed and non-collapsed companies pertain to sales of "subject merchandise," the corresponding footnotes and referenced financial statements of the collapsed entities actually indicate [ ]." Further, record

[130] *See* Petitioner Remand Comments at 23.
[131] *Id.* citing to Remand QR at Exhibit 4 (indicating that [ ] was owed money from [ ] relating to [ ].
[132] *Id.* citing to 2SQR at Exhibit D-26A ([ ]); Exhibit D-26B ([ ]; Exhibit D-26E ([ ]).
[133] *Id*. at 28.

evidence indicates that the collapsed producers that comprise Grupo Simec accounted for all rebar production and sales during the POR, and thus there is no basis to conclude that the [ ] provided by the non-collapsed fixed asset owners to the Grupo Simec during the POR was comprised of rebar, as indicated by the following points. This is demonstrated by the production and sales reconciliations on the record.[134]

As explained in detail above, the record indicates that all home market sales of subject merchandise are made through Simec Acero and Grupo Simec's only manufacturing facilities are the [ ] aforementioned facilities. The non-collapsed fixed asset owners do not maintain production equipment other than the equipment that is already used by Grupo Simec, and there is no evidence that the fixed asset owners had any production of their own during the POR.[135] And we find that, in order to shift production from the manufacturing facilities occupied by the collapsed producers during the POR to the non-collapsed fixed asset owners, substantial retooling would be required, substantial reorganization of the fixed assets owned by the six non-producing fixed-asset owners would be required, and the hiring a workforce by the fixed-asset owners to operate the equipment would be required.

Further, despite the petitioner's reference to subject merchandise (which is actually only [ ]) being provided from non-collapsed fixed asset owners to collapsed producers, the fact remains that the non-collapsed fixed asset owners identified by the petitioner reported having no costs of sales in Grupo Simec's

[134] *See* AQR at A-5. The sales reconciliation, 4SQR at Exhibit S4-3, demonstrates that all of Grupo Simec's home market sales were made through Simec Acero during the POR; *see also* 5SQR at Exhibit 1, which contains the cost reconciliation.
[135] *Id.*

audited consolidated financial statements during the POR.[136] For example, the petitioner references [

].[137] The lack of cost of sales for [ ] non-collapsed fixed asset owners in the audited consolidated financial statements indicates that there is no production of any kind.[138] The remaining [ ] non-collapsed fixed asset owners received service revenues associated with the cost of the services provided, not production of goods.[139] There is no information on the record that indicates the fixed asset owners ever produced subject merchandise before the POR.[140]

The petitioner asserts that Grupo Simec refused to answer the question of who takes title or owns the subject merchandise. At issue is whether the non-collapsed companies had the significant potential for the manipulation of prices or production. We have laid out how the non-collapsed fixed asset owners would have to undergo substantial retooling and reorganization to manipulate production. All of Grupo Simec's home market sales are through its affiliate Simec Acero and U.S. sales are through Simec USA, each company with its own established sales relationships with its customers. There is no information on the record that the collapsed

[136] *Id.*
[137] *Id.*
[138] *See* Addendum 4SQR at Exhibit 1.
[139] *See* Remand QR at Exhibit 8.
[140] The record does not reflect the identity of the [ ] to which the petitioner points in the corresponding footnotes and referenced financial statements of the collapsed entities. Any guess by Commerce in this regard would be speculative. For example, one might speculate that some of those products could be sales of any of the various products manufactured by Grupo Simec companies, such as [ ]. As we've indicated, though, the record reflects that those products could not have been sales of subject rebar produced during the POR.

producers and fixed asset owners shared sales information or pricing decisions with each other during the POR. Further, the exporters of record to the United States during the POR, are Orge and Sid. Pacifico (collapsed producers).[141]

Lastly, the petitioner questions whether the collapsed producers qualify as a "producer" or simply tollers as in *Shrimp from Brazil*. Commerce disagrees. The affiliated processor, Produmar, in *Shrimp from Brazil* had a fully functioning facility for producing the subject merchandise.[142] The collapsed producers here had exclusive access and use of the manufacturing facilities to manufacture the complete production of subject merchandise, *i.e.*, from steelmaking to cutting and rolling. In contrast, the non-collapsed companies in this case did not have access to the equipment to produce subject merchandise; [ ] non-collapsed companies [ ], which indicates no production of goods; and the remaining [ ] non-collapsed companies [ ], which also indicates no production of goods.

Further, in *Steel Wire Rod from Canada*, Commerce did not collapse the affiliated companies that were not the producers of the subject merchandise but rather, were suppliers of inputs or services to the producer.[143] Specifically, these companies were created to finance the purchase of a coal pulverizing facility and a reheating furnace. Commerce found that the ability to manipulate prices of the merchandise under investigation was not present for these companies.[144] Instead, similar to what we are doing here in the instant case, we applied the transactions disregarded rule for those fixed asset owners.

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[141] *See* AQR at A-32. *See also* Letter from Grupo Simec, "Antidumping Duty Administrative Review of Steel Concrete Reinforcing Bar from Mexico – Section A, B and C Supplemental Questionnaire Response," dated June 20, 2016 (1SQR) at Exhibits B-17, B-18, and C-13.
[142] *See* Shrimp from Brazil IDM at 11-12.
[143] *See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Canada*, 67 FR 55782 (August 30, 2002) (*Steel Wire Rod from Canada*) and accompanying Issues and Decision Memorandum at Comment 23.
[144] *Id.*

Thus, despite limited intertwined operations between the collapsed and non-collapsed companies, there is no record evidence that these interactions pertain to the production or sale of subject merchandise, thus supporting our finding that there is no significant potential for the manipulation of price or production between the companies.

E. Commerce's Discussion of the Potential for Manipulation is Inadequately Explained and Supported

Petitioner's Comments

- Commerce states that while the facts of record could be said to evince the "mere possibility" of future manipulation, they do not constitute evidence of a "significant" potential for manipulation. Commerce stated in the *Preamble* to its regulations that it was declining to adopt a standard that "would lead to collapsing in almost all circumstances in which the Department finds producers to be affiliated."
- A fair characterization of the record here reveals more than mere affiliation between the companies that Commerce has collapsed and the non-collapsed fixed asset-owners, in terms of their shared ownership, overlapping management, and intercompany transactions. Further, in its *Preamble*, Commerce also stated that it was declining to adopt an "extraordinary" standard for collapsing, whereby collapsing would only occur in highly limited cases involving specific fact patterns.[145]
- The *Preamble* also stresses that the "significant potential" standard must take into account "what may transpire in the future," rather than being concerned solely with "actual manipulation in the past."[146] A collapsing analysis that focuses solely on what affiliated companies have done in the past therefore elides an important aspect of the problem.

[145] *See Preamble*, 62 FR at 27345.
[146] *Id.* at 27346.

Commerce's analysis focused on what happened during the POR, and thus ignores the record evidence showing ample potential for the currently collapsed group (inclusive of the parent company) to leverage its power over its affiliates to restructure their manufacturing and selling functions in the future.

Commerce Position: The petitioner argues that Commerce must evaluate the hypothetical future ability of the non-collapsed fixed asset owners to manipulate price and production, even though, in the Draft Remand and detailed in the Analysis section above, Commerce found, consistent with the Court's holding in *Hontex*, the future ability of these companies to produce or sell merchandise is speculative and demonstrates only the "mere possibility" for manipulation to occur and, thus, does not constitute evidence that is "significant" within the meaning of the regulation.[147] This situation is therefore similar to the one described in the *Preamble* to the regulations, where Commerce sought to avoid collapsing affiliates with "*any* potential for price manipulation," as opposed to the standard for "significant potential" that Commerce ultimately adopted, because an "any potential" approach "would lead to collapsing in almost all circumstances in which the Department finds producers to be affiliated."[148]

Additionally unlike *Nails from Malaysia CCR*, there is no evidence on the record indicating that the non-collapsed fixed asset owners intend to produce subject merchandise in the future.[149] Further, we find there is no record evidence to support a finding that the non-collapsed fixed asset owners would have the significant potential in the future to manipulate price or production because, as explained above, to do so would require substantial retooling and significant reorganization to do so. Additionally, to sell subject merchandise, the non-collapsed

[147] *See Hontex*, 248 F. Supp. 2d at 1345.
[148] *See Preamble*, 62 FR at 27345.
[149] *See Nails from Malaysia CCR* and accompanying IDM at 6-12.

fixed asset owners would have to establish their own customer relationships in the home market and the United States, which they did not have during the POR.

Therefore, we continue to find that the non-collapsed fixed asset owners at issue do not have the significant potential to manipulate price or production under the 401(f)(2) criteria and, accordingly, we continue to find that it was appropriate not to collapse these fixed asset owners into the collapsed Grupo Simec entity.

F. Commerce's Application of the Transactions Disregarded and Major Input Requires Adjustment

Petitioner's Comments

- Commerce premised its application of the transactions disregarded and major input rules in the Draft Remand, in significant part, on its finding that it could extract company-specific G&A expenses for [ ] of the non-collapsed companies from consolidating worksheets contained Grupo Simec's supplemental questionnaire response. However, these worksheets do not include cost of sales information. Further, while Exhibit 7 to Grupo Simec's remand questionnaire response purports to provide this data for [ ], the exhibit does not provide such data [ ].[150] Commerce assumed that the [ ] companies' reported depreciation expenses constitute their entire cost of sales. Such an assumption, however, is undermined by the fact that [ ]. Further, even with respect to [ ], the companies are [ ] of [ ] of [ ]; however, the remand exhibit only provides cost of sales information for [ ].

[150] *See* Remand QR at Exhibit 7.

- According to both Exhibit S4-2 of the fourth supplemental questionnaire and Exhibit 7 of the remand questionnaire response, [ ] depreciation expenses in FY 2015.[151] However, per Grupo Simec's fifth supplemental questionnaire response, [ ], companies whose results are consolidated into those of [ ], had [ ] expenses during the POR.[152] While the information in Exhibits S4-2 and Exhibit 7 are provided on a fiscal year basis, there is not normally [ ] between FY and POR depreciation costs; the [ ] here indicates that something is amiss in Grupo Simec's reporting. The inconsistent and incomplete nature of the various worksheets on the record only underscores the impossibility of accurately or completely capturing relevant costs in the absence of the actual financial statements for all the relevant companies.
- Under Commerce's standard practice, when applying the transactions disregarded rule in situations where the input/service is not provided to or acquired from non-affiliated parties, Commerce measures the cost of the input/service per the full cost to the supplier. Here, the example of [ ] indicates that there are [ ].
- Even once the full cost is determined, Commerce's practice indicates that it must revise any below-market affiliated transfer values to reflect an amount for profit. Despite the Court's having specifically remanded the agency's original transactions-disregarded methodology on this point, the calculations made for purposes of the draft results do not reflect such values, and the draft results do not explain why.

[151] *Id.*; *see also* 4SQR at Exhibit S4-2.
[152] *See* 5SQR at S5-1.

- The remand record indicates that there are other services, besides the leasing of fixed assets, that Commerce must now consider. Grupo Simec's remand questionnaire response indicates that [ ], a [ ], is a [ ].[153]
- Grupo Simec described this company as "involved in the rebar business," and that the company was involved in shipping domestically-sold rebar. Grupo Simec did not previously disclose that the company [ ]. This means that the company is an affiliated supplier to Grupo Simec, the value of whose services must be reviewed under the transactions disregarded rule. Further, this company incurred [ ], suggesting that it supplied services at [ ], warranting an increase to Grupo Simec's costs. Likewise, it appears that non-collapsed fixed-asset owners provided [ ] during the POR.[154]
- In sum, while a change from the Draft Remand with respect to either collapsing or adverse inferences may largely or completely moot questions relating to the transactions-disregarded and major input rules, to the extent that these rules are applied in the final remand results, substantial adjustments must be made. Commerce's preliminary application of these rules rest on assumptions about the nature of the information available on the record, which the record does not itself support. Further, the record on remand indicates that there are additional companies providing Simec with relevant services that must be considered.

[153] *See* Remand QR at 6 -7 and Exhibits 7 – 8.
[154] *See* Petitioner Remand Comments at 34.

Commerce Position: After consideration of the petitioner's comments on our Draft Remand, we have amended our transactions disregarded calculation to incorporate the other income and expenses incurred by [ ] of the non-collapsed fixed asset owners.[155] Additionally, as neutral facts available, we have revised Grupo Simec's own G&A expense ratio to account for affiliated freight transactions that may be related to raw materials and intermediate goods consumed in the production of rebar during the POR.[156] Concerning the petitioner's remaining points, however, we disagree that any further adjustment is necessary.

First, we disagree with the petitioner's contention that we do not have cost of goods sold information for [ ] of the non-collapsed companies. This conclusion is reached only if one determines that the audited consolidated financial statements and the underlying consolidating worksheets are fraudulent. Otherwise, the consolidating worksheets list each Grupo Simec subsidiary with cost of goods sold that is incorporated into the cost of goods sold on the consolidated income statement. Thus, the documents demonstrate that the [ ] consolidated subsidiaries are not present, *i.e.*, they had no cost of goods sold in 2015.[157] Conversely, [ ] were part of a consolidated group ([ ]) with cost of goods sold listed on the consolidating worksheet.[158] Thus, we solicited and obtained the cost of goods sold for the [ ] companies included in [ ]'s consolidated results.[159] We disagree

[155] *See* Remand Calculation Memorandum.
[156] *Id*.
[157] The audited consolidated financial statements identify these [ ] companies as subsidiaries included in the consolidation. *See* 4SQR at Exhibit S4-1a (page 17 of the English version of Grupo Simec, S.A.B de C.V., and subsidiaries, Consolidated Financial Statements as of December 31, 2015). Further, the [ ] companies are listed with G&A expenses in the consolidating worksheets, thus confirming that although they had no cost of goods sold they are indeed included in the consolidation. *See* 4SQR at Exhibit S4-2.
[158] *See* 4SQR at Exhibit S5-2.
[159] *See* Remand Questionnaire and Remand QR. Additionally, we note that the Draft Remand mistakenly refers to [ ] companies, however, there are actually only [ ] companies that are included in the consolidated results of [ ]. *See* Draft Remand at 16. *See also* AQR at Exhibit A-2b, which identifies [ ] subsidiaries of [ ], thus totaling [ ] companies included in the consolidated [ ] results.

that in response to our supplemental questionnaire, Grupo Simec failed to provide the cost of goods sold for all of [ ]'s subsidiaries. Rather, Grupo Simec's remand supplemental questionnaire response explains that [ ] of [ ]'s subsidiaries actually [ ].[160] Thus, [ ]'s consolidating worksheet for 2015 provides the cost of goods sold for the [ ] companies and ties in total to [ ]'s 2015 consolidated income statement.[161]

We also disagree with the petitioner's arguments regarding the depreciation expenses for [ ]. A review of the consolidating worksheets indicates that certain Grupo Simec subsidiaries recorded depreciation as a G&A expense.[162] Where this occurred, the depreciation expenses were segregated and reclassified to cost of goods sold for the presentation of the consolidated financial statements.[163] Unlike the other [ ] non-collapsed fixed asset owners, [ ], had cost of goods sold in 2015, which is assumed to include their depreciation expenses (actually, [ ] for [ ]).[164] Thus, it was unnecessary for [ ] to isolate and reclassify deprecation expenses from G&A expenses to cost of goods sold for the consolidated presentation. Again, the petitioner's conclusion that Grupo Simec's reporting is incomplete can only be reached if fault is found in the audited consolidated financial statements.

Regarding the petitioner's contention that there are [

[160] *See* Remand QR at 7.
[161] *Id.* at Exhibit 7.
[162] *See* 4SQR at Exhibits S4-2 and S5-2.
[163] *See* 4SQR at Exhibits S4-2 and S5-2.
[164] *See* Remand QR at Exhibit 8.

], we agree in part. We have revised the transactions disregarded analysis with regard to [ ] to include the [ ] that are listed on their respective financial statements.[165] However, to the extent that the petitioner's comment extends to the [ ] listed on the [ ] income statements, we do not agree that these are additional costs related to the fixed asset leases. The financial statements clearly indicate that [ ] received [ ] associated with the [ ] provided.[166] Because the fixed asset owners received no consideration for the fixed asset leases, there is no reason to assume that the service revenues and their associated costs are related to the fixed asset leases.

We disagree that Commerce has a practice of adding profit where it is necessary to construct a market price for purposes of the transactions disregarded and major input analyses. Rather, the petitioner has found only a single instance where such a methodology was employed.[167] Instead, Commerce's only practice in this regard has been to develop a hierarchy for establishing market value in the application of section 773(f)(2) and (3) of the Act. Commerce's express preference for market value is a respondent's own purchases of the input from unaffiliated suppliers. When no such purchases are available, Commerce looks to the affiliated supplier's sales of the input to unaffiliated parties, and, lacking that, to any reasonable source for market value.[168] In resorting to any reasonable source, Commerce has not developed

[165] *See* Remand Calculation Memorandum.
[166] *See* Remand QR at Exhibit 8.
[167] *See* Petitioner Remand Comments at 22 (citing to *Huvis Corp. v. United States*, 32 C.I.T. at 845, 846 (2008) (*Huvis*)).
[168] *See e.g., Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review*, 69 FR 13813 (March 24, 2004) and accompanying Issues and Decision Memorandum at Comment 7; *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 77 FR 17422 (March 26, 2012) and accompanying Issues and Decision Memorandum at Comment 16; *Certain Hot-Rolled Steel Flat Products From Brazil: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 53424 (August 12, 2016) and accompanying Issues and Decision Memorandum at Comment 7.

a static practice, but rather relied on values that are reasonably available and on the record. In this case, it would not be feasible for Commerce to add profit when constructing a market price. The petitioner argues that it is unreasonable to rely on the G&A experience of the [ ] collapsed fixed asset owners in lieu of the non-collapsed fixed asset owners' experience, yet also argues that it is reasonable to rely on the collapsed companies' profit experience in lieu of the non-collapsed companies' experience.[169] Because the petitioner's suggested approach would require Commerce to calculate the profit from the [ ] based on the overall profits of the [ ] collapsed fixed asset owners who are also producers, Commerce has properly declined to adopt this approach.

We agree with the petitioner that it is appropriate to adjust Grupo Simec's costs to account for any transactions with its affiliate [ ] that may be related to the shipment of raw materials or intermediate goods. In doing so, we note that Grupo Simec identified [ ] as an affiliated freight supplier in its initial section A response.[170] Commerce's follow-up question asked Grupo Simec to "confirm whether [ ] shipped any subject merchandise during the POR,"[171] to which Grupo Simec responded, "{d}uring the POR, [ ] shipped approximately [ ] percent of the material under consideration in the domestic market and these sales have been reported in the home market sales database submitted at Exhibit B-14."[172] Because Grupo Simec's remand supplemental questionnaire response clarifies that [ ] transported raw

[169] None of the non-collapsed fixed asset owners incurred a profit during 2015. *See* Remand QR at Exhibit 8 showing [ ] operated at a loss and 4SQR at Exhibit S4-3 showing that none of the remaining [ ] non-collapsed fixed asset owner had sales revenues in 2015.
[170] *See* AQR at 12 and Exhibit A-2d.
[171] *See* SAQR at 7.
[172] *Id.* at 7-8.

materials, intermediate, and finished goods, we have, as neutral facts available, included the company's 2015 net loss (*i.e.*, the affiliated freight company's unrecovered cost of the shipping services provided) as an additional cost in the calculation of Grupo Simec's G&A expense ratio.[173] By doing so, we adjusted the reported freight cost associated with transactions with [ ] to reflect the cost incurred by the affiliated freight company. Regarding the possibility of additional unreported affiliated freight services, we find this is premised on what appears to be a faulty English translation of one operating company's 2014 Spanish version financial statements.[174] In the English version, the wrong company was identified as providing freight services to the operating company. Nevertheless, there is insufficient evidence that these freight services were incurred during the POR or were related to the cost of producing rebar. In its remand questionnaire response, Grupo Simec explained these intercompany transactions as [

].[175] The financial statement notes that the petitioner highlights are also identified in the remand questionnaire response as, "[

]," and "[

]."[176]

[173] *See* Remand Calculation Memorandum.
[174] *See* Letter from Grupo Simec, "Antidumping Duty Administrative Review of Steel Concrete Reinforcing Bar from Mexico – Section A, B, and D Supplemental Questionnaire Response," dated September 7, 2016, at Exhibit D-26B. It is evident that in the English version the numbering of the notes to the financial statements are off since, for example, there are [ ] notes in the Spanish version, but only [ ] in the English version.
[175] *See* Remand QR at 4.
[176] *Id.* and Exhibit 4.

G. Commerce Should Apply Adverse Inferences to Grupo Simec

Petitioner's Comments

- Commerce should apply adverse inferences to determine Grupo Simec's margin or, at the least, that such inferences should be applied with respect to Grupo Simec's cost reporting. Grupo Simec repeatedly failed to respond to Commerce's questions, requiring multiple questionnaires to elicit basic facts about the company's corporate structure and the roles of its affiliates.
- In the *Final Results*, Commerce declined to apply adverse inferences. In the *Opinion and Remand Order*, the Court found that the agency had neither properly explained nor supported its determination not to resort to adverse inferences here, as the agency's determination was fundamentally grounded in its unsupported collapsing and transactions disregarded analyses.[177] Commerce treats this issue only briefly, stating that the record on remand contains sufficient information to allow it to perform its collapsing analysis and to make appropriate cost adjustments under the major input/transactions disregarded rules.
- Grupo Simec significantly impeded the process of the review, as well as the Commerce's ability to make accurate margin calculations, by doling out basic information in a halting, piecemeal fashion, and leaving the record bereft of requested data. Grupo Simec's delay in identifying companies and their role in the production and sale of subject merchandise, the record lacks copies of the companies' financial statements that would permit the agency to accurately determine the costs they incurred in providing their affiliates with [ ] facilities.

[177] *See* Petitioner Remand Comments at 37.

- Grupo Simec provided a reconciliation to the financial statement of only [ ]. Grupo Simec did not reconcile the expenses reported on its schedule to the financial statements of the [ ].[178]
- Further, [ ] to which the depreciation schedule for the [ ] was reconciled [ ]. In the absence of the fixed asset owners' financial statements, Commerce has relied on various worksheets provided by Grupo Simec to back out relevant costs. These worksheets, of course, cannot be tied to the fixed-asset owners' financial statements, as these were not supplied. These worksheets on the record further only underscore the absence of the financial statements, as they indicate that the fixed-asset owners [ ], which have not been reflected in the agency's analyses.[179]
- The remand proceeding has revealed new inconsistencies and gaps in Grupo Simec's reporting. As noted previously, Grupo Simec has only on remand revealed that [ ], thus necessitating application of the transaction disregarded rule to the transfer price of these services.[180]
- Grupo Simec's remand supplemental questionnaire response indicates that additional companies had operations that rendered them relevant to the collapsing analysis, and to the determination of Grupo Simec's costs. Grupo Simec revealed that [

[178] *Id*.
[179] *Id.*
[180] *See* Remand QR at 7.

].[181] While Grupo Simec has stated that the companies were [ ]. As such, the record indicates that Grupo Simec could leverage its power over [ ] and others to resume production and/or sales under these companies' identities. Further, their [ ] related to the production/sale of subject merchandise.

- While Grupo Simec claims that [ ] were engaged in [ ],[182] [ ]) have [ ] with collapsed companies as well as [ ].[183] Indeed, these companies' [ ] with [ ] appear to relate to their [ ], while their [ ] from [ ] relate to [ ].[184] Commerce must also consider the fact that Grupo Simec's worksheets often depart from the financial statements that are on the record in unexplained ways. This issue is starkly foregrounded by the [ ], as compared against the financial statements of the companies at issue.[185]

[181] *Id.* at 6 -7.
[182] *Id.*
[183] *See* AQR at Exhibit A-6c.
[184] *Id*. at Exhibit A-6[ ] (p. 10); Exhibit A-6f (pp. 10-11); Exhibit A-6j (p. 11); Exhibit A-61 (p. 10); Exhibit A-6m.
[185] *See* Remand QR at Exhibit 4.

- The remand record indicates that there are additional companies for which the agency lacks full information, inclusive of financial statements, and whose provision of services, [ ], and status as [ ], must be considered if accurate margin calculation is to be made. The fact that this information is only now beginning to come to light does not support a finding that Simec has been fully responsive and cooperative in this proceeding; rather, it provides further grounds for resorting to adverse inferences.
- The record remains bereft of the financial statements for [ ] companies that provided [ ], otherwise engaged in [ ] with the collapsed group's, and were subject to common control with the collapsed group. For all these reasons, the agency should apply total adverse facts available with respect to Grupo Simec in the final remand results or, failing that, apply such inferences to Grupo Simec's cost reporting.

Commerce's Position: In its *Remand Opinion and Order*, the Court did not sustain Commerce's determination not to apply facts otherwise available because Commerce's decision assumed that its collapsing analysis and its application of the transactions disregarded are supported by substantial evidence and therefore the Court remanded the case for further explanation or reconsideration. In the Draft Remand, Commerce reopened the record; evaluated the [ ] non-collapsed fixed asset owners pursuant to 19 CFR 351.401(f)(2); and revised and further explained our application of transaction disregarded using the actual G&A expenses for the [ ] non-collapsed fixed asset owners. Pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), the use of facts otherwise available is warranted to fill gaps in the

record when necessary information is not available on the record or a respondent has withheld information and impeded a proceeding in doing so, while adverse inferences are warranted when Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Neither of these scenarios are present in the instant case. Thus, for the final remand, Commerce continues to find that the application of facts otherwise available, much less the use of an adverse inference in applying facts available, is simply not warranted.

We disagree with the petitioner's characterization that the record lacks information that prevents Commerce from accurately analyzing Grupo Simec's sales and cost information and calculating a weighted-average margin. For example, Grupo Simec provided a reconciliation of the depreciation for Simec 6 (collapsed producer), which [ ], to its unaudited income statement, but nevertheless ties to Grupo Simec's audited consolidated financial statement and the underlying worksheets provided.[186] We find this to be a reasonable method of reporting. As we stated above, the conclusion that the record lacks information can only be made if one determines that the audited consolidated financial statements and its underlying worksheets are fraudulent, a conclusion we do not believe is supported by the record evidence.

Further, as we've explained above, despite the petitioner's references to the purchases of [ ] between the collapsed producers and non-collapsed fixed asset owners, the fact remains that [ ] non-collapsed fixed asset owners had no cost of sales in the audited consolidated financial statements covering the POR, which indicates that there was no production of any kind.[187] Information on

[186] *See* 5SQR at Exhibit S5-2 and Addendum 4SQR at Exhibit 1.
[187] *See* Addendum 4SQR at Exhibit 1.

the record indicates that the remaining [ ] non-collapsed fixed asset owners received [ ] associated with the [ ], and not with regard to the production of goods.[188]

In addition, also as we've discussed above, we find that were Grupo Simec to decide to shift production from the collapsed producers to the non-collapsed fixed asset owners, they would have to undergo substantial retooling and reorganization of their individual pieces of equipment and hire a workforce to operate the equipment, steps we find meet the standard for significant retooling. Further, we find there is no record evidence that the fixed asset owners plan to produce in the future, nor that they intend to hire a marketing and sales workforce to begin selling merchandise in the future.

The petitioner also argues that [ ] have transactions with the collapsed producers that appear to be [ ]. Information on the record indicates that since [ ].[189] Grupo Simec confirmed that [ ].[190]

The notes in the financial statements the petitioner highlight are related to; "[ ].[191]

These transactions do not support the finding that these additional companies have the significant potential to manipulate the production or price of subject merchandise.

[188] *See* Remand QR at Exhibit 8.
[189] *See* AQR at Exhibit A-6c.
[190] *See* Remand QR at 7.
[191] *Id*. at Exhibit A-6d.

With regards to [ ], we did not know the nature of these companies until Grupo Simec answered our questionnaire pursuant to remand. Those companies [

].[192]

Furthermore, they are not one of the non-collapsed fixed asset owners at issue in this litigation.

Although the petitioner is correct that the only information on the record which we have for these companies are their ownership details[193] and their production history, because Grupo Simec fully complied with our requests for information, the reported costs and sales for the production of subject rebar reconciled fully with the information reported,[194] and there is no indication on the record that those companies would or could "leverage power" over the non-collapsed fixed asset owners to take any actions, much less the actions speculated by the petitioner, we do not believe that the application of facts available pursuant to sections 776(a) and (b) of the Act would be warranted with respect to these companies.

Finally, in these final remand results we have adjusted Grupo Simec's costs to account for transactions with its affiliate [ ]. However, the need for revision does not warrant the application of facts available with an adverse inference pursuant to section 776(b) of the Act in this regard either, because we find the information needed to perform the adjustment was not withheld, but rather was provided upon Commerce's request.

VI. FINAL RESULTS OF DETERMINATION

In accordance with the *Opinion and Remand Order*, Commerce (1) reopened the record and requested additional information from Grupo Simec; (2) continued to not collapse the [ ]

[192] *See* Remand QR at 7.
[193] *See* AQR at Exhibit A-2b.
[194] *See* 4SQR at Exhibit S4-3 and Addendum 4SQR at Exhibit 1.

fixed asset-owning companies into Grupo Simec; (3) revised the general and administrative (G&A) expense ratios and depreciation in our transactions disregarded analysis; (4) determined that the application of total adverse facts available pursuant to sections 776(a) and (b) of the Act to Grupo Simec is not appropriate. Having revised the margin calculations as discussed above, we find the weighted-average margin is 0.00 percent, which is *de minimis*.

4/8/2019

X 

Signed by: GARY TAVERMAN

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