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MEMORANDUM TO: 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

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
2015-2016 Administrative Review of the Antidumping Duty Order
on Welded Line Pipe from Korea

I. SUMMARY

We analyzed the comments of the interested parties in the 2015-2016 administrative review of the antidumping duty (AD) order covering welded line pipe (WLP) from the Republic of Korea (Korea). As a result of our analysis, we made changes to the margin calculations for the mandatory respondents Hyundai Steel Company (Hyundai Steel) and SeAH Steel Corporation (SeAH). We recommend that you approve the positions described in the “Discussion of Issues” section of this memorandum. Below is the complete list of issues in this administrative review for which we received comments from the interested parties:

General Issues:

- Comment 1: Existence of a Particular Market Situation (PMS)
- Comment 2: Additional PMS Adjustments
- Comment 3: Allegation of Improper Political Influence in Determining the PMS
- Comment 4: Differential Pricing
- Comment 5: Reimbursement of Antidumping Duties

Hyundai Steel-Specific Issues:

- Comment 6: Collapsing of Hyundai RB with Hyundai Steel
- Comment 7: Date of Sale for Hyundai Steel’s U.S. Sales

Comment 8: Reporting of Hyundai Steel's Downstream Home Market Sales
Comment 9: Assignment of Costs for Hyundai Steel's Non-Prime Pipe
Comment 10: Hyundai Steel's Foreign Inland Freight Expenses
Comment 11: Calculation Error for Hyundai Steel in the *Preliminary Results*

SeAH-Specific Issues:

Comment 12: SeAH's Third Country Comparison Market Viability
Comment 13: Constructed Export Price (CEP) Offset for SeAH

II. BACKGROUND

On January 9, 2018, the Department of Commerce (Commerce) published the *Preliminary Results* of this administrative review.¹ On February 23, 2018, we postponed the final results by 60 days, until July 11, 2018.² This review covers 24 producers and/or exporters. Commerce selected Hyundai Steel and SeAH for individual examination.³ The period of review (POR) is May 22, 2015, through November 30, 2016.

We invited parties to comment on the *Preliminary Results*.⁴ On March 23, 2018, we received case briefs from Hyundai Steel, SeAH, Husteel Co. Ltd. (Husteel), NEXTEEL Co., Ltd. (NEXTEEL), and Maverick Tube Corporation⁵ (Maverick).⁶ On April 2, 2018, we received rebuttal briefs from Hyundai Steel, SeAH, Husteel, and Maverick.⁷ On June 25, 2018, Commerce placed on the record the final determination issued by the Canadian International

¹ See *Welded Line Pipe from Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015–2016*, 83 FR 1023 (January 9, 2018) (*Preliminary Results*).

² See Memorandum, “Welded Line Pipe from Korea from the Republic of Korea: Extension of Deadline for Final Results of 2015-2016 Antidumping Duty Administrative Review,” dated February 23, 2018.

³ See Memorandum, “Selection of Respondents for Individual Review,” dated March 7, 2017.

⁴ See *Preliminary Results*, 83 FR at 1024.

⁵ Maverick was one of the petitioners in the underlying less-than-fair-value (LTFV) investigation of WLP from Korea.

⁶ See Hyundai Steel's Case Brief, “Case Brief of Hyundai Steel Company,” dated March 23, 2018 (Hyundai Steel Case Brief); SeAH's Case Brief, “Case Brief of SeAH Steel Corporation,” dated March 23, 2018 (SeAH Case Brief); Husteel's Case Brief, “Case Brief of Husteel Co., Ltd.,” dated March 23, 2018 (Husteel Case Brief); NEXTEEL's letter, “Welded Line Pipe from the Republic of Korea: NEXTEEL's Letter in Support of Respondents' Case Briefs,” dated March 23, 2018 (NEXTEEL Case Brief); and Maverick's Case Brief, “Welded Line Pipe from the Republic of Korea: Case Brief,” dated March 23, 2018 (Maverick Case Brief). Maverick resubmitted certain pages of its case brief to reflect the public disclosure of certain information previously treated as business proprietary. See Maverick's letter, “Welded Line Pipe from the Republic of Korea: Resubmission of Selected Pages in Case Brief,” dated April 25, 2018.

⁷ See Hyundai Steel's Rebuttal Brief, “Rebuttal Brief of Hyundai Steel Company,” dated April 2, 2018 (Hyundai Steel Rebuttal Brief); SeAH's Rebuttal Brief, “Rebuttal Brief of SeAH Steel Corporation,” dated April 2, 2018 (SeAH Rebuttal Brief); Husteel's Rebuttal Brief, “Welded Line Pipe from the Republic of Korea. Case No. A-580-876: Rebuttal Brief,” dated April 2, 2018 (Husteel Rebuttal Brief); and Maverick's Rebuttal Brief, “Rebuttal Brief of Maverick Tube Corporation,” dated April 2, 2018 (Maverick Rebuttal Brief). Hyundai Steel resubmitted certain pages of its case brief to reflect the public disclosure of certain information previously treated as business proprietary. See Hyundai Steel's letter, “Welded Line Pipe from the Republic of Korea: Resubmission of Certain Pages of Hyundai Steel's Rebuttal Brief,” dated April 25, 2018.

Trade Tribunal (CITT) in the Canadian carbon and alloy steel line pipe inquiry, and set a time period for interested parties to submit clarifying factual information on this AD determination.⁸ On June 27, 2018, Maverick and SeAH submitted such information,⁹ and on July 2, 2018, Maverick submitted information rebutting SeAH's submission.¹⁰ After analyzing the comments received, we changed the weighted-average margins from those presented in the *Preliminary Results*.

III. MARGIN CALCULATIONS

For Hyundai Steel and SeAH, we calculated export price (EP), constructed export price (CEP), and normal value (NV) using the same methodology stated in the *Preliminary Results*, except as follows:¹¹

- We made a correction to the calculation of the net home market price for Hyundai Steel in our calculation of NV. *See* Comment 11 below for further discussion.
- We excluded Hyundai Steel's sales of non-prime pipe products from the home market sales database and adjusted its costs to value the non-prime products at their net sales prices. *See* Comment 9 below for further discussion.
- We corrected an error in the Hyundai Steel margin calculation program in which we incorrectly identified the first month of the POR.
- For SeAH, we based NV on constructed value (CV) for comparison to U.S. price in our margin calculations. *See* Comment 12 below for further discussion.
- We granted SeAH a CEP offset based on the differences between Hyundai's selling activities in the home market and SeAH's selling activities in the U.S. market.¹²

⁸ *See* Memorandum, "Canadian Antidumping Duty Final Determination on Welded Line Pipe," dated June 25, 2018.

⁹ *See* Maverick's Letter, "Welded Line Pipe from the Republic of Korea: Response to Factual Information Placed on the Record by the Department on June 25," dated June 27, 2018. (Maverick June 27, 2018 NFI Response). We rejected SeAH's June 27, 2018 letter, which contained untimely-filed written argument. *See* Commerce Letter re: 2015-2016 Administrative Review of Welded Line Pipe from the Republic of Korea, dated June 28, 2018.

However, upon further consideration, we authorized SeAH to resubmit its June 27, 2018 submission; we also authorized parties to submit rebuttal comments to SeAH's written arguments. *See* Commerce Letter re: 2015-2016 Antidumping Duty Administrative Review of Welded Line Pipe from the Republic of Korea, dated June 29, 2018. SeAH resubmitted its rejected filing on June 29, 2018. *See* SeAH's letter, "Administrative Review of the Antidumping Order on Welded Line Pipe from Korea—Response to New Factual Information," dated June 29, 2018 (SeAH June 29, 2018 NFI Response).

¹⁰ *See* Maverick's Letter, "Welded Line Pipe from the Republic of Korea: Rebuttal Comments to SeAH's written argument," dated July 2, 2018 (Maverick July 2, 2018 NFI Rebuttal)

¹¹ *See* Memoranda entitled, "Final Results Margin Calculation for Hyundai Steel" dated July 11, 2018 (Hyundai Steel Final Calculation Memo), and "Final Results Margin Calculation for SeAH," dated July 11, 2018 (SeAH Final Calculation Memo).

¹² *See* SeAH Final Calculation Memo for further discussion.

IV. DISCUSSION OF ISSUES

Comment 1: Existence of a PMS

In the *Preliminary Results*, Commerce determined that a PMS existed in Korea which distorted the cost of production (COP) of WLP, based on the cumulative effect of: (1) Korean subsidies on the hot-rolled coil (HRC) input; (2) Korean imports of HRC from China; (3) strategic alliances between Korean HRC and WLP producers; and (4) distortions in the Korean electricity market. In the *Preliminary Results*, we quantified the impact of the PMS in Korea by making an upward adjustment to the respondents' reported HRC costs, basing that adjustment on the subsidy rates, net of export subsidies, from the countervailing duty (CVD) investigation in *Hot-Rolled Steel from Korea*.¹³

Hyundai Steel's Comments:

- No PMS finding or adjustments are warranted in this case.
- Commerce's finding in the *Preliminary Results* that a PMS existed with respect to Hyundai Steel's HRC inputs is contrary to the statute, because the statute contains two elements: (1) the PMS exists; and (2) the respondent's costs do not accurately reflect the COP in the ordinary course of trade. Commerce failed to recognize that Hyundai Steel's COP accurately reflects the COP in the ordinary course of trade.¹⁴

The *Preliminary Results* Do Not Account for Key Factual Changes Since *OCTG from Korea 14-15 AR*¹⁵

- POSCO's subsidy rate from *Hot-Rolled Steel from Korea* is irrelevant because it covered 2014 and, thus, is not contemporaneous, was based on total adverse facts available (AFA), and does not relate to WLP.
- In *Cut-to-Length Plate from Korea*, Commerce found that POSCO does not receive the subsidies for which Commerce applied AFA in *Hot-Rolled Steel from Korea*.¹⁶ Furthermore,

¹³ See *Preliminary Results*, and accompanying Preliminary Decision Memorandum (PDM) at 9-15 (citing *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016) (*Hot-Rolled Steel from Korea Final Determination*), as amended in *Certain Hot-Rolled Steel Flat Products from Brazil and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders*, 81 FR 67960 (October 3, 2016) (collectively, *Hot-Rolled Steel from Korea*)).

¹⁴ See Hyundai Steel Case Brief at 4-5 (citing section 504 of the Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA)).

¹⁵ *Id.* at 6-17 (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014–2015*, 82 FR 18105 (April 17, 2017) (*OCTG from Korea 14-15 AR*)).

¹⁶ *Id.* at 8 (citing *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 63168 (September 14, 2016) (*Cut-to-Length Plate from Korea Preliminary Determination*) and *Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 82 FR 16341 (April 4, 2017) (*Cut-to-Length Plate from Korea*)).

the POR for *Cut-to-Length Plate from Korea* covered 2015, which overlaps with the instant POR, and Commerce calculated POSCO's subsidy rate, rather than applying AFA.

- Commerce verified POSCO's COP information related to HRC, and made no mention of subsidies, distortion, or government meddling in POSCO's costs.¹⁷
- While it is inappropriate to use CVD calculations in an AD case, if Commerce continues to make a CVD-based PMS adjustment for the final results, it should rely on the methodology in *Cut-to-Length Plate from Korea*. The Court of International Trade (CIT) recently remanded to Commerce the CVD AFA rate applied in *Cold-Rolled Steel from Korea*¹⁸ based on facts virtually identical to *Hot-Rolled Steel from Korea*.¹⁹
- With respect to Chinese HRC, Hyundai Steel obtained "very little" HRC from Chinese producers during the POR.
- The volume of imports from China into Korea is not significant enough to have an impact on the Korean market, which operates under normal market conditions.
- Neither Maverick nor Commerce in its *Preliminary Results* refers to any data which indicate that Chinese imports constitute a "flood" relative to the overall production of hot-rolled steel sheet products in Korea. Only about 20 percent of hot-rolled steel imports into Korea come from China.²⁰
- Maverick points to no evidence that Chinese overcapacity is directed to the Korean market.
- With respect to electricity, Hyundai Steel notes that Commerce found no countervailable subsidies in *WLP CVD Final*, a determination affirmed by the CIT.²¹
- Moreover, record evidence contemporaneous with the instant POR shows that Korean electricity rates reflected market principles.²²

Hyundai Steel's Reported HRC Costs Were Incurred in the Ordinary Course of Trade²³

- Commerce's PMS finding in the *Preliminary Results* is based on its PMS finding in *OCTG from Korea 14-15 AR*, where it found a PMS existed due to the cumulative effect of four factors, three of which it could not quantify.
- Since *OCTG from Korea 14-15 AR*, Commerce's PMS analysis has evolved. Commerce has abandoned the "totality of the circumstances" test used in *OCTG from Korea 14-15 AR* and now uses a data-driven, quantitative analysis.²⁴

¹⁷ *Id.* at 9 (citing Hyundai Steel's letter, "Welded Line Pipe from the Republic of Korea: Particular Market Situation Allegation Comments," dated November 8, 2017 (Hyundai Steel PMS Comments), at Exhibit 2).

¹⁸ *Id.* at 11 (citing *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49946 (July 29, 2016) (*Cold Rolled Steel from Korea*)).

¹⁹ Hyundai Steel Case Brief at 11 (citing *POSCO v. United States*, 296 F. Supp. 3d 1320 (CIT 2018) (*POSCO*)).

²⁰ *Id.* at 13 (citing Maverick Letter, "Welded Line Pipe from the Republic of Korea: Particular Market Situation Allegation and Factual Information," dated September 22, 2017 (Maverick PMS Allegation), at Exhibit 4).

²¹ *Id.* at 15 (citing *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015) (*WLP CVD Final*); and *Maverick Tube Corporation v. United States*, 273 F. Supp. 3d 1293 (CIT 2017) (*Maverick Tube Corp.*)).

²² *Id.* at 16-17 (citing Hyundai Steel PMS Comments at Exhibit 10).

²³ *Id.* at 17-28.

²⁴ *Id.* at 18-22 (citing *Steel Concrete Reinforcing Bar from Taiwan: Final Determination of Sales at Less Than Fair Value*, 82 FR 34925 (July 27, 2017) (*Rebar from Taiwan*), and accompanying Issues and Decision Memorandum (IDM) at Comment 1; and *Biodiesel from Argentina: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part*, 82 FR 50391 (October 31,

- Hyundai Steel placed information on the record of this review which demonstrates that its steel purchase prices are reflective of market reality and not outside the ordinary course of trade, including Hyundai Steel’s own HRC cost data,²⁵ Steel Benchmark data,²⁶ COMTRADE data,²⁷ and GTA import data.²⁸
- Commerce’s failure to consider these data for the *Preliminary Results* renders that decision contrary to record evidence and the law. These data demonstrate that a PMS does not exist for Hyundai Steel’s HRC purchases because they are reflective of world market prices.
- The PMS adjustment applied in the *Preliminary Results* resulted in a high valuation for Hyundai Steel’s HRC inputs that is not supported by the record.
- Using an adjustment for HRC purchases from POSCO based on its AFA rate in another proceeding introduces inaccuracies into the calculations and impermissibly punishes Hyundai Steel, without any finding that Hyundai Steel is uncooperative. Moreover, Hyundai Steel was a respondent in *Hot-Rolled Steel from Korea*, where it received its own rate.
- Commerce has acknowledged that the AFA rate in *Hot-Rolled Steel from Korea* was not reflective of commercial reality. It is contradictory for Commerce to find that it cannot accurately calculate a subsidy rate in one proceeding, while also determining in another proceeding that the same inaccurate subsidy rate can “appropriately quantify” a PMS adjustment.²⁹
- Accordingly, Commerce must reverse its PMS finding for the final results. However, if Commerce continues to find that it is necessary to make an adjustment to Hyundai Steel’s costs under the PMS provisions, Commerce should ensure that any such adjustment is: (1) capped at the rate assigned to Hyundai Steel in *Hot-Rolled Steel from Korea*; and (2) only applied to HRC and cut-to-length plate used in Hyundai Steel’s own production of WLP.³⁰

Strategic Alliances³¹

- Commerce made no effort on the record of this review to confirm or corroborate the existence of a strategic alliance between WLP and HRS producers or how a strategic alliance might have contributed to a PMS. Furthermore, because Hyundai Steel is both a WLP and HRS producer, it is nonsensical to suggest that Hyundai Steel has a strategic alliance with itself or its competitors.
- Hyundai Steel’s relationships with its suppliers are not atypical or different from the business relationships of producers and input suppliers across industries and countries. There is

2017) (*Biodiesel from Argentina Preliminary Determination*), and accompanying PDM at 23; and *Biodiesel from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 50379 (October 31, 2017) (*Biodiesel from Indonesia Preliminary Determination*), and accompanying PDM at 23).

²⁵ *Id.* at 24 (citing Hyundai Steel PMS Comments at Exhibit 6 and Exhibit SD-9 of Hyundai Steel’s July 14, 2017, supplemental questionnaire response (Hyundai Steel SQRABCD)).

²⁶ *Id.* at 23-24 (citing Hyundai Steel PMS Comments at Exhibit 7).

²⁷ *Id.* at 25 (citing Maverick PMS Allegation at Exhibit 4).

²⁸ *Id.* at 25-26 (citing Hyundai Steel PMS Comments at Exhibit 8).

²⁹ *Id.* at 29 (citing *Hot-Rolled Steel from Korea*, and accompanying IDM at Comment 3.)

³⁰ Hyundai Steel offers an alternative adjustment methodology in its case brief. *See* Hyundai Steel Case Brief at Exhibit 1.

³¹ *See* Hyundai Steel Case Brief at 33-36.

nothing outside the ordinary course of trade with respect to this market. Thus, no adjustment to Hyundai Steel's costs is warranted based on such claims.

- The CIT has discredited Commerce's *Preliminary Results* PMS findings with respect to the alleged "strategic alliance" between Hyundai Steel and POSCO.³²

SeAH's Comments:³³

- Two of the factors leading to Commerce's PMS finding in the *Preliminary Results*, strategic alliances and government control over electricity costs, are entirely irrelevant to SeAH. Regarding strategic alliances, Commerce has consistently found that SeAH and POSCO are not affiliated.³⁴ As for electricity, Commerce found that the prices SeAH paid for electricity did not confer any subsidy benefit.³⁵
- With respect to HRC, there is no evidence that the prices SeAH paid were affected by subsidies allegedly provided to POSCO or Chinese suppliers' alleged predatory practices, as shown by the following:
 - The subsidy finding in *Hot-Rolled Steel from Korea* was based completely on AFA.
 - A comparison of the average prices, by grade, for SeAH's purchases of HRC from POSCO and SeAH's Japanese HRC supplier substantiates that POSCO's prices were not unfairly low.³⁶
 - There is no evidence of any findings of dumping against Chinese HRC producers by the Korean government.
 - There is no evidence that the prices charged by the Chinese producers in Korea were below the COP. Rather, the record confirms that the prices SeAH paid POSCO and its Chinese suppliers for HRC were consistent with market prices.³⁷
- Commerce's finding of a PMS in this review based primarily on its determination in *Hot-Rolled Steel from Korea*, including the AFA subsidies determination, cannot be applied to other companies such as SeAH which were not interested parties in that proceeding. To rely on that case, Commerce must place the entire record of that investigation on this record and allow parties to address that information.
- Should Commerce make a PMS adjustment to SeAH's costs, it should not rely on POSCO's subsidy rate from *Hot-Rolled Steel from Korea*. Instead, Commerce should rely on the subsidy rate calculated for POSCO in *Cut-to-Length Plate from Korea*, as this case is more recent than *Hot-Rolled Steel from Korea*, covered a period more contemporaneous with the

³² *Id.* at 34-35 (citing *Husteel Co., Ltd. v. United States*, 98 F. Supp.3d 1315, 1359 (CIT 2015) (*Husteel*)).

³³ See SeAH Case Brief at 3-9.

³⁴ *Id.* at 4, footnote 10 (citing *Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 742 (January 7, 2016) (*Stainless Steel Pipe from Korea Preliminary Results*), and accompanying IDM 7-8; and *Welded Line Pipe from the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 80 FR 29620 (May 22, 2015) (*Welded Line Pipe from Korea LTFV Preliminary Determination*), and accompanying PDM at 18).

³⁵ *Id.* (citing *WLP CVD Final*, and accompanying IDM at Comment 1).

³⁶ *Id.* at 6 (citing SeAH's DQR at Appendix D-4-D).

³⁷ *Id.*

instant POR, and was not based entirely on AFA. Furthermore, SeAH consumes cut-to-length plate, rather than HRC, for much of its WLP production.³⁸

Husteel's Comments:³⁹

- Commerce's affirmative PMS determination in the *Preliminary Results* relies almost exclusively on information provided by the petitioner in *OCTG from Korea 14-15 AR*. The OCTG and WLP markets have significant differences and, as Hyundai Steel and SeAH note, the findings in *OCTG from Korea 14-15 AR* have nothing to do with the COP of WLP.
- Commerce's evolving practice is that a PMS determination must be based on evidence of cost distortions for a particular market.⁴⁰ The record evidence in this review is speculative regarding market conditions, but does not demonstrate that the factors cited by Commerce in its PMS determination distorted the respondents' actual costs.
- Commerce acted unlawfully in relying on the record of another proceeding, *Hot-Rolled Steel from Korea*, in making its PMS determination in this review. Specifically, Commerce relied on POSCO's non-cooperation in that proceeding to make adjustments to the respondents' COP in this review.
- Further, in *Cut-to-Length Plate from Korea*, Commerce determined that POSCO did not actually receive the subsidies to which Commerce applied the AFA rate in *Hot-Rolled Steel from Korea*. Accordingly, there is no legal basis to apply AFA rates from that case to the cooperating respondents in this review.
- If Commerce continues to apply CVD rates to adjust respondents' COPs in this review, it should not use AFA rates from *Hot-Rolled Steel from Korea*, but instead use non-AFA rates from such proceedings as *Cut-to-Length Plate from Korea*.
- Commerce correctly declined to make an adjustment to the respondents' COPs for HRC sourced from China and Japan. However, Commerce's finding that these HRC imports caused or contributed to a PMS in Korea is unlawful because there is no evidence on this record that the respondents' COPs were distorted by these HRC imports.
- Commerce correctly declined to make an adjustment to the respondents' COPs based on alleged strategic alliances between Korean HRC suppliers and WLP producers. However, Commerce's finding that such alleged strategic alliances caused or contributed to a PMS in Korea is unlawful because there is no evidence on this record to support a finding that these alleged strategic alliances exist.
- Commerce correctly declined to make an adjustment to the respondents' COPs based on Korean electricity costs. However, Commerce incorrectly found that Korean electricity costs

³⁸ See SeAH Case Brief at 9 (citing SeAH DQR at Appendix D-4-B).

³⁹ See Husteel Case Brief at 3-9.

⁴⁰ *Id.* at 4 (citing *Steel Concrete Reinforcing Bar from Taiwan; Final Determination of Sales at Less Than Fair Value*, 82 FR 34925 (July 27, 2017), and accompanying IDM at Comment 1; *Biodiesel from Argentina Preliminary Determination*, and accompanying PDM at 23-24, unchanged in *Biodiesel From Argentina: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 8837 (March 1, 2018) (*Biodiesel from Argentina*), and accompanying IDM at Comment 2; and *Certain Softwood Lumber Products from Canada: Final Affirmative Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 82 FR 51806 (November 8, 2017), and accompanying IDM at Comment 17).

contribute to a PMS in Korea because Commerce has not found electricity to be provided in Korea for less than adequate remuneration.⁴¹

NEXTEEL's Comments:⁴²

- NEXTEEL disagrees with Commerce's finding of a PMS in the *Preliminary Results* and supports Hyundai Steel's and SeAH's arguments.

Maverick's Rebuttal Comments:⁴³

- Under the PMS provision in the TPEA, Commerce has the broad authority to address situations in a foreign market where inputs are purchased and where inherent distortions in the market prevent a fair comparison. Commerce has the authority to choose any alternative methodology to account for distorted prices and costs as reported.
- Therefore, Commerce should continue to find that a PMS exists in Korea, and continue to increase reported costs for HRC purchased from Korean suppliers using the subsidy rates in *Hot-Rolled Steel from Korea*.

Existence of a PMS in Korea⁴⁴

- The four alleged factors combine to cause a distortion in the price and cost of steel production in Korea, preventing an accurate comparison, as Commerce has recognized in *OCTG from Korea 14-15 AR*, *OCTG from Korea Preliminary Results*, and *CWP from Korea Preliminary Results*.⁴⁵
- Although OCTG and WLP are different products, the similarities between their production processes, as well as that these products are manufactured by the same mills, using the same equipment, in the same facilities, and utilizing the same HRC primary input, facing the same distortive market conditions, support Commerce's PMS findings in the *Preliminary Results*, as well as in the OCTG proceeding.
- None of the Korean WLP producers refute the evidence on the record regarding the existence and impact of Chinese overcapacity in the Korean market or of the Korean government's subsidization of the steel industry (particularly HRC).
- The Korean WLP respondents fail to support their claims that the PMS findings in the OCTG proceedings are inapplicable in this review. The only significant difference between the OCTG proceedings and this review is that Hyundai Steel, an integrated producer, was not a respondent in the OCTG proceedings but is one in this review.

⁴¹ See *Husteel Case Brief* at 9 (citing *Hot-Rolled Steel from Korea Final Determination*, and accompanying IDM at 36-53, and *Maverick Tube Corp.*).

⁴² See *NEXTEEL Case Brief* at 1.

⁴³ See *Maverick Rebuttal Brief* at 2-35.

⁴⁴ *Id.* at 5-15.

⁴⁵ *Id.* at 5 (citing *OCTG from Korea 14-15 AR*; *Certain Oil Country Tubular Goods from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 46963 (October 10, 2017) (*OCTG from Korea Preliminary Results*), and accompanying PDM at 14-20; and *Circular Welded Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 57583 (December 6, 2017) (*CWP from Korea Preliminary Results*), and accompanying PDM at 10-14).

- Because Hyundai Steel is a producer of HRC, Commerce properly applied a PMS adjustment to Hyundai Steel’s COP of WLP in the *Preliminary Results*. Hyundai Steel’s HRC production is affected by the same factors as other Korean producers.
- While SeAH claims to use cut-to-length plate, rather than HRC, for the primary raw material for many of its WLP products, it also reported HRC as a primary input for WLP products.⁴⁶
- Hyundai Steel’s contention that the statute contains a two-part requirement to make an affirmative PMS finding represents an incorrect reading of the statute. Rather, Commerce determined that, under the PMS provision, “where a particular market situation affects the cost of production for the foreign like product, such as through distortions in the cost of inputs, for example, it is reasonable to conclude that such a situation may prevent a proper comparison with the export price or constructed value.”⁴⁷
- Contrary to Hyundai Steel’s and Husteel’s claims, there have been no significant factual changes to warrant a reversal of Commerce’s PMS finding in the *Preliminary Results*. The same evidence that supported the PMS finding in the *Preliminary Results*, as well as the PMS finding in *OCTG from Korea 14-15 AR*, remain present.
- The rates from *Hot-Rolled Steel from Korea* are an appropriate basis for making the PMS adjustment and do not constitute AFA when applied to the parties in this proceeding.
- Hyundai Steel’s attempt to rely on verification reports in *Cut-to-Length Plate from Korea* in support of its argument are not convincing because verification reports do not draw conclusions as to whether reported information was successfully verified, and subsidies, distortions, and government interference are not typically covered in an AD verification.

Chinese HRC Imports⁴⁸

- Chinese HRC continued to flood the Korean market during the POR, while Korean domestic HRC prices declined. As a result, Commerce should continue to find that imports of Chinese hot-rolled steel contributed to the existence of a PMS in Korea for HRC.
- Hyundai Steel and Husteel’s arguments regarding Commerce’s “evolving” practice in its PMS analysis are misguided. The *Preliminary Results* demonstrate that Commerce has not developed a singular methodology for assessing a PMS allegation. The PMS provision under the TPEA does not direct Commerce how to assess whether a PMS exists or how to address the existence of a PMS. Each case presents a unique set of facts, which should be evaluated on a case-by-case basis.
- The respondents’ claims that the PMS analysis in cases such as *Rebar from Taiwan*, *Biodiesel from Argentina*, and *Biodiesel from Indonesia* limits Commerce’s authority to analyze the PMS in this review is unfounded and meritless because none of these cases explicitly limit the PMS analysis to a data-driven approach. Furthermore, “totality-of-the-circumstances” tests have continuously been used and sustained by the courts, including with respect to determining whether sales are made in the “ordinary course of trade.”⁴⁹
- Commerce should reject Hyundai Steel’s arguments regarding benchmarks for HRC, such as the Steel Benchmark data and GTA import data into Italy. These data are not relevant to

⁴⁶ See Maverick Rebuttal Brief at 10 (citing SeAH’s BCDEQR, Section D at 3, 6, 7, and 38).

⁴⁷ *Id.* at 11 (citing *OCTG from Korea 14-15 AR*, and accompanying IDM at Comment 3).

⁴⁸ *Id.* at 16-26.

⁴⁹ *Id.* at 19-20 (citing *NTN Bearing Corp. of America v. United States*, 295 F.3d 1263, 1267 (Fed. Cir. 2002), and *Biodiesel from Argentina*, and accompanying IDM at Comment 3).

whether a PMS exists in Korea. In contrast, the POSCO CVD margin from *Hot-Rolled Flat Steel Products from Korea* approximates how much higher Korean hot-rolled steel prices and costs would be without government distortion.

- SeAH’s denies that that Korean government subsidization had any impact on the prices SeAH paid for its HRC. However, this argument has no merit as Commerce has previously rejected them.
- Commerce’s subsidy determination is consistent with the United States’ World Trade Organization (WTO) obligations. Further, the U.S. courts, as well as the WTO, have all recognized that input subsidies affect the price of the downstream goods.⁵⁰
- Contrary to SeAH’s assertion, a dumping determination in Korea against Chinese HRC is not a prerequisite to the existence of a PMS in Korea. Evidence on the record demonstrates the impact of unfairly traded Chinese HRC in Korea.

Strategic Alliances⁵¹

- With respect to Hyundai Steel’s arguments concerning the strategic alliances PMS factor, Hyundai Steel’s reliance on *Husteel* is misplaced. In that case, the CIT upheld Commerce’s decision not to make a major input adjustment. In contrast, the issue in the instant review is whether strategic alliances contribute to a PMS in Korea.⁵²
- Commerce should reject SeAH’s argument that it has no strategic alliances because Commerce found POSCO and SeAH not to be affiliated in past AD/CVD proceedings. SeAH conflates the concepts of affiliation and strategic alliances. Parties in a strategic and uncompetitive alliance are not necessarily affiliated.
- Commerce has previously determined that strategic alliances exist in Korea between HRC suppliers and downstream producers, and there is further evidence on the record of this review supporting this finding.⁵³

Electricity Pricing⁵⁴

- Contrary to Hyundai Steel’s claims regarding the electricity pricing data it submitted, the existence of an affirmative subsidy finding on electricity is irrelevant to whether electricity costs in Korea contribute to a PMS for the HRC inputs into WLP. Further, Commerce’s

⁵⁰ *Id.* at 21-22 (citing *China Nat. Machinery Import & Export Corp. v. United States*, 264 F. Supp. 2d 1229, 1237 (CIT 2003); *GPX Intern. Tire Corp. v. United States*, 780 F.3d 1136 (Fed. Cir. 2015); and *Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube from the People’s Republic of China*, 77 FR 52683 (August 30, 2012)).

⁵¹ *Id.* at 26-28.

⁵² *Id.* at 26 (citing *Husteel*, F.3d. at 1315, 1359).

⁵³ *Id.* at 27-28 (citing *OCTG from Korea 14-15 AR*; *OCTG from Korea Preliminary Results*; and *Maverick PMS Allegation* at 30 and Exhibit 31).

⁵⁴ *Id.* at 28-30.

negative determination in *Welded Line Pipe from Korea CVD Final* has been appealed to the CIT and, thus, Commerce’s electricity subsidy finding in that case is under review.

- Countervailability is not a prerequisite to a PMS finding, nor does countervailability address or account for the degree to which the manipulation and control over a market by its government prevents an accurate comparison between NV and U.S. price.

PMS Adjustment⁵⁵

- The respondent’s arguments concerning the use of CVD rates from *Hot-Rolled Steel from Korea*, and the use of POSCO’s subsidy rate in particular, were addressed by Commerce in *OCTG from Korea 14-15 AR* and the *Preliminary Results*.
- Hyundai Steel’s argument that the subsidy rates in *Hot-Rolled Steel from Korea* should be disregarded because of the CIT’s opinion in *POSCO* does not provide grounds to reject the use of these subsidy rates. In *POSCO*, the CIT specifically sustained Commerce’s use of AFA and remanded Commerce only for the purpose of explaining its decision to select the rate.⁵⁶
- Commerce should continue using rates from *Hot-Rolled Steel from Korea*, which are more appropriate than the CVD rates from *Cut-to-Length Plate from Korea* or world market prices.

Commerce Position:

Section 504 of the TPEA⁵⁷ added the concept of “particular market situation” in the definition of the term “ordinary course of trade,” for purposes of CV under section 773(e) of the Tariff Act of 1930, as amended (the Act), and through these provisions for purposes of the COP under section 773(b)(3) of the Act. Section 773(e) of the Act states that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.”

In this review, Maverick alleged that a PMS exists in Korea which distorts WLP costs of production based on the following four factors: (1) subsidization of Korean hot-rolled steel products by the Korean government; (2) the distortive pricing of unfairly traded Chinese HRC; (3) strategic alliances between Korean HRC suppliers and Korean WLP producers; and (4) distortive government control over electricity prices in Korea. Section 504 of the TPEA does not specify whether to consider these allegations individually or collectively. In *OCTG from Korea 14-15 AR*, *OCTG from Korea 15-16 AR*, and *CWP from Korea*, the petitioner alleged that a PMS existed in Korea based on the same four factors and, upon analyzing the four allegations as a whole, we found that a PMS existed in Korea.⁵⁸ For this review, after analyzing Maverick’s allegation, as well as the factual information and case briefs subsequently submitted by interested

⁵⁵ *Id.* at 32-35.

⁵⁶ *Id.* at 34 (citing *POSCO*, 296 F. Supp. 3d at 1353).

⁵⁷ See *TPEA*, Pub. L. No. 114-27, 129 Stat. 362 (2015).

⁵⁸ See *OCTG from Korea 14-15 AR*, and accompanying IDM at Comment 3; *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 17146 (April 18, 2018) (*OCTG from Korea 15-16 AR*), and accompanying IDM at Comment 1; and *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, 83 FR 83 FR 2754 (June 13, 2018) (*CWP from Korea*), and accompanying IDM at Comment 1.

parties, we determine that the circumstances present during this review – that is, the PMS allegation itself and the record evidence concerning the allegation – remained largely unchanged from those which led to the finding of a PMS in Korea in the other reviews. Therefore, we find that, based on the collective impact of Korean HRC subsidies, Korean imports of HRC from China, strategic alliances, and government involvement in the Korean electricity market, a PMS exists in Korea which distorts the cost of production for WLP.

In this administrative review, as well as in *OCTG from Korea 14-15 AR*, *OCTG from Korea 15-16 AR*, and *CWP from Korea*, we considered the four aspects underlying the PMS allegation as a whole, based on their cumulative effect on the cost of production for Korean WLP.⁵⁹ Based on the existence of these conditions in the Korean market, we continue to find that a single PMS exists which impacts the COP for WLP. The record evidence demonstrates that the Korean government subsidized HRC and that the mandatory respondents purchased HRC from entities receiving these subsidies, including POSCO.⁶⁰ The record evidence also shows that the subsidies received by certain Korean HRC steel producers totaled almost 60 percent of the cost of hot-rolled steel, the primary input into WLP production.⁶¹ Additionally, we note that HRC as an input of WLP constitutes a substantial proportion of the cost of WLP production; thus, distortions in the HRC market have a significant impact on the COP for WLP.⁶²

Further, as a result of significant overcapacity in Chinese steel production, which stems, in part, from the distortions and interventions prevalent in the Chinese economy, the Korean steel market has been flooded with imports of cheaper Chinese steel products, placing downward pressure on Korean domestic steel prices.⁶³ This situation, along with the domestic steel production being heavily subsidized by the Korean government, distorts the Korean market prices of HRC, the main input in Korean WLP production.

With respect to Maverick's contention that certain Korean HRC suppliers and Korean WLP producers attempt to compete by engaging in strategic alliances, we agree that the record evidence supports that such strategic alliances exist in Korea.⁶⁴ In addition, these strategic alliances affected prices in the period covered by the original less-than-fair value investigation of *OCTG from Korea*. Because strategic alliances have led to distortions in the prices of HRC, as evidenced by the record information, we find that such strategic alliances are a contributing factor to the PMS in Korea impacting the COP for WLP.

With respect to the allegation of distortion present in the electricity market, consistent with the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, a PMS may exist where there is government control over prices to such an extent that home market prices cannot be considered to be competitively set.⁶⁵ Moreover, electricity in Korea

⁵⁹ See *Preliminary Results*, and accompanying PDM at 11-13.

⁶⁰ See *Maverick PMS Allegation* at Attachment 13, Exhibit 12.

⁶¹ *Id.*

⁶² *Id.* at Exhibit 4.

⁶³ *Id.* at Exhibit 6.

⁶⁴ *Id.* at Exhibit 4.

⁶⁵ See *OCTG from Korea 14-15 AR*, and accompanying IDM at Comment 3 (citing Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) at 822).

functions as a tool of the government's industrial policy. Furthermore, the largest electricity supplier, KEPCO, is a government controlled entity.⁶⁶ Accordingly, the Korean government's involvement in the electricity market in Korea is a contributing factor to the PMS in Korea impacting the COP for WLP.

These intertwined market conditions signify that the production costs of WLP are distorted and are not in the ordinary course of trade. Thus, we continue to find that various market forces result in distortions which impact the costs of production for WLP from Korea. Considered collectively, we continue to find that the allegations support a finding that a PMS existed during the POR in the instant administrative review.

We disagree with Hyundai Steel's and Husteel's arguments that the facts present in the instant review have changed significantly since Commerce's PMS determination in *OCTG from Korea 14-15 AR*. Conversely, we find that the same factors that led to the finding that a PMS existed in Korea in *OCTG from Korea 14-15 AR* are still present in this administrative review, and that the facts of this record support the continued finding that a PMS existed during this POR. Specifically, the facts in this review are largely identical to the facts in *OCTG from Korea 14-15 AR*, as HRC is the primary input for OCTG as well as WLP and the same market conditions for Korean HRC apply, and the same evidence is on the record of this review.

We also disagree with Hyundai Steel's and SeAH's contentions that POSCO's subsidy rate from *Hot-Rolled Steel from Korea* is irrelevant because it covered 2014 (*i.e.*, it is not contemporaneous) and does not relate to WLP. Regarding the fact that the rates from *Hot-Rolled Steel from Korea* precede the instant POR, we note that these are the rates in effect for that proceeding because, to date, Commerce has not yet completed a CVD review. The respondents' contention that the subsidization finding did not pertain to WLP is misplaced, because it relates to the inputs used in the production of WLP (*i.e.*, HRC) and we apply the adjustment (*i.e.*, the relevant CVD rate) to the cost of inputs used in the production of WLP. This approach is consistent with the approach taken in *OCTG from Korea 14-15 AR*, as well as *OCTG from Korea 15-16 AR*, and *CWP from Korea*, because the OCTG, CWP, and WLP production processes all rely on HRC as an input.

Contrary to the respondents' arguments, and, as explained in the *Preliminary Results*, we continue to find that the subsidy rates from *Hot-Rolled Steel from Korea* are more appropriate than the subsidy rates from Commerce's CVD investigation of *Cut-to-Length Plate from Korea*, because the former rates are for hot-rolled steel, the primary input used to make WLP, whereas the latter are not. In our view, the difference in the PORs of these two determinations does not outweigh our consideration that it is preferable to rely on CVD rates which apply to the relevant input, versus CVD rates which apply to other products other than the respondents' primary input. Accordingly, we continue to find that the CVD rates from the investigation on *Hot-Rolled Steel from Korea* are an appropriate basis for making a PMS adjustment in this review. However, Commerce continues to consider and develop the basis for its PMS adjustment under section 773(e) of the Act.

⁶⁶ *Id.*; see also *WLP CVD Final*, and accompanying IDM at 13-15.

While we note that Hyundai Steel and SeAH use cut-to-length (CTL) plate, as well as HRC, as an input in WLP production, for both respondents, HRC is the primary input to WLP.⁶⁷ In making our PMS adjustments to COP, we applied them as an adjustment only to the HRC input consumed by each respondent, not to the respondents' CTL plate input, because the subsidy rates used for the PMS adjustment were calculated for HRC, but not CTL plate.⁶⁸

With respect to the PMS adjustment to the respondents' COP, as explained in the *Preliminary Results*, we disagree with the respondents' argument that the CVD rates applied in *Hot-Rolled Steel from Korea* are not an appropriate basis for the adjustment. The respondents argue that it would not be appropriate to make a PMS adjustment based on the CVD rate applied to POSCO in *Hot-Rolled Steel from Korea*, because that rate was based on total AFA and is for a period that does not overlap with this review. Regarding the fact that POSCO's CVD rate was based on total or partial AFA, we disagree that this fact alone should discredit its use in making a PMS adjustment. The total or partial AFA rates were imposed because the respondents failed to cooperate to the best of their abilities. As the CVD rates currently being applied to HRC reflect the results of Commerce's investigation into the subsidies the Korean producers received in *Hot-Rolled Steel from Korea*, we determine that the CVD rates from *Hot-Rolled Steel from Korea* represent an accurate measure of the subsidies received by the producers of HRC, and are a reasonable basis for Commerce's adjustment to reflect the Government of Korea's (GOK's) subsidization of HRC products in Korea.

Further, the AFA rate only applied to POSCO because POSCO failed to cooperate to the best of its ability, and in this review we only applied POSCO's rate as an adjustment to the HRC sourced from POSCO. For HRC sourced from other Korean companies, including Hyundai Steel's self-produced HRC, we applied the all-others rate, which was not based on AFA. Moreover, we find that POSCO could have acted to the best of its ability in responding to Commerce's requests for information in *Hot-Rolled Steel from Korea*. The fact that it did not suggests that its full cooperation may have resulted in a higher CVD rate than the one based on total or partial AFA. Regardless of the motives, however, nothing on the record of this proceeding demonstrates that the CVD rates assigned to the producers in *Hot-Rolled Steel from Korea* are inaccurate or unlawful. Indeed, to date, the HRC producers' rates remain the rates applied to relevant subject merchandise entering the United States. Further, we find Hyundai Steel's argument that it was contradictory for Commerce to find that it could not accurately calculate a subsidy rate for POSCO in *Hot-Rolled Steel from Korea*, yet use that same subsidy rate to quantify a PMS adjustment, to be misplaced. In determining to apply AFA to POSCO in *Hot-Rolled Steel from Korea*, Commerce did not find that the AFA rate itself was inaccurate, but, rather, that we could not calculate an accurate rate for POSCO in that proceeding due to POSCO's failure to submit "complete, accurate and reliable data."⁶⁹ Therefore, there is no basis for Hyundai Steel's claim that POSCO's AFA rate from *Hot-Rolled Steel from Korea* cannot be used to quantify a PMS adjustment here.

⁶⁷ See Memorandum, "Preliminary Results Margin Calculation for Hyundai Steel Company," dated January 2, 2018, at Attachment 3, and Memorandum, "Calculations for Preliminary Results," dated January 3, 2018, at Attachment 1.

⁶⁸ *Id.*

⁶⁹ See *Hot-Rolled Steel from Korea*, and accompanying IDM at Comment 5.

With respect to SeAH's contention that the Korean government did not make a formal finding that Chinese HRC is being dumped, we do not consider such a finding to be a prerequisite. Although a formal finding of dumping or subsidization could be evidence of the existence of unfair practices, such practices could exist even without a formal finding. In most cases, dumping investigations are initiated based on a petition by the domestic industry, which would require both the demonstration of the existence of dumping and the existence or threat of material injury to the domestic industry. In this case, however, record evidence shows subsidization of HRC producers by the Korean government,⁷⁰ as well as purchases of HRC by the mandatory respondents from Korean HRC suppliers that received such subsidies.⁷¹

We also disagree with Hyundai Steel's arguments that Commerce's "totality of the circumstances" analysis used in *OCTG from Korea 14-15 AR* has been wholly replaced by a different test in *Rebar from Taiwan* and *Biodiesel from Argentina*. In *Rebar from Taiwan*, Commerce acknowledged the "totality of the circumstances" PMS determination made in *OCTG from Korea 14-15 AR*, and stated that "the record in this case {(i.e., *Rebar from Taiwan*)} does not include the same facts or allegations as in *OCTG from Korea*."⁷² In *Biodiesel from Argentina*, Commerce stated specifically that "Commerce's conclusions in *OCTG from Korea* are consistent with this {(i.e., the *Biodiesel from Argentina*)} final determination." Commerce further acknowledged that, "in certain contexts, an ordinary course of trade analysis may involve a comparison of specific sales and transactions to the general market," but also stated that "a PMS analysis is, by definition, concerned with distortions in the overall 'market,' rather than distortions in particular sales or transactions in relation to the general market."⁷³ Accordingly, we find Hyundai Steel's arguments to be unpersuasive, and find that Commerce appropriately analyzed the facts and allegations on the records of each individual case in making its determinations.

Furthermore, we disagree with Hyundai Steel that our finding in the *Preliminary Results* that a PMS existed with respect to Hyundai Steel's HRC inputs is contrary to the statute because Commerce "conducted no empirical analysis of Hyundai Steel's submitted data to determine whether Hyundai Steel's HRC costs were incurred in the ordinary course of trade."⁷⁴ We disagree with the notion that such company-specific analysis is necessary and appropriate in a situation where, as here, there is sufficient evidence demonstrating that the market as a whole is distorted and a PMS exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the COP in the ordinary course of trade. Companies do not operate in a vacuum, but, rather, purchase their inputs in a market. If a particular market is distorted as a whole, it would be illogical to conclude that one company operating in that particular market is insulated from the market distortions with respect to costs.

⁷⁰ See Maverick PMS Allegation at Attachment 13, Exhibit 12.

⁷¹ *Id.*; see also Hyundai Steel SQRABCD at Exhibit D-9; and SeAH's August 16, 2017, Sections D-E Supplemental Questionnaire Response (SeAH SQRDE1) at Exhibit SD-9C.

⁷² See *Rebar from Taiwan*, and accompanying IDM at Comment 1.

⁷³ See *Biodiesel from Argentina*, and accompanying IDM at Comment 3.

⁷⁴ See Hyundai Steel Case Brief at 5.

We also disagree with Hyundai Steel that Chinese imports into Korea are not significant enough to have an impact on the Korean market. Record evidence shows that POSCO's profits have been affected by "a deluge of Chinese exports" which "pushed global prices to their lowest in at least a decade."⁷⁵ Despite Hyundai Steel's contention that imports of Chinese hot-rolled steel account for only about 20 percent of hot-rolled steel imports into Korea, we find that 20 percent is not an insignificant percentage. To put this into perspective, based on the COMTRADE data provided by Maverick, Korean imports of Chinese HRC during calendar year 2016 amounted to 973,881 metric tons, out of total imports of 4,903,387 metric tons.⁷⁶

However, we agree with Hyundai Steel that Maverick has not pointed to any evidence that Chinese overcapacity is a phenomenon *specific* to the Korean market. The fact that Chinese steel overcapacity affects the whole world is not disputed. Information on the record indicates that, "{a}ccording to OECD statistics, China's production capacity will continue to grow until 2017. Therefore, China's oversupply situation does not seem to improve, and is expected to result in increased exports and price decline pressures."⁷⁷ In any event, we find that the fact that overcapacity affects other markets is irrelevant; certainly one aspect of a PMS could be a contributing factor to a PMS in more than one country.

With respect to Hyundai Steel's arguments based on a comparison of its HRC COP and its HRC purchases with Steel Benchmark data, COMTRADE data, and GTA import data, we find that the data from these sources are not appropriate benchmarks for the HRC Hyundai Steel and SeAH used in the production of WLP. For example, the Steel Benchmark prices are for "hot-rolled band," not HRC.⁷⁸ With respect to COMTRADE prices, the data are only for Korean imports of HRC;⁷⁹ given that we have found that the PMS in Korea is caused, in part, by the distortive pricing of unfairly traded Chinese HRC, we determine that it is not clear that these data would be an appropriate source for benchmarking. With respect to GTA import data, we only have data on the record for Mexico and Italy,⁸⁰ and it is not clear that using individual countries for comparison is an appropriate substitute for world prices. Furthermore, we consider that comparisons to Hyundai Steel's own HRC production costs are not appropriate because Hyundai Steel's HRC is also subject to the distortive impact of the PMS for HRC in Korea.⁸¹

We also disagree with Hyundai Steel's and SeAH's arguments that they are not involved in any strategic alliances, and that we should not find a PMS on this basis. We agree with Maverick that record evidence supports that such strategic alliances exist in Korea,⁸² and continue to find that strategic alliances between certain Korean HRC suppliers and Korean WLP producers are

⁷⁵ See Maverick PMS Allegation at Exhibit 30.

⁷⁶ *Id.* at Exhibit 29.

⁷⁷ *Id.* at Exhibit 30.

⁷⁸ See Hyundai Steel PMS Comments at Exhibit 7.

⁷⁹ See Maverick PMS Allegation at Exhibit 4.

⁸⁰ See Hyundai Steel PMS Comments at Exhibit 8.

⁸¹ Because Hyundai Steel's arguments regarding its HRC production costs and capping any adjustment at the rate determined in *Hot-Rolled Steel from Korea* involve the discussion of business proprietary information, we address them in the separate memorandum entitled "Discussion of Business Proprietary Information for the Final Results - Particular Market Situation," dated concurrently with this memorandum.

⁸² See Maverick PMS Allegation at Exhibit 31; see also *OCTG from Korea 15-16 AR*, and accompanying IDM at Comment 1; and *CWP from Korea*, and accompanying IDM at Comment 1.

relevant as an element of our PMS analysis. Further, we evaluate the existence of a PMS based on the totality of circumstances in the market. Accordingly, to the extent that strategic alliances may have a distortive effect on the market as a whole, in our view, it is unnecessary for every company operating in the market to be a member of a strategic alliance. Thus, whether or not Hyundai Steel and/or SeAH are part of such an alliance is not relevant to our consideration of the presence of strategic alliances in the Korean HRC and WLP industries.

Finally, regarding SeAH's argument that Commerce previously found that the prices SeAH paid for electricity did not confer any subsidy benefit, and Husteel's argument that Commerce has yet to find any countervailable subsidies with respect to electricity in Korea, we disagree that these factors should have an impact on our PMS determination in this case. As an initial matter, as discussed below in Comment 2, because we were unable to quantify the effect of distortions in the electricity market, we did not include an adjustment factor for electricity in the PMS adjustment. However, the fact that we were not able to quantify the amount of the distortion does not undermine the fact that the government's policies have an effect on electricity prices.⁸³ As stated previously, above, we evaluate the existence of a PMS based on the totality of circumstances in the market. Based on the record, we find that government involvement in the Korean electricity market distorts the cost of producing WLP. In conjunction with the other three factors discussed above, we continue to find that a PMS exists in Korea with respect to the HRC input in WLP production.

Comment 2: Additional PMS Adjustments

Maverick's Comments:⁸⁴

- Commerce correctly found in the *Preliminary Results* that a PMS exists in Korea that distorts the COP for WLP and made an adjustment for Korean subsidies on HRC. For the final results, Commerce should make additional adjustments to account for the effects of: (1) Chinese overcapacity on the prices of HRC from Chinese and Japanese suppliers; (2) strategic alliances; and (3) distorted electricity costs in Korea.
- Commerce should reconsider its acceptance of Hyundai Steel's HRC information in Hyundai Steel's PMS Comments and adjust Hyundai Steel's and SeAH's COP according to Maverick's preferred methodology.⁸⁵
- Section 504 of the TPEA provides Commerce with broad authority to address distortions in a market and, thus, apply appropriate adjustments to account for these distortions.

HRC from Chinese Suppliers⁸⁶

- To counter the effect of Chinese overcapacity on HRC from Chinese suppliers, Commerce should make an upward adjustment to the cost of Chinese HRC purchases based on the

⁸³ See Maverick PMS Allegation at Attachment 3; see also *CWP from Korea*, and accompanying IDM at Comment 1.

⁸⁴ See Maverick Case Brief at 10-24.

⁸⁵ *Id.* at 14-15 (citing Hyundai Steel's PMS Comments at Exhibit 6).

⁸⁶ *Id.* at 12-19.

simple average of the subsidy rates from the European Union’s recent final determination involving hot-rolled steel flat products from China (*i.e.*, 23 percent).⁸⁷

- In the *Preliminary Results*, Commerce failed to provide a reason why the European Union’s decision was inappropriate for making a PMS adjustment, especially since that decision stated that the covered hot-rolled steel products are used in “energy pipelines;” was contemporaneous with the instant POR; considered Chinese overcapacity; and acknowledged that more Chinese imports flood the Korean market than the European Union.⁸⁸
- Commerce routinely utilizes data from foreign authorities in other AD/CVD contexts, *e.g.*, for surrogate values or benchmark data.

HRC from Japanese Suppliers⁸⁹

- China’s excess capacity has affected the Japanese steel industry adversely;⁹⁰ therefore, to account for the distortions affecting Japanese HRC prices, Commerce should make an upward adjustment to the cost of HRC purchases from Japanese suppliers.
- Commerce should adjust Japanese HRC purchases based on: (1) the dumping margins from Commerce’s determination on *Hot-Rolled Steel from Japan*;⁹¹ (2) the weighted-average of the adjustments made to Korean and Chinese HRC purchases; or (3) the percentage difference between the average price of POR Korean hot-rolled imports from Japan and the average price of all other non-Chinese and non-Japanese imports.⁹²
- These options for making PMS adjustments, in addition to subsidy rates, are consistent with *Biodiesel from Indonesia*, in which Commerce used a world market price to account for the PMS.⁹³
- In the *Preliminary Results*, Commerce tied its decision not to quantify the effect of Japanese HRC to its inability to quantify the impact of Chinese HRC. However, the record contains sufficient evidence by which to account for the distortions in Chinese HRC sold in Korea; thus, Commerce should also account for the distortions in Japanese HRC sold in Korea.
- In the *Preliminary Results*, Commerce declined to use the dumping rates from *Hot-Rolled Steel from Japan*, because it involved company-specific comparisons of Japanese prices to U.S. prices. However, Japanese prices in Korea are even lower than they are in the United States, due to distorted Chinese imports in a market with no duties on Chinese HRC.
- The entire Korean HRC market is distorted; thus, Commerce cannot acknowledge that distortions affect the whole market, but only make adjustments to some prices in that market.

⁸⁷ *Id.* at 16 (citing Maverick PMS Allegation at 34 and Exhibit 29; and Maverick’s letter “Welded Line Pipe from the Republic of Korea: Particular Market Situation Comments,” dated November 16, 2017 (Maverick PMS Comments) at 23).

⁸⁸ *Id.* at 18-19 (citing Maverick PMS Allegation at Exhibit 29).

⁸⁹ *Id.* at 19-22.

⁹⁰ *Id.* at 14 (citing Maverick’s PMS Allegation at Exhibit 30).

⁹¹ *Id.* at 16 (citing *Certain Hot-Rolled Steel Flat Products from Japan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 53409 (August 12, 2016) (*Hot-Rolled Steel from Japan*)).

⁹² *Id.* (citing Maverick PMS Allegation at 39; and Maverick PMS Comments at 23-24).

⁹³ *Id.* at 16 (citing *Biodiesel From Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835, (March 1, 2018) (*Biodiesel from Indonesia*), and accompanying IDM at Comment 3).

Strategic Alliances between Korean HRC Suppliers and Korean OCTG Producers⁹⁴

- In the *Preliminary Results*, Commerce stated that it could not quantify the effect of strategic alliances on HRC costs. However, Maverick previously requested that Commerce collect additional information from respondents on their relationships with HRC suppliers and the prices that the suppliers offer to respondents as opposed to other customers.
- Because Commerce did not collect the additional data, Commerce should rely on existing percentage differences in price which are on the record to make an upward adjustment.⁹⁵

Distorted Electricity Costs in Korea⁹⁶

- For the final results, Commerce should make an adjustment for electricity market distortions.
- Commerce stated in the *Preliminary Results* that the record did not contain sufficient information to make a PMS adjustment for electricity. However, the record does contain appropriate sources, namely, industrial sector electricity rates from Japan, New Zealand, and Italy,⁹⁷ and Commerce has not identified any specific deficiencies regarding this information.

Hyundai Steel's Rebuttal Comments:⁹⁸

- Commerce should reject Maverick's claims that Commerce should further increase and expand its PMS adjustment based on the alleged distortions in manufacturing costs caused by Chinese HRC imports, strategic alliances between certain producers and suppliers in Korea, and the GOK's involvement in electricity.
- If Commerce accepts Maverick's argument that the Korean HRC prices are so distorted that they are unusable, then the remedy would be to disregard the Korean HRC prices entirely and use an external benchmark such as a world market price to value HRC, rather than increase the Korean HRC price by an adjustment factor.⁹⁹ In such case, Commerce may use the global benchmark price of \$418.53 per metric ton for hot-rolled steel used to produce WLP.¹⁰⁰
- In the *Preliminary Results*, Commerce correctly found that HRC purchased from Chinese suppliers and the effect of Chinese HRC prices on Japanese HRC that is, in turn, imported into Korea could not be quantified based on the information on the record.
- Commerce should continue to find that it would be inappropriate to use the European Union's subsidy decision of HRC from China. The European Union's case is a completely different proceeding involving a foreign authority investigating HRC from China entering the European Union, not Korea, without any explanation or evidence on the record of this proceeding. The European Union's case also only partially covers the POR in the instant

⁹⁴ *Id.* at 22-23.

⁹⁵ *Id.* at 23 (citing Maverick's PMS Allegation at 30 and Exhibit 3).

⁹⁶ *Id.* at 23-24.

⁹⁷ *Id.* (citing Maverick's PMS Allegation at 41 and Exhibit 3).

⁹⁸ See Hyundai Steel Rebuttal Brief at 3-10.

⁹⁹ *Id.* at 4 -5 (citing Maverick Case Brief at 16-17 and 21-23).

¹⁰⁰ *Id.* at 6 (citing Hyundai Steel PMS Rebuttal Comments at 6 and Exhibit 1).

case, and there is no evidence that the scope of that case covers the HRC used to produce WLP.

- Commerce should continue to find that it would be inappropriate to use the *Cold-Rolled Steel Flat Products from China* determination.¹⁰¹ Cold-rolled steel is not an input to produce WLP and this case does not cover the POR in the instant review. Moreover, if Commerce were to reverse its *Preliminary Results* in this regard, it would have no basis to continue to reject the results of *Cut-to-Length Plate from Korea* for adjustment purposes, and those results are more relevant to the instant PMS determination.
- Commerce should reject Maverick's assertion that an adjustment be made for strategic alliances. There is no basis in the record to conclude that Hyundai Steel, a HRC producer, is in a strategic alliance with its competitors, and Commerce correctly declined to seek additional information in this regard.
- Commerce correctly determined in the *Preliminary Results* that there is insufficient information to quantify the impact of any alleged government intervention with respect to electricity based on the facts of the record. Commerce's finding did not mean that it had inadequate information, but rather that the information on the record does not support any adjustment to the electricity values.

SeAH's Rebuttal Comments:¹⁰²

- The statute does not permit an adjustment to the COP used to test whether SeAH's sales to Canada were made at below COP based on an alleged PMS in Korea. The TPEA allows Commerce to make adjustments only when the PMS affects the comparability of U.S. sales to the sales in the comparison market, but not to adjust the COP for the below-COP analysis.
- The record information does not support Maverick's claim that SeAH's HRC costs were distorted by a PMS in Korea. In particular, Maverick's arguments that Commerce should rely on past Commerce determinations and decisions by the European Union are erroneous because:
 - A subsidy finding does not indicate that the benefit affected the prices charged by the subsidy recipient;
 - A finding of dumping reflects a comparison of prices charged in two markets, and does not imply that prices were below the COP in the ordinary course of trade;
 - Subsidy and dumping determinations are valid only for the particular period examined;
 - The prices for steel products in a single product category (*e.g.*, HRC) may vary significantly by grade and time period, which means that the average unit values for purchases may be distorted by product mix or time period differences; and
 - Reliance on determinations by Commerce or another investigating agency in which SeAH was not an interested party raises critical issues regarding due process.¹⁰³
- Commerce's finding in *Hot-Rolled Steel from Korea* does not mean that POSCO passed subsidies along to its customers *via* lower prices. That investigation covered the 2014 calendar year, and thus provides no information about any subsidies POSCO actually

¹⁰¹ *Id.* at 8 (citing *Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Partial Affirmative Critical Circumstances Determination*, 81 FR 32729 (May 24, 2016) (*Cold-Rolled Steel Flat Products from China*), and accompanying IDM).

¹⁰² See SeAH Rebuttal Brief at 11-24.

¹⁰³ *Id.* at 19 (citing *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 327, n.7 (1979)).

received during the instant POR. Further, because SeAH was not an interested party in that investigation, it would be a violation of SeAH's due process rights to consider that decision binding with regard to SeAH.

- Likewise, Maverick's argument that Commerce should adjust SeAH's purchases of Chinese HRC based on the European Union's subsidy investigation on hot-rolled steel from China is inapposite because: (1) Commerce cannot rely on foreign governments' decisions; (2) the Chinese producers did not necessarily pass subsidy benefits along to their customers in the form of lower prices; (3) the European Union's investigation covered the 2015 calendar year, and does not overlap with the last eleven months of the POR; and (4) SeAH was not a party to that investigation, which raises the issue of due process.
- SeAH also disagrees with Maverick's contention that SeAH's purchases of Japanese HRC should be adjusted based on *Hot-Rolled Steel from Japan*, because that case compared U.S. prices to Japanese producers' home market prices and does not mean that the Japanese producers sold their products at prices below COP, or provide information regarding the level of prices for Japanese exports to Korea. Further, the period covered in that investigation does not overlap with the instant POR.
- Maverick's claim concerning strategic alliances has nothing to do with SeAH because Commerce has found consistently that SeAH is not affiliated with POSCO, nor has Maverick identified any potential affiliation between SeAH and other Korean steel producers.¹⁰⁴
- Regarding Maverick's argument that Commerce should make an adjustment for SeAH's electricity purchases, Commerce has determined that SeAH did not receive any subsidies for electricity,¹⁰⁵ and Maverick has not provided any evidence of distortions in Korean electricity pricing for the instant POR. Instead, Commerce has recently found changes in Korean electricity pricing that renders Maverick's assertions on electricity pricing obsolete.¹⁰⁶

Husteel's Rebuttal Comments:¹⁰⁷

- Commerce properly declined to make a PMS adjustment for Chinese and Japanese HRC because the sources cited by Maverick do not quantify the alleged distortions for these particular respondents in this particular market.
- Maverick's only additional legal support for applying any alternative method for quantification is its assertion that Commerce is not limited to using a subsidy rate to account for a PMS because Commerce applied a "world market price" for the biodiesel input in *Biodiesel from Indonesia*. However, in that case, Commerce made an adjustment to the respondent's U.S. price to account for credits issued by the U.S. Environmental Protection Agency, and not with respect to the cost of an input. Rather, Commerce declined to make the petitioner's requested additional PMS adjustment because there was insufficient information on the record to calculate that adjustment.¹⁰⁸

¹⁰⁴ *Id.* at 21 (citing *Stainless Steel Pipe from Korea Preliminary Results*, and accompanying PDM at 7-8; and *Welded Line Pipe from Korea LTFV Preliminary Determination*, and accompanying PDM at 18).

¹⁰⁵ *Id.* at 23 (citing *Welded Line Pipe from Korea CVD Final*, and accompanying IDM at Comment 1).

¹⁰⁶ *Id.* (citing *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49946 (July 29, 2016), and accompanying IDM at Comment 2).

¹⁰⁷ See *Husteel Rebuttal Brief* at 2-6.

¹⁰⁸ *Id.* at 3-4 (citing *Maverick Case Brief* at 16-17, *Biodiesel from Indonesia Preliminary Determination*, and accompanying PDM at 17-23, and *Biodiesel from Indonesia*, and accompanying IDM at Comment 3).

- Commerce should reject Maverick’s claim that an adjustment be made for strategic alliances. The record does not show that strategic alliances exist and Maverick’s request for Commerce to seek additional information is an admission that there is no evidence on the record to quantify any alleged distortion.
- Commerce should also reject Maverick’s contention that an adjustment be made for electricity costs. There is no basis for an adjustment according to the prices from the “surrogate” countries Maverick selected. Moreover, Commerce has recognized that electricity is not a type of commodity that can be compared across countries; thus, the prices in these other countries are not relevant to prices in Korea.¹⁰⁹

Commerce Position:

As discussed in the *Preliminary Results*, Commerce continues to develop the concepts and types of analysis that are necessary to address future allegations of PMS under section 773(e) of the Act.¹¹⁰

Further, as explained in Comment 1, above, we continue to find that a PMS existed in Korea during the POR, which distorted the cost of production of WLP, based on the cumulative effect of: (1) Korean subsidies on the HRC input; (2) Korean imports of HRC from China; (3) strategic alliances between Korean HRC and WLP producers; and (4) distortions in the Korean electricity market. In this review, we considered the four PMS allegations as a whole, based on their cumulative effect on the Korean market through the COP for WLP, consistent with our practice in *OCTG from Korea 14-15 AR*, *OCTG from Korea 15-16 AR*, and *CWP from Korea*. After consideration of interested parties’ comments regarding the application of additional adjustments, we continue to find that the subsidy rates from *Hot-Rolled Steel from Korea* are the best information available on the record with which to make an adjustment, and that the record of this review does not contain appropriate data with which to make further adjustments.

With respect to HRC purchased from Chinese suppliers, we have continued not to make an adjustment for these final results. As we explained in the *Preliminary Results*, we find that the information on the record of this review does not permit us to quantify the effect of imports of Chinese HRC on Korean HRC inputs.¹¹¹ Even if we were able to quantify the impact of Chinese HRC inputs on the PMS in Korea, we are reluctant to make an adjustment based on a subsidy determination by another administering authority (*i.e.*, the European Union). Although findings by foreign administering authorities may be considered by Commerce, we are not required to accept their findings, let alone specific findings regarding the levels of dumping or subsidization. We seek to make an accurate adjustment that would correct distortions in costs and, thus, are reluctant to incorporate a margin or subsidies rate that is based on specific calculations and methodologies of a foreign investigating authority. Also, we find that it would not be appropriate to make an adjustment based on Commerce’s CVD determination on *Cold-Rolled Steel Flat Products from China* because cold-rolled steel is not an input used in WLP production.

¹⁰⁹ *Id.* at 4-5 (citing *OCTG from Korea 14-15 AR*, and accompanying IDM at Comment 3; and *OCTG from Korea Preliminary Results*, and accompanying PDM at 20).

¹¹⁰ See *Preliminary Results*, and accompanying PDM at 15.

¹¹¹ *Id.* at 14.

Because we are unable to quantify the effect of Chinese imports on Korean HRC, we, likewise, cannot quantify the effect of Chinese HRC prices on Japanese HRC that is, in turn, imported into Korea. Even if we were able to do so, we continue to find that, as previously noted both in the *Preliminary Results* and above, it would not be appropriate to make an adjustment based on a European Union determination, because it is a foreign administering authority.¹¹² We also find that it would be inappropriate to make an adjustment using rates from Commerce’s AD final determination in *Hot-Rolled Steel from Japan*, since that proceeding did not measure the effect of Chinese HRC prices on Japanese HRC, but involved company-specific comparisons of Japanese home market prices to U.S. prices. Regarding Maverick’s suggestion that we make an adjustment to Japanese HRC based on import data, we continue to find that the record evidence does not allow us to quantify such an adjustment. As discussed above in Comment 1, the data provided by Maverick are not appropriate benchmarks for the HRC Hyundai Steel and SeAH used in the production of WLP.

Additionally, we continue to find, as in the *Preliminary Results*, that the record lacks information concerning strategic alliances that could be used to adjust the respondents’ costs following our finding that a PMS exists in Korea impacting the COP for WLP producers.¹¹³ That being said, and as discussed above, it is our experience that strategic alliances may impact the way customer-supplier relationships are structured and contribute to the existence of a PMS.

Moreover, we continue to find that the record lacks sufficient information concerning the Korean government’s involvement in the electricity market to adjust the respondents’ costs following our finding that a PMS exists in Korea impacting the COP for WLP producers. That being said, and as discussed above, the record evidence does support a finding that, at minimum, the Korean government’s involvement in the electricity market contributed to the existence of a PMS.

Finally, we find no basis to reconsider our acceptance of Exhibit 6 of Hyundai Steel’s PMS Comments. Contrary to Maverick’s contention, we provided an explanation regarding our acceptance of this submission, stating “we do not find that Exhibit 6 of the Hyundai Steel PMS Comments includes untimely-filed new factual information. Rather, we find that the information at issue is timely filed consistent with the Department’s October 27 letter permitting the filing of new factual information relevant to the PMS allegation.”¹¹⁴ Therefore, we continue to find that it is appropriate to consider the information Hyundai Steel provided in its Exhibit 6 of its PMS Comments.

¹¹² *Id.*

¹¹³ *Id.* at 15.

¹¹⁴ See Memorandum, “Maverick’s Allegation of New Factual Information in Hyundai Steel’s November 8, 2017, Submission,” dated November 21, 2017.

Comment 3: Allegation of Improper Political Influence in Determining the PMS

Hyundai Steel's Comments:¹¹⁵

- Commerce reversed its PMS findings in *OCTG from Korea 14-15 AR* under political pressure from the White House.¹¹⁶ This finding, in turn, was carried over to the *Preliminary Results* in the instant proceeding. Improper political interference by a White House Policy Advisor does not provide a justification for finding a PMS.
- Commerce cannot employ the PMS provisions in the TPEA without reference to record evidence and without due consideration of the implications of its actions. For the final results, Commerce should return to its reasoned preliminary conclusion in the preliminary results of *OCTG from Korea 14-15 AR* and find that no PMS exists with respect to WLP from Korea.

Maverick's Rebuttal Comments:¹¹⁷

- Commerce already reviewed and rejected claims regarding improper political pressure in the *OCTG from Korea 14-15 AR*.¹¹⁸
- Contrary to Hyundai Steel's claims, the email correspondence between White House advisor Peter Navarro and Commerce Secretary Wilbur Ross is not evidence of improper political pressure.
- There is no evidence on the record that Commerce's PMS determination was based on factors outside the antidumping statute or TPEA, and there is no sign that the email influenced Commerce's decision-making process.

Commerce Position:

We disagree that Commerce's decision process regarding the PMS in Korea was influenced improperly. In reaching our determination, we relied solely on the record of this review, as well as the records of *OCTG from Korea 14-15 AR* and *OCTG from Korea 15-16 AR*.

In *OCTG from Korea 14-15 AR*, Commerce placed a memorandum on the record containing an email message from the Director of the National Trade Council to Commerce.¹¹⁹ Commerce placed the communication on the record of that administrative review in accordance with the requirements of the law. In particular, section 516A(b)(2)(A) of the Act states that the administrative records of AD and CVD proceedings shall consist of "a copy of all information presented to or obtained by the Secretary, the administering authority, or the Commission during the course of the administrative proceeding, including all governmental memoranda pertaining to

¹¹⁵ See Hyundai Steel Case Brief at 36-37.

¹¹⁶ *Id.* at 36. (citing Email correspondence from White House trade policy Peter Navarro, included in Hyundai Steel PMS Comments at Exhibit 11.)

¹¹⁷ See Maverick Rebuttal Brief at 30-32.

¹¹⁸ *Id.* at 31 (citing *OCTG from Korea 14-15 AR*, and accompanying IDM at Comment 4).

¹¹⁹ See *OCTG from Korea 14-15 AR*, and accompanying IDM at Comment 4.

the case and the record of *ex parte* meetings required to be kept by section 777(a)(3).” Hyundai Steel placed the memorandum from *OCTG from Korea 14-15 AR* on the record of this review.¹²⁰

As we stated in *OCTG from Korea 14-15 AR*, and again in *OCTG from Korea 15-16 AR*¹²¹ and *CWP from Korea*,¹²² other government agencies, as well as members of Congress, are free to submit their views on questions before Commerce in AD and CVD proceedings. We are free to take these views into account, provided the application of the statute to the facts on the record does not compel a different result, and provided the time allows for comment on such views in keeping with our statutory deadlines.

Separate and apart from any views expressed by the National Trade Council in *OCTG from Korea 14-15 AR*, we, on our own, have been actively engaged in an ongoing examination of the new statutory provisions pertaining to PMS allegations and the implication of these new provisions, as required and expected of us in order to fulfill our function as the agency responsible for administering the AD and CVD laws. In this case, we relied upon its interpretation of the amended statute and the facts submitted and certified as accurate by the parties in their submissions. After considering the facts and comments on the record, we find that a PMS exists in Korea based on Maverick’s allegations and supporting evidence taken as a whole, as explained above. Accordingly, the communication from National Trade Council from *OCTG from Korea 14-15 AR* was not considered in this administrative review and did not affect the final results.

Comment 4: Differential Pricing

SeAH’s Comments:

- SeAH submitted comments regarding the inappropriateness of Commerce’s alternative comparison method in general and its application in this case.¹²³

Maverick’s Rebuttal Comments:

- Maverick submitted comments in support of Commerce’s differential pricing analysis.¹²⁴

Commerce Position:

For the final results of this review, Commerce used the standard average-to-average method to calculate both Hyundai Steel’s and SeAH’s weighted-average dumping margins.¹²⁵ Therefore, the comments regarding the Cohen’s *d* test used in the differential pricing analysis are moot for purposes of this administrative review.

¹²⁰ See Hyundai Steel PMS Comments at Exhibit 11.

¹²¹ See *OCTG from Korea 15-16 AR*, and accompanying IDM at Comment 3.

¹²² See *CWP from Korea*, and accompanying IDM at Comment 3.

¹²³ See SeAH Case Brief at 10-26.

¹²⁴ See Maverick Rebuttal Brief at 38-46.

¹²⁵ See SeAH Final Calculation Memo for further discussion.

Comment 5: Reimbursement of Antidumping Duties

Maverick's Comments:¹²⁶

- Record evidence suggests that Hyundai Steel and SeAH absorb antidumping duties by reimbursing their affiliated importers using loans provided by banks directed by the GOK.
- Despite the existence of an AD order, there were large import volumes of WLP during the POR.¹²⁷ If Hyundai Steel and SeAH had passed antidumping duties to their customers, they would have sold significantly less WLP in the United States.
- Hyundai Steel's financial statements show the existence of loans provided by GOK-directed KEB Hana Bank, and import financing provided by Kookmin Bank.¹²⁸ SeAH's financial statements show loans from both KEB Hana Bank and Shinhan Bank.¹²⁹
- Both Hyundai Steel and SeAH are highly-leveraged and uncreditworthy, and therefore cannot make cash deposits.¹³⁰ This situation supports finding that the GOK directed banks to make loans to Hyundai Steel and SeAH.
- The GOK has a stated plan to promote Korea's domestic steel industry, and Hyundai Steel and SeAH are included in that plan.¹³¹ The GOK plan also indicates that the government is committed to contravening the corrective actions taken under U.S. AD laws.¹³²
- The GOK has previously directed KEB Hana Bank, Kookmin Bank, and Shinhan Bank to provide loans that would not otherwise be offered,¹³³ and the GOK's current policies suggest that it continues to direct these banks to provide loans to certain pipe and tube producers.
- Hyundai Steel and SeAH are separate corporate entities from their respective importers Hyundai Steel USA, Inc. (HSU) and Pusan Pipe America (PPA). Therefore, Commerce's practice of not applying AD reimbursement regulations where the producer/exporter and importer are of the same entity is here inapplicable.¹³⁴
- Commerce should find that respondents Hyundai Steel and SeAH reimbursed their importers in violation of 19 CFR 351.402. Commerce should treat the reimbursements as costs in its margin calculations, in accordance with section 772(c)(2)(A) of the Act.

¹²⁶ See Maverick Case Brief at 24 to 39.

¹²⁷ *Id.* at 25 (citing Memorandum, "2015-2016 Antidumping Duty Administrative Review: Welded Line Pipe from the Republic of Korea: Release of Customs Entry Data from U.S. Customs and Border Protection," dated February 14, 2017).

¹²⁸ *Id.* at 26 (citing Hyundai Steel's April 12, 2017 Section A Questionnaire Response (Hyundai Steel AQR) at Appendices FS-1 and FS-2).

¹²⁹ *Id.* (citing SeAH's April 5, 2017 Section A Questionnaire Response (SeAH AQR) at Appendix A-7-B).

¹³⁰ *Id.* (citing Hyundai Steel's July 14, 2017 SQR at Exhibit SA-9, and SeAH SQRDE1 at Appendices SD-2-B and SD-13).

¹³¹ *Id.* at 27 (citing Maverick PMS Allegation at 24 and Exhibits 5 and 29).

¹³² *Id.* at 28 (citing Maverick PMS Allegation at Exhibit 29).

¹³³ *Id.* (citing *Hynix Semiconductor Inc. v. United States*, 30 CIT 288, 300 (2006); also *Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003), and accompanying IDM).

¹³⁴ *Id.* at 30 (citing *Brass Sheet and Strip from Germany*, 75 FR 66347 (October 10, 2010), and accompanying IDM).

- This administration has not yet had the opportunity to address this issue, and courts have not precluded Commerce from changing its practice of not deducting AD duties from margin calculations.¹³⁵

Hyundai Steel’s Rebuttal Comments:¹³⁶

- Hyundai Steel did not reimburse its importers during the POR, and there is no evidence on the record to suggest that it did so.
- KEB Hana Bank and Kookmin Bank are private entities, and there is no evidence on the record to support Maverick’s allegation that they are directed by the GOK.
- Contrary to Maverick’s claims, Hyundai Steel is in strong financial shape and is able to finance its operations.
- Commerce can only deduct antidumping duties from U.S. price where an exporter/producer has reimbursed an importer.¹³⁷
- Commerce must reject Maverick’s argument that antidumping duties be treated as costs. Both Congress and Commerce have repeatedly found that doing so is inappropriate.¹³⁸
- Because of the United States’ retroactive duty assessment practice, in which importers make estimated duty deposits at the time of entry, it is impossible to define such an expense at the time of the review.
- Commerce previously determined that deducting duties from an assessment rate would result in double counting.¹³⁹

SeAH’s Rebuttal Comments:¹⁴⁰

- There is no evidence on the record that SeAH reimbursed its affiliate PPA for antidumping duties; thus Maverick’s allegation has no factual basis.
- Commerce’s longstanding practice is not to assume such reimbursement solely on the basis of affiliation, but rather to require there be evidence of financial intermingling or an agreement to reimburse antidumping duties.¹⁴¹
- Maverick had the opportunity to demonstrate that SeAH received countervailable subsidies in the CVD investigation initiated concurrently with the LTFV investigation of this proceeding, but did not do so.
- Maverick is requesting that Commerce automatically deduct antidumping duties as costs where an affiliated importer pays antidumping duties. However, it is not Commerce’s practice to deduct antidumping duties or deposits of antidumping duties from U.S. price,

¹³⁵ *Id.* at 33 (citing *APEX Exports v. United States*, 777 F 3d 1373, 1378-1379 (Fed. Cir. 2015)).

¹³⁶ See Hyundai Steel Rebuttal Brief at 10 to 13.

¹³⁷ *Id.* at 12 (citing 19 CFR 351.402(f)(1)(i)).

¹³⁸ *Id.* at 13 (citing *Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 19153 (April 12, 2004), and *Certain Frozen Warmwater Shrimp from India*, 78 FR 42492 (July 16, 2013) and accompanying IDM at Comment 2).

¹³⁹ *Id.*

¹⁴⁰ See SeAH Rebuttal Brief at 24 to 28.

¹⁴¹ *Id.* at 25 (citing *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review*, 62 FR 18476 (April 15, 1997)).

¹⁴² and Commerce does not have the discretion to here reverse its practice concerning this matter.¹⁴³

Commerce Position:

With respect to Maverick's assertion that Hyundai Steel and SeAH engaged in duty reimbursement schemes, we disagree. Based on our analysis, we find that there is no evidence on the record of this review which establishes that either Hyundai Steel or SeAH undertook such a program to provide reimbursement for AD duties.¹⁴⁴ Accordingly, we find no basis to determine that Hyundai Steel or SeAH reimbursed AD duties within the meaning of 19 CFR 351.402(f).

With respect to Maverick's arguments, we note that the level of imports of WLP cannot, in itself, demonstrate that the respondents reimbursed their affiliated importers. There are many possible reasons why both Hyundai Steel and SeAH are able to sell their products in the United States, and it is beyond the purview of this review to address such factors. While certain banks provided loans to Hyundai Steel and SeAH, there is no evidence on the record that these banks did so at the GOK's direction. Moreover, it is also beyond the purview of this antidumping review to assess the creditworthiness of respondents Hyundai Steel and SeAH, and whether they would have received these loans without GOK intervention. Lastly, even *arguendo*, the GOK had directed KEB Hana Bank, Kookmin Bank, and Shinhan Bank to provide loans that they would not have otherwise made, there is no evidence to substantiate Maverick's claim that such loans were provided for the express purpose of reimbursing the respondents' importers for antidumping duties paid.

Therefore, we find that there is insufficient evidence to support Maverick's allegation that Hyundai Steel and SeAH reimbursed their affiliated importers for antidumping duties paid on imports of subject merchandise.

Comment 6: Collapsing of Hyundai RB with Hyundai Steel

Maverick's Comments:

- In the *Preliminary Results*, Commerce found no basis to collapse Hyundai RB and Hyundai Steel.¹⁴⁵ Maverick disagrees with this finding and argues that Commerce should collapse Hyundai Steel and Hyundai RB because Hyundai RB meets Commerce's criteria for collapsing.

¹⁴² *Id.* at 27 (citing *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 60 FR 10900, 10906-10907 (February 28, 1995) and accompanying IDM at Comment 3; and *Federal-Mogul Corp. v. United States*, 813 F. Supp. 856, 871-873 (CIT 1993)).

¹⁴³ *Id.* (citing *Color Television Receivers from the Republic of Korea: Final Results of Administrative Review of Antidumping Duty Order*, 58 FR 50333, 50337 (September 27, 1993) and accompanying IDM at Comment 7.

¹⁴⁴ See Hyundai Steel AQR at Appendices FS-1 and FS-2; and SeAH AQR at Appendix A-7-B.

¹⁴⁵ See *Preliminary Results*, and accompanying PDM at 16.

- Hyundai RB and Hyundai Steel are clearly affiliated because Hyundai Steel owned 6.78% of Hyundai RB during the POR, and because they are both part of the Hyundai Motor Corporate Group of Companies.¹⁴⁶
- Although Hyundai RB is no longer affiliated with Hyundai Steel, because its ownership share fell to 4.99 percent,¹⁴⁷ Commerce must, nonetheless, examine the facts that existed during the POR. Further, because Hyundai Steel continues to own 4.99 percent of Hyundai RB, Commerce should consider the companies affiliated throughout the POR for purposes of the collapsing analysis. The statute does not state that 5.00 percent ownership qualifies for affiliation; rather, it provides a five percent threshold, which is satisfied though 4.99 percent ownership.¹⁴⁸
- As Hyundai RB already produces the subject merchandise, no substantial retooling is required to its production facilities to produce the subject merchandise. The operations of Hyundai RB and Hyundai Steel are significantly intertwined. Both companies have facilities capable of producing the subject merchandise, and sold the subject merchandise to the US during the POR. Furthermore, Hyundai Steel and Hyundai RB had other interactions which clearly demonstrate that their operations are intertwined.¹⁴⁹
- Because of these factors, there is significant potential for price and production manipulation consistent with Commerce's standard practice.¹⁵⁰ Accordingly, Commerce should collapse Hyundai Steel and Hyundai RB.
- Hyundai Steel was requested to provide Hyundai RB sales and cost information, but it did not do so.¹⁵¹ Because of this failure to provide this information, Commerce should consider applying partial AFA in calculating Hyundai Steel's margin.
- The operations of Hyundai RB and Hyundai Steel are significantly intertwined. Both companies have facilities capable of producing the subject merchandise, and sold the subject merchandise to the United States during the POR. Furthermore, Hyundai Steel and Hyundai RB had other interactions which clearly demonstrate that their operations are intertwined.¹⁵² Due to the clear affiliation between Hyundai Steel and Hyundai RB, there is significant potential for price and production manipulation in accord with Commerce's standard practice.¹⁵³

¹⁴⁶ See Maverick Case Brief at 35-36 (citing Hyundai Steel AQR at A-10).

¹⁴⁷ *Id.* at 37 (citing Hyundai Steel's June 20, 2017, collapsing Supplemental Questionnaire Response (Hyundai Steel Collapsing SQR) at S-1.

¹⁴⁸ *Id.* at 37-38 (citing section 771(33)(E) of the Act).

¹⁴⁹ *Id.* at 36. (citing Hyundai Steel AQR at A-10, A-14 – A-16.) The details of Maverick's argument include business proprietary information.

¹⁵⁰ *Id.* (citing 19 CFR 351.401(f)).

¹⁵¹ *Id.* at 34-35 (citing Hyundai Steel SQR at S-8, S-14, S-22, and S-33).

¹⁵² See Maverick Case Brief at 36. The details of Maverick's argument include business proprietary information.

¹⁵³ *Id.* at 36 (citing Hyundai's Steel April 12, 2017 AQR at A-15).

Hyundai Steel's Rebuttal Comments:

- The facts on this record regarding Hyundai Steel and Hyundai RB demonstrate there is no basis to find that there is a significant potential for manipulation of price or production under 19 CFR 351.401(f), and thus there is no basis to collapse Hyundai Steel and Hyundai RB.¹⁵⁴
- While Hyundai Steel and Hyundai RB were affiliated by minor shareholdings for a portion of the POR, this low level of affiliation and the fact that the affiliation ended confirms that the parties should not be collapsed. In particular, Hyundai Steel asserts that, contrary to Maverick's allegations, Hyundai RB is not a member of Hyundai Motor Group.¹⁵⁵ Hyundai Steel and Hyundai RB were affiliated under Commerce's regulations for only part of the POI. Further, level of common ownership does not support the conclusion that the companies were in a position to coordinate price or production. Analyzed under the criteria of 19 CFR 351.401(f), there is no basis to collapse Hyundai Steel and Hyundai RB because the facts on this record demonstrate there is no basis to find that there is a significant potential for manipulation of price or production.
- Hyundai Steel and Hyundai RB have already established on the record that they have neither intertwined operations nor the ability to manufacture identical or similar products without retooling. Hyundai Steel demonstrated that the business interactions with Hyundai RB are limited to tolling services and a few arms' length transactions which do not support a finding of significant potential for the manipulation of price or production.¹⁵⁶

Commerce Position:

In the *Preliminary Results*, we declined to collapse Hyundai Steel and Hyundai RB because these companies were not affiliated at the end of the POR. We noted that, although Hyundai Steel owned over five percent of Hyundai RB for much of the POR, as of September 30, 2016, it reduced its interest in Hyundai RB to less than five percent.¹⁵⁷ Maverick contends that Commerce should consider the companies affiliated for purposes of collapsing the companies under 19 CFR 351.401(f) because they were affiliated during 16 of the 18 months of the POR, and that Hyundai Steel's continued 4.99 percent interest in Hyundai RB meets the 5 percent affiliation threshold under section 771(33)(E) of the Act.

¹⁵⁴ See Hyundai Steel Rebuttal Brief at 17-18 (citing Hyundai Steel's Letter, "Rebuttal Comments and Rebuttal Factual Information," dated May 30, 2017; Hyundai Steel's Letter, "Response to Petitioner's Comments on Hyundai Steel and Hyundai RB's Supplemental Questionnaire Response Regarding Collapsing Criteria," dated July 12, 2017 (Hyundai Steel July 12 Letter); and Hyundai Steel's Letter, "Response to Petitioner's Comments on Hyundai Steel's Sections A-D Supplemental Questionnaire Response," dated August 4, 2017 (Hyundai Steel August 4 Letter)).

¹⁵⁵ *Id.* at 19 (citing Hyundai Steel Collapsing SQR at S-2 and Exhibit S-2).

¹⁵⁶ *Id.* at 19-20 (citing Hyundai Steel July 12 Letter at 3 and Hyundai Steel Collapsing SQR at S-3).

¹⁵⁷ See *Preliminary Results*, and accompanying PDM at 16. See also Hyundai Steel's Collapsing SQR at S-1.

As an initial matter, we note that section 771(33)(E) of the Act specifically states that an “affiliate” is “{a}ny person, directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization.” Maverick contends that the 4.99 percent ownership is equal to the statutory five percent threshold “as a matter of rounding to the nearest whole number.”¹⁵⁸ We find no basis to accept Maverick’s statutory interpretation. Section 771(33)(E) of the Act provides a bright line of five percent. There is neither statutory nor regulatory guidance to apply a rounding principle to this figure. At the end of the POR, Hyundai Steel owned less than five percent of Hyundai RB. Further, there is no other basis on the record to find affiliation.¹⁵⁹ Accordingly, as of September 30, 2016, Hyundai Steel and Hyundai RB were not affiliated parties under section 771(33)(E) of the Act.

Prior to September 30, 2016, Hyundai Steel and Hyundai RB were affiliated because Hyundai Steel’s interest in Hyundai RB until that date was over 5 percent (*i.e.*, 6.78 percent).¹⁶⁰ Maverick argues that Commerce must, therefore, consider collapsing the companies for the portion of the POR during which they were affiliated. In similar circumstances, where the companies at issue were affiliated during the POR but subsequently unaffiliated, Commerce separately analyzed whether collapsing was warranted for assessment as well as cash deposit purposes. For example, in *Ironing Tables from China*, Commerce determined that, with respect to cash deposits, because the entities in question were no longer affiliated, “to assign a single cash deposit rate to both entities would be contrary to the statute and regulations, *i.e.*, absent affiliation there can be no significant potential for manipulation of production or prices between the two entities, as provided for in 19 CFR 351.401(f).”¹⁶¹ Commerce further noted in *Ironing Tables from China* that, with respect to assessment rates, because the company at issue did not sell the subject merchandise during the POR, “regardless of whether a significant potential for manipulation existed, collapsing the two entities for this POR would have no effect, as there are no entries of subject merchandise produced or exported by {respondent} during the POR on which to assess.”¹⁶² In the instant case, there are no entries of the subject merchandise produced or exported by Hyundai RB on which to assess AD duties because no party requested a review of Hyundai RB, and Commerce has already issued automatic liquidation instructions for parties not subject to the review, including Hyundai RB.¹⁶³

Accordingly, as Hyundai Steel and Hyundai RB are not affiliated for purposes of establishing cash deposit rates, and there are no entries by Hyundai RB for consideration of establishing assessment rates, we continue to find that there is no basis to consider whether these two

¹⁵⁸ See Maverick Case Brief at 38.

¹⁵⁹ See Hyundai Steel Collapsing SQR at S-2 – S-3; and Hyundai RB’s June 20, 2017, Collapsing Supplemental Questionnaire Response at S-2 and Exhibit S-1.

¹⁶⁰ Hyundai Steel disclosed this percentage publicly. See Hyundai Steel Collapsing SQR at Exhibit S-1.

¹⁶¹ See *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People’s Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 13239, (March 21, 2007) (*Ironing Tables from China*), and accompanying IDM at Comment 8.

¹⁶² *Id.*

¹⁶³ See instructions to U.S. Customs and Border Protection (CBP), “Automatic liquidation instructions for welded line pipe from the Republic of Korea for the period 05/22/2015 through 11/30/2016 (A-580-876),” message number 7083301, dated March 24, 2017.

companies should be collapsed and treated as a single entity, under 19 CFR 351.401(f). Nevertheless, even if we were to consider the companies affiliated during the first 16 months of the POR, there is no basis on the record to collapse the companies and treat them as a single entity, as discussed below.

In determining whether to collapse affiliated companies, Commerce also bases its analysis on “{t}he extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm,” and “{w}hether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.”¹⁶⁴ Here, there are no shared managers or board members between Hyundai Steel and Hyundai RB. Furthermore, the only transactions between the companies are Hyundai Steel’s contracting with Hyundai RB to provide tolling services and the companies engaging in sales transactions involving small quantities. The record does not demonstrate that Hyundai Steel and Hyundai RB share pricing or production decisions, administrative functions, or employees.¹⁶⁵ Accordingly, we find that there is no significant potential for the manipulation of price or production between Hyundai Steel and Hyundai RB within the meaning of 19 CFR 351.401.

Finally, because we find no basis to collapse Hyundai Steel and Hyundai RB, there is no basis to consider applying any AFA in calculating Hyundai Steel’s margin because Hyundai Steel did not report Hyundai RB’s sales and cost information.

Comment 7: Date of Sale for Hyundai Steel’s U.S. Sales

Maverick’s Comments:¹⁶⁶

- Hyundai Steel relied on the shipment date as the U.S. date of sale.¹⁶⁷ However, this date of sale selection is unjustified because Hyundai Steel reported only one instance where the material terms of sale (*i.e.*, quantity) changed between purchase order date and shipment date. Accordingly, the material terms of sale were set when the purchase order was accepted. Thus, the purchase order date, not the shipment date, should be Hyundai Steel’s date of sale for its U.S. sales.¹⁶⁸
- Because Hyundai Steel relied on an inappropriate date of sale, its U.S. sales database is incomplete. Commerce should apply AFA to the estimated number of missing sales from the U.S. sales database.

¹⁶⁴ See 19 CFR 351.401(f)(ii) and (iii).

¹⁶⁵ See Hyundai Steel’s Collapsing SQR at page S-5 and S-9.

¹⁶⁶ See Maverick Case Brief at 39-42.

¹⁶⁷ *Id.* at 39-40 (citing Hyundai Steel AQR at A-15).

¹⁶⁸ *Id.* at 40 (citing Hyundai Steel SQRABCD at S-23).

Hyundai Steel's Rebuttal Comments:¹⁶⁹

- Maverick ignores the fact that, in administrative reviews, the U.S. sales reporting requirement is normally based on the date of entry, not the date of sale. Hyundai Steel reported its U.S. sales properly and therefore there is no basis to apply AFA.¹⁷⁰
- Hyundai Steel reported the home market and U.S. date of sale based on the earlier of the shipment or invoice date. This methodology was accepted by Commerce in the investigation, and there is no evidence on the record to support changing this methodology in this review.¹⁷¹
- Maverick's argument is based on the mistaken belief that the material terms of sale are set when Hyundai Steel receives a purchase order.¹⁷² However, as Hyundai Steel noted in its questionnaire responses, the terms of sale can and do change until the date of shipment.¹⁷³
- Commerce has long held that, in considering whether a purchase order or a contract date better reflects the date of sale, the test is whether the material terms remain subject to change.¹⁷⁴ Maverick is attempting to create a new standard beyond Commerce's practice. A single change in the terms of sale confirms that the material terms of sale are subject to change.

Commerce Position:

In the initial AD questionnaire, Commerce instructed Hyundai Steel to:

Report each U.S. sale of merchandise entered for consumption during the POR, except: (1) for EP sales, if you do not know the entry dates, report each transaction involving merchandise shipped during the POR; and (2) for CEP sales made after importation, report each transaction that has a **date of sale** within the

¹⁶⁹ See Hyundai Steel Rebuttal Brief at 21-25.

¹⁷⁰ *Id.* at 22 (citing Hyundai Steel SQRABCD at S-22).

¹⁷¹ *Id.* at 23 (citing *Welded Line Pipe from Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015), and accompanying IDM at 23).

¹⁷² *Id.* (citing Maverick Case Brief 39-40).

¹⁷³ See Hyundai Steel's May 5, 2017 Sections B-D Questionnaire Response (Hyundai Steel BCDQR) at C-13.

¹⁷⁴ *Id.* at 24 (citing *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 77 FR 46058, 46064 (August 2, 2012) (*Wind Towers from Vietnam*), unchanged in *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 77 FR 75984 (December 26, 2012); *Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania: Preliminary Results of Antidumping Duty Administrative Review*, 77 FR 50465- 50467 (August 21, 2012), unchanged in *Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 67336, (November 9, 2012); *Solid Urea from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 35405-35406 (June 17, 2011), unchanged in *Solid Urea From the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 76 FR 66690 (October 27, 2011); and *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55354 (September 7, 2011) (*Light-Walled Pipe from Mexico*), unchanged in *Light-Walled Rectangular Pipe and Tube from Mexico; Final Results of Antidumping Duty Administrative Review*, 77 FR 1915, January 12, 2012).

POR. Do not report canceled sales. If you believe there is a reason to report your U.S. sales on a different basis, please contact the official in charge before doing so.¹⁷⁵

After analyzing Hyundai Steel's CQR, Commerce asked Hyundai Steel to:

{E}nsure that you have reported in the U.S. sales database all direct-shipment CEP sales (i.e., CEP sales that were not resold after entry) with an entry date within the POR, and all EP sales with a reported shipment date within the POR. If not, revise the U.S. sales database to report Hyundai Steel's U.S. sales in this manner.¹⁷⁶

Hyundai Steel responded, "Hyundai Steel confirms that it has reported in the U.S. sales database all direct-shipment CEP sales (i.e., CEP sales that were not resold after entry) with entry dates in the POR, as well as all EP sales with shipment dates in the POR."¹⁷⁷ Our subsequent analysis of Hyundai Steel's sales databases confirmed that Hyundai Steel reported the universe of sales for analysis in this review in accordance with Commerce's instructions. Accordingly, Hyundai Steel properly reported the U.S. sales subject to this review and there is no basis to apply AFA to Hyundai Steel for failure to report any U.S. sales.

Under section 351.401(i) of Commerce's regulations, Commerce will normally use as the date of sale the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, Commerce may use a date other than the date of invoice (*e.g.*, the date of a long-term contract) if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. Further, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.¹⁷⁸ Accordingly, Hyundai Steel reported the factory shipment date as the date of sale for all U.S. sales, except for the limited volume of CEP sales it made out of inventory, for which it reported the date of shipment to the ultimate customer as the date of sale.¹⁷⁹ We relied on these dates of sale for the *Preliminary Results*.

Maverick contends that Commerce should reject Hyundai Steel's date of sale methodology and use the purchase order date instead as the date of sale. Maverick bases its argument on the fact that Hyundai Steel provided only one example of a POR sale where the quantity changed after the purchase order date.¹⁸⁰

¹⁷⁵ See Commerce Letter re: AD Questionnaire, dated March 8, 2017, at C-2.

¹⁷⁶ See Commerce Letter re: Supplemental Questionnaire, dated June 16, 2017, at 8.

¹⁷⁷ See Hyundai Steel SQRABCD at S-22.

¹⁷⁸ See, *e.g.*, *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying IDM at Comment 11; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

¹⁷⁹ See Hyundai Steel CQR at C-13-C-14.

¹⁸⁰ See Maverick Case Brief at 40-41 (citing Hyundai Steel SQRABCD at S-23).

Maverick's argument suggests that, unless a respondent can demonstrate that material terms of sale (*e.g.*, price or quantity) actually changed for an unspecified number or percentage of sales during the period of investigation or review, the date of sale must always be the date that the material terms of sale first are agreed to between the seller and the customer. We note that Maverick cites no case precedence to support its interpretation of 19 CFR 351.401(i). On the other hand, Hyundai Steel cites several cases that support its position that the relevant test is whether the material terms of sale remain subject to change after the purchase order or contract date.¹⁸¹ The courts have supported the regulatory presumption of using the invoice date as the date of sale, noting that the party seeking to show that a different date better reflects when the exporter or producer established the material terms of sale bears the burden to demonstrate that the alternate date firmly and finally establishes the material terms of sale.¹⁸²

In the LTFV investigation, Commerce relied on Hyundai Steel's reported date of sale (*i.e.*, factory shipment date) for its U.S. sales.¹⁸³ The facts underlying the LTFV date of sale determination are essentially the same for this review. In a concurrent administrative review involving a similar product, circular welded pipe, Commerce also accepted Hyundai Steel's use of the factory shipment date as the date of sale for its U.S. sales.¹⁸⁴ When weighed against the facts and precedent in this and the circular welded pipe proceeding, Maverick's argument fails to satisfy its burden to establish that its preferred alternate date of sale, the purchase order date, is the date that all of the material terms of sale are firmly and finally established in the minds of both the buyer and the seller. Accordingly, we continue to rely on Hyundai Steel's reported U.S. date of sale in our calculations for the final results.

Comment 8: Reporting of Hyundai Steel's Downstream Home Market Sales

Maverick's Comments:¹⁸⁵

- Due to the nature of Hyundai Steel's home market sales to affiliated parties, Hyundai Steel should have reported the affiliated parties' downstream sales. Hyundai Steel's failure to report these sales warrants the application of AFA. As AFA, Commerce should assign the highest individual home market sales price reported by Hyundai Steel to its affiliated home market sales.

¹⁸¹ See Hyundai Steel Rebuttal Brief at 24-25 (citing, *inter alia*, *Wind Towers from Vietnam* and *Light-Walled Pipe from Mexico*).

¹⁸² See, *e.g.*, *ArcelorMittal USA LLC v. United States*, 2018 CIT LEXIS 37, Slip Op. 2018-34; and *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001).

¹⁸³ See *Welded Line Pipe from Korea LTFV Preliminary Determination*, and accompanying PDM at 9, unchanged in *Welded Line Pipe from Korea LTFV Final Determination*.

¹⁸⁴ See *CWP from Korea Preliminary Results*, and accompanying PDM at 9, unchanged in *CWP from Korea*.

¹⁸⁵ See Maverick Case Brief at 46.

Hyundai Steel's Rebuttal Comments:¹⁸⁶

- Commerce in its questionnaire does not require the reporting of all the affiliate's sales to the first unaffiliated party. The reporting of home market resale data only applies to resellers.
- Hyundai Steel did not sell the foreign like product to affiliated resellers in the home market during the POR; it reported sales to affiliated customers who consumed the subject merchandise.¹⁸⁷ Accordingly, there is no basis to apply AFA for these allegedly unreported sales.

Commerce Position:

Hyundai stated in its questionnaire response that it did not sell the foreign like product to affiliated parties that resold this merchandise in the home market during the POR.¹⁸⁸ Rather, Hyundai Steel's sales to its affiliated customers consisted of products that the affiliated customers consumed for their own applications.¹⁸⁹ Thus, we find that Hyundai Steel had no potentially reportable downstream sales; as a result, there is no basis to apply AFA to Hyundai Steel for not reporting them.

Comment 9: Assignment of Costs for Hyundai Steel's Non-Prime Pipe

Maverick's Comments:¹⁹⁰

- Hyundai Steel reported that its non-prime pipe cannot be used for the same purposes as prime pipe, and is sold through different channels and at significantly different prices than prime pipe.¹⁹¹
- Accordingly, Commerce should not value non-prime pipe the same as prime pipe. Thus, Commerce should assign the costs of Hyundai Steel's non-prime pipe to the costs of prime pipe, and use the sales of non-prime pipe as an offset to the COP of prime pipe.

Hyundai Steel's Rebuttal Comments:

- No adjustment to Hyundai Steel's costs with respect to non-prime pipe is necessary, but if Commerce were to make an adjustment, it should disregard home market sales of non-prime pipe as non-subject merchandise.
- In the *Welded Line Pipe from Korea LTFV Final Determination*, Commerce determined that non-prime products incapable of use as line pipe are outside the scope of the investigation.¹⁹² Although its sales of non-prime pipe are properly considered foreign like product, Commerce

¹⁸⁶ See Hyundai Steel Rebuttal Brief at 29.

¹⁸⁷ *Id.* (Citing Hyundai Steel's April 12, 2017 AQR at A-33).

¹⁸⁸ See Hyundai Steel AQR at A-31.

¹⁸⁹ See Hyundai Steel BCDQR at B-3.

¹⁹⁰ See Maverick Case Brief at 42-44.

¹⁹¹ *Id.* (citing Hyundai Steel BCDQR at B-9 – B-10 and Exhibits B-1 and B-10).

¹⁹² See Hyundai Steel Rebuttal Brief at 25-26 (citing *Welded Line Pipe from Korea LTFV Final Determination* at Comment 7).

should either: 1) retain the non-prime sales as within-scope merchandise and not adjust costs; or 2) exclude the non-prime sales from the NV calculation and remove the quantities of non-prime merchandise from the COP database.

- If Commerce determines that the non-prime products are not within the scope of the proceeding, Commerce should not attribute the costs of producing these products to the costs of prime products, which would inappropriately attribute costs of producing non-subject goods to the reported WLP costs.

Commerce Position:

Consistent with our treatment of non-prime pipe in the *Welded Line Pipe from Korea LTFV Final Determination*, we revised our *Preliminary Results* calculations to exclude non-prime products from the home market sales database, and adjusted Hyundai Steel's costs to value the non-prime products at their net sales prices.

In this review, Hyundai Steel reported that its home market sales of non-prime merchandise:

(1) do not have the quality assurances normally provided with a recognized industry specification; (2) are usually used for applications that do not require specific performance standards, unlike prime products; and (3) usually have different end uses than prime merchandise. Therefore, it is extremely unlikely that a customer would use non-prime pipe in an application that requires specified performance standards because using a product that the manufacturer refuses to certify as suitable for such an application would leave the customer potentially liable for any damage that might subsequently occur. Generally speaking, purchasers of Hyundai Steel's non-prime pipe use it as structural pipe, small piling material, fencing material, and low-quality couplings or connectors.

On the other hand, the end uses for prime merchandise include all applications for which line pipe products are appropriate. Unlike the end uses for non-prime pipe, the end uses for prime pipe correspond to the industrial specification of the pipe.¹⁹³

In the *Welded Line Pipe from Korea LTFV Final Determination*, we found that non-prime pipe that is not of a kind used for oil or gas pipelines, as specified in the scope of the investigation, is not subject merchandise.¹⁹⁴ The non-prime pipe Hyundai Steel sold in the home market during this POR, by Hyundai Steel's own description quoted above, cannot be used for oil or gas pipelines. Accordingly, we find that these sales are outside the scope of this AD order and we have excluded them from our calculation of NV in the final results.

¹⁹³ See Hyundai Steel BCDQR at B-9 – B-10.

¹⁹⁴ See *Welded Line Pipe from Korea LTFV Final Determination*, and accompanying IDM at Comment 7.

In addition, in the *Welded Line Pipe from Korea LTFV Final Determination*, Commerce found that:

{i}f the product is not capable of being used for the same applications, the product's market value is usually significantly impaired, often to a point where its full cost cannot be recovered.... The difference between the costs assigned to these products and the sales revenue earned on these products is in large part due to the fact that these products are not certified API 5L products. Consequently, assigning full costs to these products does not reasonably reflect the costs associated with the production and sale of the merchandise. {Accordingly,} we adjusted HYSCO's¹⁹⁵ reported costs to value the downgraded non-prime products not capable of being used as line pipe at their net sales prices.¹⁹⁶

Consequently, for these final results, we applied the same methodology as in the *Welded Line Pipe from Korea LTFV Final Determination*. As a result, we adjusted Hyundai Steel's reported cost of manufacture (COM) to: 1) value the non-prime pipe outside the scope of the order at its sales price; and 2) allocate the difference between the COM and the sales price to prime pipe production.¹⁹⁷

Comment 10: Hyundai Steel's Foreign Inland Freight Expenses

Maverick's Comments:¹⁹⁸

- The record provides no reasonable explanation for the price Hyundai Steel paid to its affiliate for the foreign inland freight expenses incurred in shipping subject merchandise from the factory to the port for its U.S. sales.¹⁹⁹
- Hyundai Steel's attempt to demonstrate that the affiliate's freight expenses are made at arm's length based on the affiliate's financial statements is insufficient because the financial statements do not include sufficient detail.²⁰⁰
- The rates Hyundai Steel reported for inland freight expenses incurred on home market sales prove that the difference between the amounts incurred on home market and U.S. sales defies explanation, particularly considering the destinations of the shipments.²⁰¹ Therefore, Commerce should adjust Hyundai Steel's foreign inland freight expenses to account for these inconsistencies.

¹⁹⁵ Hyundai Steel was known as HYSCO during the LTFV investigation.

¹⁹⁶ See *Welded Line Pipe from Korea LTFV Final Determination*, and accompanying IDM at Comment 9 (internal cites omitted).

¹⁹⁷ See Hyundai Steel Final Results Calculation Memorandum for further discussion.

¹⁹⁸ See Maverick Case Brief at 44-46.

¹⁹⁹ The details of Maverick's argument include business proprietary information which cannot be discussed here. See Maverick Case Brief at 44 (citing Hyundai Steel BCDQR at Exhibits B-1 and C-2).

²⁰⁰ The details of Maverick's argument include business proprietary information which cannot be discussed here. See Maverick Case Brief at 45.

²⁰¹ The details of Maverick's argument include business proprietary information which cannot be discussed here. See Maverick Case Brief at 45-46.

Hyundai Steel's Rebuttal Comments:²⁰²

- The freight expenses at issue are incurred on a flat rate-per-truck basis. As a result, the per-unit expenses depend on the volume in a particular shipment.²⁰³
- Maverick's analysis does not account for the fact that the home market destination code it used in its analysis is considerably broader than it characterized, which adds to the inaccuracy of Maverick's claim.²⁰⁴
- The freight arrangements between Hyundai Steel and its affiliate were made at arm's length. The record demonstrates that the rates charged by the unaffiliated provider were lower than the rates charged by Hyundai Steel's affiliate.²⁰⁵

Commerce Position:

Maverick's argument is based on its assumption that Hyundai Steel ships its products from its factory to home market customers in the Ulsan port area in the same manner and for the same distance as it ships its products from the factory to the Ulsan port for export. However, the information on the record does not support Maverick's assumptions.

The home market destination code identified by Maverick, on which it bases its contention, is broader than the port of Ulsan.²⁰⁶ As a result, home market shipments made to this destination code are not necessarily at a comparable distance as shipments to the Ulsan port. Hyundai Steel reports that it incurs trucking expenses on a per-truckload basis;²⁰⁷ thus, Hyundai Steel will pay the same amount to ship WLP to its home market customer, whether or not the truck is filled to capacity, which, in turn, may result in higher per-unit freight expenses for home market sales.

Maverick made this same argument regarding inland freight expenses in the LTFV investigation regarding SeAH. In the *Welded Line Pipe from Korea LTFV Final Determination*, we concluded:

We confirmed at verification that the merchandise destined for the United States travels approximately two kilometers from the company's Pohang plant to the nearby port. A review of SVE-27, contained in the SeAH verification report, clearly illustrates that SeAH's customers can be located anywhere in the Pohang area and, therefore, shipments would travel considerably farther from SeAH's Pohang plant than to the nearby port. Additionally, because shipments to the Pohang port are normally larger than shipments made to individual customers, it is reasonable to assume that per-unit freight costs would be lower.²⁰⁸

²⁰² See Hyundai Steel Rebuttal Brief at 27-28.

²⁰³ *Id.* at 27 (citing Hyundai Steel August 4 Letter).

²⁰⁴ *Id.* (citing Hyundai Steel BCDQR at Exhibit B-11).

²⁰⁵ *Id.* (citing Hyundai Steel BCDQR at B-28 and Exhibits B-10-D and B-10-E).

²⁰⁶ See Hyundai Steel BCDQR at Exhibit B-11; see also Hyundai Steel's Letter, "Welded Line Pipe from the Republic of Korea: Hyundai Steel's Response to Petitioner's Comments on Hyundai Steel's Sections A-D Supplemental Questionnaire Response," dated August 4, 2017, at 7.

²⁰⁷ See Hyundai Steel BCDQR at Exhibit B-10-D.

²⁰⁸ See *Welded Line Pipe from Korea LTFV Final Determination*, and accompanying IDM at Comment 18 (internal cites omitted).

The facts regarding Hyundai Steel's shipments within the Ulsan area are similar to those of SeAH's shipments within the Pohang area described in the *Welded Line Pipe from Korea LTFV Final Determination*. As discussed above, Commerce found no basis to make an adjustment to inland freight expenses for SeAH's home market shipments within the Pohang area. Similarly, we find no basis to adjust Hyundai Steel's inland freight expenses within the Ulsan area here.

Finally, with respect to Maverick's contention that Hyundai Steel's affiliated freight company does not charge Hyundai Steel at arm's length rates, we find that the information on the record is sufficient to reject Maverick's claim. Specifically, the rates charged by the unaffiliated provider were comparable to the rates charged by Hyundai Steel's affiliate for comparable shipping routes.²⁰⁹

Comment 11: Calculation Error for Hyundai Steel in the *Preliminary Results*

Hyundai Steel Comments:²¹⁰

- Commerce inadvertently omitted early payment discounts (EARLYPH) in its NV calculations for the *Preliminary Results* in the margin calculation program.

No other party commented on this topic.

Commerce Position:

We agree that we inadvertently omitted EARLYPH from the calculation of NV in the margin calculation program. We corrected this error in our calculations for the final results.²¹¹

Comment 12: SeAH's Third Country Comparison Market Viability

Maverick's Comments:²¹²

- SeAH does not have a viable comparison market. Its Canadian sales are dumped, and Commerce cannot compare dumped sales to U.S. sales in calculating a dumping margin.
- On September 21, 2017, the Canada Border Services Agency (CBSA) preliminary found a 6.5 percent dumping margin for SeAH's sales of line pipe to Canada during the period of April 1, 2016, to March 31, 2017.²¹³ This period overlaps with eight months of the POR.
- The statute dictates that Commerce will not use third country sales to calculate dumping margins where it determines that the prices of those sales are not representative, or if a

²⁰⁹ See Hyundai Steel BCDQR at Exhibits B-10-D and B-10-E.

²¹⁰ See Hyundai Steel Case Brief at 37-38.

²¹¹ See Hyundai Steel Final Results Calculation Memorandum.

²¹² See Maverick Case Brief at 3 to 10.

²¹³ *Id.* at 4 (citing Maverick PMS Allegation at Exhibit 32).

PMS prevents a proper comparison with the EP or CEP.²¹⁴ The prices of dumped goods are distorted, and therefore not representative under the statute.²¹⁵

- The SAA states that a PMS exists when there is a distortion in the market, and the CBSA’s finding that Korean line pipe is dumped in Canada demonstrates that such a distortion exists.²¹⁶
- In *Biodiesel from Indonesia*, Commerce found that, where a PMS affects prices in a given market, sales of the related product are outside the course of ordinary trade.²¹⁷
- The CIT has stated that comparisons between dumped prices are inaccurate.²¹⁸
- Canada’s CV-based dumping margin calculations are more accurate than the price-to-price calculations utilized by Commerce, which compare SeAH’s at- or nearly below-cost Canadian sales to similarly-priced U.S. sales. Both Canada and the U.S. have found SeAH’s sales to be dumped, and because both markets are part of the same region (*i.e.*, North America), they are likely to have similar prices. These conditions create a PMS, which formed the basis for Commerce’s decision not to use a distorted comparison market in *Biodiesel from Argentina*.²¹⁹
- It is likely that SeAH’s reported Canadian sales of WLP are actually not subject merchandise, but rather misclassified other types of pipe. This is because, in the first administrative review of *OCTG from Korea 14-15 AR*, SeAH’s reported OCTG exports to Canada did not reconcile with Canadian import data.²²⁰ Therefore, SeAH’s actual sales of WLP in Canada likely did not exceed the five percent threshold required for comparison market viability.
- Because of the misclassified sales in OCTG and SeAH’s admission that its Canadian customs broker misclassified pipe, Commerce should determine that SeAH’s Canadian sales data is unreliable and that Canada is not a viable comparison market.
- It is possible that SeAH’s Canadian sales were actually destined for the United States. SeAH acknowledged that PPA’s sales to unaffiliated Canadian customers were made in U.S. dollars (USD),²²¹ and State Pipe made USD-denominated purchases of WLP from unaffiliated U.S. distributors who had, in turn, purchased WLP from SeAH through PPA.²²²
- SeAH did not explain how it determined that its reported Canadian sales were intended for consumption in Canada, as requested by Commerce.²²³ Therefore, Commerce should

²¹⁴ *Id.* (citing section 773(a)(1)(B)(ii) of the Act).

²¹⁵ *Id.* (citing section 773(a)(1)(B)(ii)(I) of the Act).

²¹⁶ *Id.* (citing the SAA at 822).

²¹⁷ *Id.* at 5 (citing Maverick’s November 8, 2017 PMS Factual Information Submission (Maverick November 8, 2017 PMS Submission) at Exhibit 2 (containing *Biodiesel from Indonesia*, and accompanying IDM)).

²¹⁸ *Id.* (citing *Alloy Piping Products, Inc. v. United States*, 201 F. Supp. 2d 1267, 1277 (CIT 2002) (*Alloy Piping*) (“{T}he goal of accuracy cannot be achieved if Commerce relies upon dumped third country prices to calculate NV.”)).

²¹⁹ *Id.* at 6 (citing Maverick November 8, 2017 PMS Submission at Exhibit 2).

²²⁰ *Id.* (citing Maverick’s Letter, “Welded Line Pipe from the Republic of Korea: Deficiency Comments on SeAH’s Sections A-E Questionnaire Response” dated May 19, 2017, at Exhibits 1, 2, and 3).

²²¹ *Id.* at 9 (citing SeAH’s May 5, 2017 Sections B-E Questionnaire Response (SeAH May 5, 2017 B-EQR)).

²²² *Id.* at 9 (citing SeAH April 5, 2017 AQR).

²²³ *Id.* at 10 (citing SeAH May 5, 2017 B-EQR).

find as facts available that none of SeAH's reported Canadian market sales were sold for consumption in Canada.

Maverick's June 27, 2018 Response to Factual Information Placed on the Record and Rebuttal to the SeAH June 29, 2018 NFI Response:

- Maverick submitted clarifying information in response to factual information placed on the record by Commerce on June 25, 2018. This information included documentation from the CBSA and the CITT (and related evidence), and is related to the final determination issued by the CITT in the carbon and alloy steel line pipe inquiry. On July 2, 2018, Maverick provided rebuttal comments to the SeAH June 29, 2018 NFI Response. In its rebuttal, Maverick argued:
 - Commerce should apply total AFA to SeAH, because the company failed to disclose the existence of home market sales produced by other manufacturers.²²⁴ SeAH's concealment of the existence of those sales deprived Commerce from using them in its viability and profit analyses.
 - If Commerce decides not to apply AFA to SeAH, it should find that SeAH has no viable comparison market.²²⁵
 - SeAH admitted that it failed to report its home market sales in accordance with Canadian trade law, and provided no explanation as to why Canada's law should be identical to U.S. trade law. The key issue is that Canada found SeAH's sales to be dumped; there is no requirement that Canada's AD laws be identical to those of the United States.
 - Moreover, SeAH failed to provide information containing the COP of the goods, which the CBSA needed to perform its profitability analysis.²²⁶ Had SeAH provided the information it concealed from the CBSA, SeAH likely would have had an even higher dumping margin in the Canada investigation.²²⁷

SeAH's Comments:²²⁸

- Maverick's allegation that a PMS exists due to Canada's preliminary dumping determination concerning imports of welded line pipe is untimely.
- Maverick submitted factual information concerning Canada's preliminary determination, entitled, "Statement of Reasons Concerning the preliminary determination with respect to the dumping of Certain Carbon and Alloy Steel Line Pipe Originating in or Exported from the Republic of Korea—Decision (September 21, 2017)," on September 28, 2017.²²⁹ However, the deadline to submit information concerning a market viability allegation in this administrative review was May 19, 2017.²³⁰

²²⁴ See Maverick July 2, 2018 NFI Rebuttal at 8 (citing SeAH June 29, 2018 NFI Response at 3).

²²⁵ *Id.* at 8 (citing Maverick Case Brief at 4).

²²⁶ *Id.* at 9 (citing Maverick June 27, 2018 NFI Response at 15).

²²⁷ *Id.* at 9 (citing Maverick June 27, 2018 NFI Response at 15 to 16).

²²⁸ See SeAH Rebuttal Brief at 1 to 10.

²²⁹ *Id.* at 1 (citing Maverick PMS Allegation at Exhibit 32).

²³⁰ *Id.* at 4 (citing Commerce's Letter, "2016-2016 Administrative Review of Welded Line Pipe from the Republic of Korea," dated May 16, 2017).

- Section 773(a)(1)(B)(ii) of the Act provides Commerce’s authority to decline to use third country sales for comparison where a PMS exists. This provision has been in place since the Uruguay Round Agreements came into force in 1995.
- Section 351.404(c)(2) of Commerce’s regulations addresses the specific requirements for allegations made under section 773(a)(1)(B)(ii) of the Act, requiring that market viability allegations are due, with all supporting factual information, 10 days after the respondent files its response to the relevant section of the questionnaire.²³¹
- It was not until Maverick’s December 19, 2017, pre-preliminary comments that it disclosed that the purpose of the information submitted at Exhibit 32 of its September 28 submission was in support of a market viability allegation.²³² Maverick falsely stated that the information in its September 28 submission fell under 19 CFR 351.301(c)(5), as factual information not directly responsive to or relating to 19 CFR 351.301(c)(I)-(4), and not submitted in support of an allegation.
- Because the information was not submitted by the May 19, 2017 deadline, Maverick’s arguments based on that information are untimely and should be rejected by Commerce.
- Commerce has previously relied upon third country sales subject to an antidumping finding to determine NV.²³³ Moreover, because Maverick’s counsel benefited from arguing that it was appropriate to rely on SeAH’s sales of OCTG to Canada as the basis for NV in *OCTG from Korea 14-15 AR*, they are here estopped from adopting a contrary position.²³⁴
- Maverick’s argument that SeAH’s Canadian sales cannot be used as the basis for NV would effectively prevent the use of third country sales when the prices of those sales are lower than U.S. prices. It would also alter the definition of “ordinary course of trade” by replacing the sales below cost test with a sales below CV profit test.
- Different countries have their own practices in implementing the WTO Antidumping Agreement, and Commerce is not bound to follow the methodologies of those countries. Therefore, a finding of dumping in a foreign country does not enjoin Commerce to do the same.
- When determining whether sales were dumped in Canada, Commerce should consider how it—and not the foreign country—would have analyzed those sales under U.S. law. In the instant review, Commerce’s methodology would prescribe the use of a third country comparison market (*i.e.*, the United States) to establish NV; if it were to find no dumping, then Commerce should not here regard those sales as dumped. Moreover, if SeAH’s Canadian sales were found to be dumped under Commerce’s methodology, then by extension, SeAH could not be dumping in the United States.
- Maverick’s argument that Canada’s dumping finding precludes the use of SeAH’s sales as the basis for NV is inconsistent with U.S. law, because it would mandate that Commerce disregard above-COP sales dependent upon the profit rate the third country investigating authority (*i.e.*, Canada) selected for its CV calculation.

²³¹ *Id.* at 3 (citing 19 CFR 351.301(c)(2)(i)).

²³² *Id.* at 2 (citing Maverick’s Letter, “Welded Line Pipe from the Republic of Korea: Pre-Preliminary Comments,” dated December 18, 2017).

²³³ *Id.* at 5 (citing *OCTG from Korea 14-15 AR*, and accompanying IDM at 13-14).

²³⁴ *Id.* at 5 (citing *Davis v. Wakelee*, 156 U.S. 680,689 (1895)).

- Contrary to Maverick’s argument that SeAH’s Canadian sales cannot be used due to certain customs entry misclassifications, the mill test certificates on the record demonstrate that the merchandise in question was in fact line pipe.²³⁵ It is the physical characteristics of products set forth in the scope—not HTS codes—which define subject merchandise/foreign like product.

SeAH’s June 27, 2018 Response to Factual Information Place on the Record:

- SeAH submitted clarifying information in response to factual information placed on the record by Commerce on June 25, 2018. This information included documentation from the CBSA related to the final determination issued by the CITT in the carbon and alloy steel line pipe inquiry. In its submission, SeAH argued:
 - The CBSA used the equivalent of facts available in calculating SeAH’s dumping margin because SeAH failed to report home market sales of merchandise produced by another manufacturer. Under U.S. law, the reporting of such sales is unnecessary, because the home market sales of merchandise produced by one manufacturer may not be used to calculate NV for exports of merchandise produced by another manufacturer.
 - If Canada followed U.S. legal principles, SeAH’s dumping calculation would have been based on a comparison of SeAH’s home market and Canadian prices. Therefore, this case demonstrates why Commerce cannot treat a finding of dumping by a foreign country as equivalent to a finding of dumping under U.S. law.
 - There is no evidence that Canada would have found SeAH’s sales to be dumped had it applied Commerce’s antidumping methodology.

Commerce Position:

Pursuant to 19 CFR 351.301(c)(4), Commerce may place factual information on the record of a proceeding at any time, and allow interested parties one opportunity to submit factual information to rebut, clarify, or correct that factual information. On June 25, 2018, we placed the final determination of the CITT in the antidumping inquiry on carbon and alloy steel line pipe on the record of this proceeding and provided interested parties an opportunity to comment.²³⁶ Interested parties filed comments, and we have considered them in our analysis. Therefore, SeAH’s timeliness argument regarding Maverick’s allegations and submission of factual information concerning Canada’s preliminary finding of dumping in its investigation of carbon and alloy steel line pipe from Korea is now moot.

Furthermore, we disagree with SeAH that Maverick’s counsel, Wiley Rein, is precluded from arguing that Commerce should disregard third-country sales subject to a dumping finding because it benefitted from the usage of sales subjected to a Canadian dumping finding in a prior

²³⁵ *Id.* at 9 (citing SeAH’s November 8, 2017 Supplemental Questionnaire Response at Appendix S2B-3).

²³⁶ *See* Memorandum to the File: “Canadian Antidumping Duty Final Determination on Welded Line Pipe,” dated June 25, 2018, attaching the final determination issued by the CITT in Carbon and Alloy Steel Line Pipe Inquiry No. NQ-2017-002 (CITT Final).

case. We note that we find no argument from Maverick’s counsel in *OCTG from Korea 14-15* for the use of SeAH’s Canadian sales other than for the purpose of determining CV for NEXTEEL.²³⁷

We also disagree with SeAH’s argument that we should not rely on Canada’s determination of dumping because different countries have their own practices in implementing the WTO Antidumping Agreement, and that we should consider how such sales would be analyzed under U.S. law. The fact that Commerce’s methodology may differ from that of the CBSA does not negate Canada’s finding of dumping.

Given these circumstances, we agree with Maverick that Canada is not an appropriate third country comparison market. In the *Preliminary Results*, we found that SeAH did not have a viable home market.²³⁸ Therefore, we calculated SeAH’s NV based on sales to its largest third country comparison market, Canada.²³⁹ However, as discussed above, we have placed on the record of this proceeding the final determination by the CITT that SeAH’s Canadian sales of steel line pipe were dumped,²⁴⁰ thereby disqualifying such sales for purposes of establishing a representative comparison market and calculating SeAH’s NV. The prices of dumped goods are distorted, and therefore not “representative” under the statute.²⁴¹ The CIT has held that, in such circumstances, comparisons to dumped prices are inaccurate.²⁴²

The statute and the SAA are silent as to the definition of the term “representative,” but because comparison market sales can reasonably be interpreted in these circumstances as a proxy for the home market sales they replace, such comparison market sales must accurately reflect, or be representative of, home market sales.²⁴³ We interpret the statute to require that third country comparison market sales be representative of a respondent’s home market sales since such comparison market sales are used only where there is no viable home market. Here, SeAH’s Canadian sales are dumped, and thus, inaccurate by their nature, for purposes of representing normal value. Therefore, they cannot be representative of viable home market sales. Further, because there are neither viable home nor comparison market sales on the record of this review, we calculated SeAH’s margin using CV as the basis for NV, as provided by the statute.²⁴⁴

²³⁷ See *OCTG from Korea 14-15 AR* IDM at Comment 1.

²³⁸ See *Preliminary Results*, and accompanying PDM at 15-16.

²³⁹ *Id.*

²⁴⁰ See CITT Final; see also Maverick’s Letter, “Welded Line Pipe from the Republic of Korea: Response to Factual Information Placed on the Record by the Department on June 25,” dated June 27, 2018; see also, SeAH’s Letter, “Administrative Review of the Antidumping Order on Welded Line Pipe from Korea – Response to New Factual Information,” dated June 27, 2018.

²⁴¹ Sales prices must be “representative.” See section 773(a)(1)(B)(ii)(I) of the Act.

²⁴² See *Alloy Piping*, 201 F. Supp. 2d at 1277 (stating “the Court agrees that the goal of accuracy cannot be achieved if Commerce relies upon dumped third country prices to calculate NV”).

²⁴³ *Id.*

²⁴⁴ See section 773(a)(4) of the Act. If the administering authority determines that the normal value of the subject merchandise cannot be determined under paragraph (1)(B)(i), then, notwithstanding paragraph (1)(B)(ii), the normal value of the subject merchandise may be the constructed value of that merchandise, as determined under subsection (e).

Because we have determined to disregard SeAH's Canadian sales on the basis of Canada's dumping determination, we find moot Maverick's arguments that we should determine that SeAH's Canadian sales data is unreliable either due to misclassified sales or the possibility that such sales were actually destined for the United States. We further note that Maverick's argument that Commerce apply total AFA to SeAH for failing to report certain home market sales of foreign like product made by other producers is predicated upon a false assumption. SeAH reported that it made a small quantity of WLP produced by other Korean manufacturers, and it provided a list of those manufacturers.²⁴⁵

Comment 13: CEP Offset for SeAH²⁴⁶

We note that although SeAH made arguments concerning a CEP offset, those arguments and Maverick's rebuttal to them are moot because, as noted in Comment 12, above, we find that SeAH's sales to Canada do not constitute a viable comparison market.

V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this administrative review in the *Federal Register*.

Agree

Disagree

7/11/2018

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

²⁴⁵ See SeAH AQR at 51 and Appendix A-12.

²⁴⁶ See SeAH Case Brief at 1 to 3; see also Maverick Rebuttal Brief at 35 to 38.