



A-580-809
Administrative Review
POR: 11/01/18-10/31/19
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March 19, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Results of
Antidumping Duty Administrative Review and Preliminary
Determination of No Shipments: Circular Welded Non-Alloy Steel
Pipe from the Republic of Korea; 2018-2019

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on circular welded non-alloy steel pipe (CWP) from the Republic of Korea (Korea) covering the period of review (POR) November 1, 2018, through October 31, 2019. We selected two companies for individual examination in this administrative review: Husteel Co., Ltd. (Husteel) and Hyundai Steel Company (Hyundai Steel). We preliminarily determine that sales of subject merchandise from Husteel and Hyundai Steel were not made at prices below normal value (NV).

II. BACKGROUND

On November 2, 1992, we published in the *Federal Register* an AD order on CWP from Korea.¹ On February 6, 2020, Commerce initiated this administrative review.² On February 19, 2020, we released entry data we obtained from U.S. Customs and Border Protection (CBP) for comment by interested parties regarding our selection of the respondents for this review.³ On April 20, 2020, we selected Husteel and Hyundai Steel as mandatory respondents for individual examination in this review.⁴

¹ See *Notice of Antidumping Duty Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe from Korea*, 57 FR 49453 (November 2, 1992).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 6896 (February 6, 2020).

³ See Memorandum, "Release of U.S. Customs and Border Protection Data," dated February 19, 2020.

⁴ See Memorandum, "Respondent Selection," dated April 20, 2020.



On March 9, 2020, HiSteel Co., Ltd. (HiSteel) timely filed a no-shipment certification.⁵ On March 1, 2021, we issued a no shipment inquiry to CBP.⁶ On March 9, 2021, CBP responded to the inquiry confirming that they found no evidence of shipments of CWP from Korea produced and/or exported by the aforementioned company during the POR.⁷

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.⁸ Subsequently, on July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.⁹ On October 28, 2020, Commerce extended the preliminary results of this review to March 19, 2021.¹⁰

On April 29, 2020, Commerce issued the AD questionnaire to Husteel and Hyundai Steel.¹¹ Between May and June 2020, Husteel and Hyundai Steel submitted timely questionnaire responses.¹² Between August and October 2020, Commerce issued supplemental questionnaires to Husteel¹³ and Hyundai Steel¹⁴ and received timely responses.¹⁵

⁵ See HiSteel's Letter, "Administrative Review of the Antidumping Duty Order on Circular Welded Non-Alloy Steel Pipe from Korea for the 2018-19 Review Period – No Shipments Letter," dated March 9, 2020.

⁶ See Customs Instructions Message No: 1060401, dated March 1, 2021 (No Shipment Inquiry).

⁷ See Memorandum, "Circular welded non-alloy steel pipe from the Republic of Korea (A-580-809)," dated March 9, 2021 (CBP Response to No Shipment Inquiry).

⁸ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19", dated April 24, 2020. Commerce practice dictates that when a deadline falls on a weekend or Federal holiday (in this instance, Saturday, September 19, 2020), the appropriate deadline is the next business day. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005) (Next Business Day Rule).

⁹ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

¹⁰ See Memorandum, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Extension of Deadline for Preliminary Results of 2018-2019 Antidumping Administrative Review," dated October 28, 2020.

¹¹ See Commerce's Letters to Husteel and Hyundai Steel, "Antidumping Duty Administrative Review of Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Initial Questionnaire," dated April 29, 2020.

¹² See Husteel's Letters, "Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, Case No. A-580-809: Section A Questionnaire Response," dated May 28, 2020 (Husteel AQR) and "Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, Case No. A-580-809: Sections B-D Questionnaire Response," dated June 19, 2020 (Husteel BCDQR); see also Hyundai Steel's Letters, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea - Section A Questionnaire Response," dated June 1, 2020 (Hyundai Steel AQR) and, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea - Sections B-D Questionnaire Response," dated June 19, 2020 (Hyundai Steel BCDQR).

¹³ See Commerce's Letter, "Administrative Review of the Antidumping Duty Order on Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Supplemental Questionnaire," dated August 26, 2020.

¹⁴ See Commerce's Letter, "Administrative Review of the Antidumping Duty Order on Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Supplemental Questionnaire," dated September 28, 2020.

¹⁵ See Husteel's Letter, "Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Case No. A-580-809: Husteel Supplemental Questionnaire Response," dated September 22, 2020; see also Hyundai Steel's Letter, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Supplemental Sections A-D Questionnaire Response," dated October 26, 2020.

In March 2021, Commerce issued another supplemental questionnaire to Hyundai Steel and received a timely response.¹⁶

III. SCOPE OF ORDER

The merchandise subject to the order is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in the order.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of the order except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit.¹⁷

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) numbers: 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. Although the HTSUS numbers are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

IV. PRELIMINARY DETERMINATION OF NO SHIPMENTS

HiSteel certified that it had no exports, sales, or entries of subject merchandise during the POR. Consistent with our standard practice,¹⁸ we issued a “No Shipment Inquiry” to CBP and received no information that contradicted their claims.¹⁹ Thus, we preliminarily find that HiSteel had no shipments during the POR. Consistent with our practice, we will not rescind the review with

¹⁶ See Commerce’s Letter, “Administrative Review of the Antidumping Duty Order on Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Supplemental Questionnaire,” dated March 1, 2021; *see also* Hyundai Steel’s Letter, “Circular Welded Non-Alloy Steel Pipe from the Republic of Korea – Supplemental Section D Questionnaire Response,” dated March 8, 2021.

¹⁷ See *Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the Republic of Korea, Mexico, and Venezuela*, 61 FR 11608 (March 21, 1996). In accordance with this determination, pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A-53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines, is outside of the scope of the AD order.

¹⁸ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 34863 (July 19, 2019), and accompanying PDM at 4.

¹⁹ See No Shipment Inquiry and Response to No Shipment Inquiry.

respect to HiSteel, but rather, will complete the review with respect to HiSteel and issue appropriate liquidation instructions to CBP based on the final results of the review.²⁰

V. AFFILIATION

In accordance with section 771(33) of the Act, the following persons shall be considered affiliated: (A) members of a family, including brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants; (B) any officer or director of an organization and such organization; (C) partners; (D) employer and employee; (E) any person directly or indirectly owning, controlling, controlled by, or holding with power to vote, five percent or more of the voting stock or shares of any organization and such organization; (F) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) any person who controls any other person and such other person. To find affiliation between two companies, at least one of the criteria above must be applicable. Section 771(33) of the Act further provides that, “{f} or purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.” Commerce’s regulations at 19 CFR 351.102(b)(3) state that, in finding affiliation based on control, Commerce will consider, among other factors: (i) corporate or family groupings; (ii) franchise or joint venture agreements; (iii) debt financing, and (iv) close supplier relationships.

Control between persons may exist in close supplier relationships in which either party becomes reliant on the other.²¹ With respect to close supplier relationships, Commerce has determined that the threshold issue is whether either the buyer or seller has, in fact, become reliant on the other. Only if such reliance exists does Commerce then determine whether one of the parties is in a position to exercise restraint or direction over the other.²² Commerce will not, however, find affiliation on the basis of this factor unless the relationship has the potential to affect decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.²³

Husteel

Husteel reported that its U.S. sales of subject merchandise during the POR were made through Husteel USA Inc. (Husteel USA), a wholly owned U.S. subsidiary of Husteel.²⁴ Husteel reported that, during the POR, it sold subject merchandise to Husteel USA, which sold the merchandise to unaffiliated U.S. customers.²⁵ In addition, Husteel reported that it is affiliated with certain other trucking companies that are involved in the distribution of the merchandise

²⁰ See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003).

²¹ See, e.g., Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (SAA) at 838.

²² See, e.g., *Multilayered Wood Flooring from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011), and accompanying Issues and Decision Memorandum (IDM) at Comment 21.

²³ See 19 CFR 351.102(b)(3)

²⁴ See Husteel AQR at A-5.

²⁵ *Id.*

under review.²⁶ For these preliminary results, we find Husteel to be affiliated with Husteel USA and certain other companies, pursuant to section 771(33)(E) of the Act.

Hyundai Steel

Hyundai Steel reported that its U.S. sales of subject merchandise during the POR were made through Hyundai Steel USA (HSU), a wholly owned U.S. subsidiary of Hyundai Steel.²⁷ Hyundai Steel reported that, during the POR, it sold subject merchandise to HSU, which sold the merchandise to unaffiliated U.S. customers.²⁸ Sometimes, HSU will, instead, resell the subject merchandise to Hyundai Corporation USA (HC(USA)), an affiliated trading company, who would then, in turn, sell subject merchandise to their own unaffiliated U.S. customers.²⁹ In addition, Hyundai Steel reported that it is affiliated with certain other companies that are involved in the production, sales, or distribution of the merchandise under review.³⁰ For these preliminary results, we find Hyundai Steel to be affiliated with HSU, HC(USA), and certain other companies, pursuant to section 771(33)(E) of the Act.

VI. DISCUSSION OF THE METHODOLOGY

We are conducting this administrative review of the order in accordance with section 751(a) of the Act and 19 CFR 351.213.

Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether the respondents' sales of the subject merchandise from Korea in the United States were made at less than NV, Commerce compared the constructed export price (CEP), as appropriate, to the NV as described in the "Constructed Export Price" and "Normal Value" sections of this memorandum.

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average CEPs (*i.e.*, the average-to-average (A-A) method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average NVs with the CEPs of individual sales (*i.e.*, the average-to-transaction (A-T) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce

²⁶ See Husteel BCDQR at C-31.

²⁷ See Hyundai Steel AQR at A-1.

²⁸ *Id.*

²⁹ *Id.*

³⁰ See Hyundai Steel BCDQR at Exhibit D-4.

nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.³¹

In proceedings and the last completed administrative review of this order, Commerce applied a “differential pricing” analysis for determining whether application of the A-T method is appropriate in a particular situation, pursuant to section 777A(d)(1)(B) of the Act and 19 CFR 351.414(c)(1) and 19 CFR 351.414(c)(1).³² Commerce finds that the differential pricing analysis used in recent investigations and reviews may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the A-A method in calculating weighted-average dumping margins for the respondents.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the A-A method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip codes) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between CEP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser,

³¹ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012) and accompanying IDM at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

³² See, *e.g.*, *Truck and Bus Tires from the People’s Republic of China: Preliminary Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances, and Postponement of Final Determination*, 81 FR 61186 (September 6, 2016), and accompanying Preliminary Decision Memorandum (PDM) at 22, unchanged in *Truck and Bus Tires from the People’s Republic of China: Final Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances*, 82 FR 8599 (January 27, 2017); *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews and Rescission of Administrative Review, in Part; 2014-2015*, 81 FR 12870 (March 11, 2016) (2014-15 Prelim); and accompanying PDM at 6, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2014-2015*, 81 FR 62712 (September 12, 2016) (2014-15 Final).

region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the A-T method to all sales as an alternative to the A-A method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an A-T method to those sales identified as passing the Cohen's *d* test as an alternative to the A-A method, and application of the A-A method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the A-A method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the A-A method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the A-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-A method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if (1) there is a 25 percent relative change in the weighted-average dumping margins between the A-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margins between the A-A method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

B. Results of the Differential Pricing Analysis

Husteel

For Husteel, based on the results of the differential pricing analysis, we preliminarily find that 66.58 percent of the value of U.S. sales pass the Cohen's *d* test,³³ confirming the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin Husteel.

Hyundai Steel

For Hyundai Steel, based on the results of the differential pricing analysis, Commerce preliminarily finds that 92.30 percent of the value of U.S. sales pass the Cohen's *d* test,³⁴ confirming the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Hyundai Steel.

C. Date of Sale

Section 351.401(i) of Commerce's regulations states that, “{i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business.” The regulation provides further that Commerce may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.³⁵ Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.³⁶

³³ See Memorandum, “Antidumping Duty Administrative Review of Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results Margin Calculation for Husteel Co., Ltd.,” dated concurrently with this memorandum.

³⁴ See Memorandum, “Antidumping Duty Administrative Review of Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results Margin Calculations for Hyundai Steel Company,” dated concurrently with this memorandum.

³⁵ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

³⁶ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918

Husteel

For its comparison market sales, Husteel has reported the shipment date as the date of sale, because Husteel establishes the material terms of sale at the time of shipment.³⁷ For its U.S. CEP sales, Husteel reported the date of sale as the earlier of the date of shipment from Korea or the date of its U.S. affiliate, Husteel USA's invoice to the unaffiliated U.S. customer.³⁸ Therefore, consistent with our practice, we are relying on the sale dates reported by Husteel for both the comparison and U.S. market sales.³⁹

Hyundai Steel

For its comparison market sales, Hyundai Steel reported that negotiations on the terms of sale may continue until Hyundai Steel issues its tax and commercial invoice.⁴⁰ For U.S. sales, both the quantity and the terms are no longer subject to change once the merchandise is shipped.⁴¹ Therefore, consistent with our practice, we are relying on the earlier of shipment date or invoice date for both home market sales and U.S. sales.⁴²

D. Product Comparisons

In accordance with section 771(16) of the Act, we considered all products meeting the physical description of merchandise covered by the "Scope of the Order" section above, produced and sold by the respondents in the comparison market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales of subject merchandise. For Husteel and Hyundai Steel, we compared U.S. sales to sales made in the home market on the basis of the comparison product which was either identical or most similar in terms of the physical characteristics to the product sold in the United States. In order of importance, these physical characteristics are: (1) grade; (2) nominal pipe size; (3) wall thickness; (4) surface finish; and (5) end-finish.

(December 23, 2004), and accompanying IDM at Comment 10; *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.

³⁷ *See* Husteel AQR at A-16.

³⁸ *Id.*

³⁹ This is consistent with our practice with respect to Husteel in prior reviews. *See, e.g., Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 57583 (December 6, 2017), and accompanying IDM at 6-7 unchanged in *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 26910 (June 12, 2017).

⁴⁰ *See* Hyundai Steel AQR at A-32.

⁴¹ *See* Hyundai Steel BCDQR at C-20.

⁴² This is consistent with our practice with respect to Hyundai Steel in prior reviews. *See, e.g., Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 63619 (December 11, 2018) (CWP AR16-17) and accompanying IDM at 8, unchanged in *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 84 FR 26401 (June 6, 2019).

VII. CONSTRUCTED EXPORT PRICE

Section 772(b) of the Act defines CEP as “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States to an unaffiliated purchaser in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)” of section 772 of the Act. As explained below, we based the U.S. price on CEP for both Husteel and Hyundai Steel.

Husteel classified all of their sales of CWP to the United States during the POR as CEP sales.⁴³ During the POR, Husteel made sales in the United States through its U.S. affiliate, Husteel USA.⁴⁴ This U.S. affiliate then resold the merchandise to unaffiliated customers in the United States. We calculated CEP based on the packed, delivered prices to unaffiliated purchasers in the United States. We adjusted these prices for movement expenses, including foreign inland freight, international freight, marine insurance, foreign and U.S. brokerage and handling, and U.S. customs duties, in accordance with section 772(c)(2)(A) of the Act.

Hyundai Steel also classified all of their sales of CWP to the United States during the POR as CEP sales.⁴⁵ During the POR, Hyundai Steel made sales in the United States through its U.S. affiliate, HSU.⁴⁶ HSU then resold the merchandise to unaffiliated customers in the United States or to HC(USA), an affiliated trading company, who would then in turn sell subject merchandise to their own unaffiliated U.S. customers.⁴⁷ We calculated CEP based on the packed, delivered prices to unaffiliated purchasers in the United States. We adjusted these prices for movement expenses, including foreign inland freight, international freight, marine insurance, foreign and U.S. brokerage and handling, and U.S. customs duties, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including credit expenses, warranty expenses, and indirect selling expenses. We also made an adjustment for profit, in accordance with section 772(d)(3) of the Act.

VIII. NORMAL VALUE

A. Particular Market Situation (PMS) Allegation

1. Background

In the previous administrative review of CWP from Korea covering November 1, 2017 to October 31, 2018, Commerce found that a PMS existed in Korea which distorted the cost of production (COP) of CWP, based on our considerations of cumulative effects of: (1) Korean

⁴³ See Husteel BCDQR at C-16.

⁴⁴ See Husteel AQR at A-5.

⁴⁵ See Hyundai Steel AQR at A-1.

⁴⁶ *Id.*

⁴⁷ *Id.*

subsidies on inputs of hot-rolled coil (HRC), the primary input for CWP; (2) Korean imports of HRC from the People’s Republic of China (China); (3) strategic alliances between Korean HRC and CWP producers; and (4) distortions in the Korean electricity market.⁴⁸ On July 23, 2020, the petitioner submitted factual information and a letter in which it argued that Commerce should find that a PMS continues to exist in Korea in the instant POR.⁴⁹

On August 20, 2020, Commerce issued a letter inviting all other interested parties to submit factual information to rebut, clarify or correct the petitioner’s factual information supporting its PMS allegation, and comments regarding the alleged PMS in this review.⁵⁰ On September 17, 2020, Husteel and Hyundai Steel submitted separate factual information and comments concerning the PMS allegation.⁵¹

2. Parties’ Arguments

In this review, the petitioner alleges that a PMS continues to exist in Korea which distorts the CWP costs of production based on the following six 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 CWP producers; (4) distortive government control over electricity prices in Korea; (5) distortive shipping rates for inbound iron ore and coal; and (6) distortive costs of iron ore used to produce Korean HRC.⁵² The petitioner urges Commerce to apply the concept of persistence in affirmative PMS findings, similar to its findings when it determines that a country is a non-market economy.⁵³ In support of its allegation that a PMS continues to exist in the Korean market, the petitioner placed on the record PMS allegations from recent administrative reviews related to steel pipe products.⁵⁴ To account for the effect of steel overcapacity on the Korean steel market, the petitioner contends that Commerce should increase the respondents’ reported costs for all HRC purchases, using a global excess capacity-based *regression analysis* provided on the record that quantifies the impact of global steel excess capacity on the price of HRC in Korea, and derives a corresponding percentage adjustment factor that, when applied to the respondents’ costs of HRC, accounts for the distortions inherent to an overcapacity-driven PMS.⁵⁵

⁴⁸ See *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 71055 (November 6, 2020) and accompanying IDM at Comment 1-A.

⁴⁹ See Petitioner’s Letter, “Certain Circular Welded Pipe from the Republic of Korea: Particular Market Situation Allegation and Supporting Factual Information – Qualitative Submission,” dated July 23, 2020 (PMS Allegation).

⁵⁰ See Commerce’s Letter, “2018-2019 Administrative Review of the Antidumping Duty Order on Circular Welded Non-Alloy Steel Pipe (CWP) from the Republic of Korea: PMS Response Letter,” dated August 20, 2020.

⁵¹ See Husteel’s Letter, “Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, Case No. A-580-809: Particular Market Situation Allegation Rebuttal Comments,” dated September 17, 2020 (Husteel PMS Comments); see also Hyundai Steel’s Letter, “Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Rebuttal Factual Information and Comments Relating to PMS Allegation,” dated September 17, 2020.

⁵² See PMS Allegations at 6-7.

⁵³ See PMS Allegation at 2-5.

⁵⁴ *Id.* at 5-27.

⁵⁵ See Petitioner’s Letter, “Circular Welded Pipe from the Republic of Korea: Particular Market Situation Allegation and Supporting Factual Information – Quantitative Submission,” dated July 23, 2020 (Regression Analysis).

The respondents argue that much of the information submitted by the petitioner is outside the POR, and therefore, is not contemporaneous with the current status of the Korean market.⁵⁶ As for the factors involved in the PMS analysis, the respondents claim that the global overcapacity in steel production is not a particular problem for Korea and prices for HRC have recovered during the POR.⁵⁷ With respect to subsidies from the Korean government, the respondents note that the most recently completed administrative review by Commerce of the CVD order on HRC from Korea shows the level of subsidies to be almost *de minimis*.⁵⁸ The respondents also argue that the allegations of strategic alliance within the Korea steel industries are outdated and not related to HRC producers and CWP producers.⁵⁹ The respondents contend that Commerce has consistently found that there is no government subsidization of electricity prices in Korea, and there is no basis to argue any distortion of electricity prices that contribute to a PMS.⁶⁰ Finally, with respect to global bulk shipping overcapacity and the distorted price of Australian iron ore, the respondents argue that global demand for bulk shipping has kept pace with the expansion of the global bulk shipping industry and that the petitioner failed to take into account the grade of iron ore that was allegedly being distorted and that Korea sources a significant portion of its iron ore from other nations.⁶¹ They argue that even if these two distortions did exist, it would affect the global market and thus not be particular to the Korean market.⁶² With respect to the Regression Analysis submitted by the petitioner, the respondents argue that the methodology submitted is flawed, such that its framework was based on a series of assumptions that were deliberately picked to skew the analysis to the petitioner's favor rather than represent the reality of the market, and should therefore be rejected.⁶³ Additionally, the respondents argue that if Commerce finds a PMS during the POR, the AD statute does not allow Commerce to make a PMS adjustment to the calculation of COP for its sales-below-cost test.⁶⁴

3. Analysis

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), Public Law No. 114-27. Section 504 of the TPEA added the concept of "particular market situation" to the definition of the term "ordinary course of trade," found at section 771(15) of the Act. This expanded Commerce's consideration of the existence of a PMS not only in the circumstances of determining NV under section 773(a)(1)(A), but also for purposes of constructed value (CV) under section 773(e), and through these provisions for purposes of the COP under section 773(b)(3). Section 773(e) 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." Section 773(e) does not specify whether to consider these allegations individually or collectively.

⁵⁶ See Husteel PMS Comments at 3 and Hyundai Steel's PMS Comments at 3.

⁵⁷ See Husteel PMS Comments at 14-21 and Hyundai Steel's PMS Comments at 26-48.

⁵⁸ See Husteel PMS Comments at 21-23 and Hyundai Steel's PMS Comments at 25-26.

⁵⁹ See Husteel PMS Comments at 8-24 and Hyundai Steel's PMS Comments at 48-50.

⁶⁰ See Husteel PMS Comments at 24-25 and Hyundai Steel's PMS Comments at 50-53.

⁶¹ See Husteel PMS Comments at 25-27 and Hyundai Steel's PMS Comments at 53-61.

⁶² *Id.*

⁶³ See Husteel PMS Comments at 28-33 and Hyundai Steel's PMS Comments at 65-88.

⁶⁴ See Husteel PMS Comments at 4 and Hyundai Steel's PMS Comments at 3.

In this administrative review, we consider the six components of the petitioner's PMS allegation as a whole, based on their cumulative effect on the Korean market for the inputs to produce CWP. First, the petitioner argues that the Korean government's subsidization of HRC distorts the HRC market and impacts the production costs of CWP within Korea.⁶⁵ Additionally, HRC, as an input of CWP, constitutes a substantial proportion of the cost of CWP production; thus, distortions in the HRC market have a significant impact on production costs for CWP.⁶⁶ The petitioner cites the countervailing duty (CVD) investigation rates on *Hot-Rolled Steel Flat Products from Korea* as evidence of subsidization of hot-rolled steel in Korea, but the investigation took place during the 2014 calendar year.⁶⁷ The current CVD rate for the 2018 calendar year, the most recent administrative review of this order, shows the rate to be 0.51 percent which is barely above *de minimis*.⁶⁸ Although Commerce acknowledges that there is subsidization of HRC in Korea, more recent evidence shows the subsidization was minimal during the POR.

The petitioner also argues that due to global overcapacity, largely driven by Chinese overcapacity, large quantities of unfairly priced Chinese steel products have flooded the Korean steel market which places downward pressure on steel prices, including HRC, in the Korean market.⁶⁹ The majority of the evidence provided by the petitioner does not cover the POR.⁷⁰ Further, this information frequently contradicts the petitioner's arguments. For example, the petitioner provided data showing a steady decline over recent years of imports of Chinese HRC with the last data point showing a decline from 24.17 percent in 2017 to 13.65 percent in 2018.⁷¹ Moreover, data provided by the petitioner indicates that the average unit values (AUVs) of Korean imports increased by about 13 percent in 2018 (the start of the POR) from 2017.⁷² The petitioner provided no contemporaneous data that show how overcapacity in China is distorting prices in Korea.⁷³ Additionally, data provided by the respondents indicate that HRC imports from China into Korea have been steadily trending downward since 2012 (with only a slight increase from 2018 to 2019).⁷⁴ There is nothing that specifically shows market penetration of the Korean market by Chinese imports of HRC is upsetting the Korean HRC market. Data submitted by both the petitioner and the respondents show that in recent years, Korean import AUVs have risen, which contradicts the petitioner's claims.

With respect to the petitioner's contention that certain Korean HRC suppliers and Korean CWP producers attempt to compete by engaging in strategic alliances, Commerce agrees that the record evidence demonstrates that such strategic alliances likely exist in Korea.⁷⁵ In this review,

⁶⁵ See PMS Allegation at 8 and 9.

⁶⁶ *Id.*

⁶⁷ See PMS Allegations at Exhibit 31.

⁶⁸ See *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2018*, 86 FR 10533 (February 22, 2021).

⁶⁹ See PMS Allegations at 19.

⁷⁰ See Petitioner's Letter, "Certain Circular Welded Pipe from the Republic of Korea: Particular Market Situation Allegation and Supporting Factual Information – Quantitative Submission," dated July 23, 2020 at Exhibit 5.

⁷¹ *Id.*

⁷² *Id.*

⁷³ See Husteel PMS Comments at 14-18 and Exhibit 2.

⁷⁴ See Husteel PMS Comments at 20-21 and Exhibit 6A.

⁷⁵ See PMS Allegations at Exhibits 44 and 45.

the petitioner submitted the same exhibits as evidence as it did in the 2017-2018 review for this case, and in the preliminary decision memorandum (PDM) for that review, Commerce stated that “the record does not contain specific evidence showing that strategic alliances were directly created between HRC suppliers and CWP producers in the current POR,”⁷⁶ Nonetheless, these strategic alliances between certain Korean HRC suppliers and Korean pipe producers in the past are relevant as an element of our analysis, in that they may have created distortions in the prices of HRC in the past, and may continue to affect HRC pricing in a distortive manner during this POR and in the future.

With respect to the allegation of distortion present in the electricity market, consistent with the SAA, Commerce may find a PMS to exist where there is government control over prices to such an extent that home market prices cannot be considered to be competitively set. Commerce has previously found that electricity in Korea functions as a tool of the government’s industrial policy.⁷⁷ Furthermore, the largest electricity supplier, KEPCO, is a government-controlled entity. However, much of the data provided is not contemporaneous with the POR. Thus, there is no direct evidence to suggest that this factor creates such a substantial market distortion in Korea during the POR that a PMS determination is warranted.

The petitioner argues that global bulk shipping overcapacity during the POR, coupled with government subsidies to the Korean shipbuilding industry, distorted the acquisition prices for raw materials in the Korean steel market.⁷⁸ The petitioner also claims that the Australian iron ore industry is distorted due to government subsidization, and since Korea imports a majority of its iron ore from Australia, this distorts the cost of HRC.⁷⁹ The petitioner provides various articles and data originally submitted with the PMS allegations in the 2018-2019 review of *OCTG from Korea*.⁸⁰ However, many of these articles pre-date the POR, and the petitioner does not provide evidence connecting how these factors affect the HRC market. We note that in that same 2018-2019 review of *OCTG from Korea*, we determined that this factual information was insufficient to prove that global bulk shipping overcapacity and anomalies in the Australian iron ore market led to distortions in the Korean steel market.⁸¹ We are making the same determination in this review.

In this administrative review, we considered the six components of the petitioner’s PMS allegation, discussed, as a whole, based on their cumulative effect on the Korean market for the inputs to produce CWP. Based on the qualitative evidence submitted by the petitioner, Commerce preliminarily finds that the petitioner has not supported its allegation of a PMS.

⁷⁶ See Memorandum, “Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: 2017-2018,” dated January 9, 2020 at 12.

⁷⁷ See Memorandum, “Issues and Decision Memorandum for the Final Results of the 2014-2015 Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea,” dated April 10, 2017 at Comment 3.

⁷⁸ See PMS Allegation at 37-38.

⁷⁹ *Id.* at 40-41.

⁸⁰ *Id.* at Exhibit 53; see also Memorandum, “Decision Memorandum for the Preliminary Results of the 2018-2019 Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea,” dated January 15, 2021 (*OCTG from Korea*).

⁸¹ See Memorandum, “Oil Country Tubular Goods from the Republic of Korea: Preliminary Particular Market Situation Memorandum,” dated January 15, 2021 at 24-25.

Upon examining the data and exhibits that the petitioner provided in their allegation, we find the data and exhibits to be insufficient in proving that a PMS existed in Korea during the POR due to the lack of contemporaneous data and other evidence. For most of the evidence, the data and other evidence were for calendar year 2018 which only encompasses two months of POR. The data that the petitioner provided on HRC subsidization, Chinese HRC importation into Korea, strategic alliances, the Korean electricity market, global shipping capacity, and subsidization of Australian iron ore, are mostly from before the POR. Moreover, as noted above, the petitioner has not demonstrated the specific impact of each of these on the cost of production of CWP in the POR. Therefore, in light of the evidence on the record, Commerce determines that the evidence submitted in this allegation is insufficient to prove that a PMS existed in Korea during the POR.

B. Selection of Comparison Market

To determine whether there was a sufficient volume of sales in Korea to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S sales), we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third country market as the basis for comparison market sales, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this administrative review, we preliminarily determine that for both respondents, the volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of subject merchandise. Therefore, we used home market sales as the basis for NV in accordance with section 773(a)(1)(B) of the Act.

C. Affiliated Party Transactions and Arm's-Length Test

During the POR, Husteel reported that it neither made sales of the foreign like product to affiliated customers in the comparison market, as defined in section 771(33) of the Act, nor purchased raw material inputs from affiliated parties.⁸² Husteel obtained domestic inland freight from factory/warehouse to customer (INFLTCH) and domestic inland freight for U.S. sales from factory to port (DINLFTPU) from affiliated companies.⁸³ Based on the information Husteel provided, we preliminarily determine that these expenses were arm's length transactions.

Hyundai Steel reported sales to affiliated customers in the comparison market during the POR.⁸⁴ Hyundai Steel also obtained domestic inland freight from factory to warehouse (INLFTWH), domestic inland freight from factory/warehouse to customer (INFLTCH), domestic inland freight for U.S. sales from factory to port (DINLFTPU), international freight (INTNFRU), other freight

⁸² See Husteel AQR at A-2 (sales to unaffiliated customers in the home market) and A-10 (unaffiliated purchases of raw material inputs).

⁸³ See Husteel BCDQR at B-33-34 and C-30-31.

⁸⁴ See Hyundai Steel AQR at A-3.

services, and material inputs into production from affiliated companies.⁸⁵ Based on the information Hyundai Steel provided, we preliminarily determine that these expenses were all at arm's length with the exception of certain inputs.

Commerce may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.⁸⁶

Commerce excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because Commerce considered them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, "the Department may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."⁸⁷

To test whether Hyundai Steel's home market sales to affiliated customers were made at arm's-length prices, Commerce compared these prices to the prices of sales of comparable merchandise to unaffiliated customers, net of all discounts and rebates, movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.103(c) and in accordance with our practice, when the prices charged to an affiliated customer were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated customer, Commerce determined that the sales to that affiliated customer were at arm's-length prices.⁸⁸ In this review, Commerce excluded sales to affiliated customers in the home market that were not made at arm's-length prices from our analysis because we considered these sales to be outside the ordinary course of trade.⁸⁹

D. Level of Trade/CEP Offset

To the extent practicable, we determine NV based on sales of the foreign like product at the same level of trade (LOT) as the CEP sales.⁹⁰ Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁹¹ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁹² In order to determine whether the home market sales were at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.* the chain of distribution), including selling functions, class of consumer (customer category), and the level of selling expenses for each type of sale.

⁸⁵ See Hyundai Steel BCDQR at B-36-39 and C-30-34.

⁸⁶ See 19 CFR 351.403(c).

⁸⁷ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003) (*China Steel*), *aff'd*, 306 F. Supp. 2d 1291 (CIT

2004) (citing *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55355 (September 7, 2011)).

⁸⁸ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002).

⁸⁹ See 19 CFR 3351.102(b).

⁹⁰ See section 773(a)(1)(B)(i) of the Act and 19 CFR 351.412.

⁹¹ See 19 CFR 351.412(c)(2).

⁹² *Id.*

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOT for comparison market sales (*i.e.*, NV based on either home market or third country prices), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

When we are unable to match NV at the same LOT as the CEP, we may compare U.S. sales to comparison market sales at a different LOT. When this occurs and the difference in LOT is demonstrated to affect price comparability based on a pattern of consistent price differences between sales at a different LOT in the NV market under consideration, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP only, if the NV is established at a LOT which constitutes a more advanced stage of distribution than the LOT of the CEP, but there is no basis for determining whether the difference in the LOT between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), we grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.

Husteel

We examined the information obtained from Husteel regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed by Husteel for each channel of distribution.⁹³ Husteel reported that it has one channel of trade for all home-market sales and all its CEP sales.⁹⁴ Husteel reported that, after adjusting for functions performed in the United States, the CEP LOT would be less advanced than the home market LOT.⁹⁵

We find that Husteel did not provide source documentation, requested by Commerce in the initial questionnaires, that supports the performance of specific selling activities that each company claimed to have undertaken for different reported channels of distribution. Specifically, Husteel did not provide the quantitative analysis, also requested by Commerce in the initial questionnaires, that is substantiated with source documents to show how: (1) the expenses for sales made at different claimed LOTs impact price comparability; or (2) the claimed levels of intensity for the selling activities reported in the selling functions chart are quantitatively supported. Because Husteel's respective reported selling functions and intensities thereof were unsubstantiated, we find that there is insufficient information on the record to determine whether respective comparison market sales were made at a different LOT than U.S. sales.

The courts have confirmed that the mere existence of a CEP entity and CEP sales do not, in themselves, establish an entitlement to a CEP offset. In *Corus*, the Court stated, "CEP offset analysis thus compares the indirect selling activities that are undertaken outside the United States in support of the U.S. and comparison market sales. It is not automatic each time export price is constructed ... {t}he burden of proof is upon the claimant to prove entitlement ... (if a respondent claims an adjustment to decrease normal value, as with all adjustments which benefit

⁹³ See Husteel AQR at A-11-16, and Exhibit A-10 (Selling Functions Chart and Documents).

⁹⁴ *Id.* at A-13.

⁹⁵ *Id.* at A-14-15.

a responding firm, the respondent must demonstrate the appropriateness of such adjustment’).”⁹⁶ Moreover, Commerce recently explained the significance of the quantitative analysis as essential in supporting the claimed differences in selling functions and determining whether such differences are substantial in warranting a finding of sales being made at different LOTs.⁹⁷ Due to the absence of requested documentation and quantitative analysis, the record lacks any means of corroborating LOT claims for each respondent. Further, given the importance of the quantitative analysis to Commerce’s LOT analysis, we find that Husteel has not met its evidentiary burden. Accordingly, for Husteel, we have not made a preliminary LOT adjustment or CEP offset under sections 773(a)(7)(A) or (B) of the Act. Our determination, under identical circumstances, is supported by recent administrative precedents.⁹⁸

Hyundai Steel

We examined the differences in selling functions reported in Hyundai Steel’s responses to our requests for information. Hyundai Steel reported two types of customers in the home market: end-users and distributors.⁹⁹ The selling activities associated with the two types of customers did not differ; therefore, we consider all home-market sales to constitute one LOT. In the U.S. market, Hyundai Steel reported CEP sales of subject merchandise to HSU who then sells it to either unaffiliated customers or HC(USA) who, in turn, will then sell it to its own unaffiliated customers.¹⁰⁰ The selling activities associated with these two channels of distribution did not differ; therefore, we preliminarily consider all U.S. sales to constitute one LOT. We compared the selling activities at the CEP LOT with the selling activities at the home market LOT and found, after deducting selling functions corresponding to economic activities in the United States, *i.e.*, those performed by Hyundai Steel’s U.S. affiliates, that these levels were substantially dissimilar. Hyundai Steel reported that CEP sales involve no or lower levels of: (1) sales forecasting and strategic/economic planning/market research; (2) personnel training/exchange; (3) advertising; (4) freight and delivery arrangement; (5) sales/marketing; (6) order input/processing; (7) inventory maintenance; (8) engineering services/technical assistance; and (9) warranty service relative to sales at the home market level.¹⁰¹ Additionally, Hyundai Steel provided support for its claims that its home market selling activities were more advanced in the home market in the four core selling functions evaluated by Commerce: (1) sales and marketing support; (2) freight and delivery; (3) inventory maintenance; and (4) and technical support.¹⁰² Therefore, we preliminarily determine the home market sales are at a more advanced stage of distribution than the CEP LOT.

⁹⁶ See *Corus Engineering Steels Ltd. v. United States*, 27 CIT 1286, 1290 (2003) (*Corus*) (citing *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1315-16 (Fed. Cir. 2001) and quoting Statement of Administrative Action, H.R. Doc. No. 103-316 (1994) reprinted in 1994 U.S.C.C.A.N. 4040 at 829).

⁹⁷ See *Polyethylene Terephthalate Sheet from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 85 FR 44276 (July 22, 2020) (*PET Film Korea*), and accompanying IDM at Comment 4.

⁹⁸ See *Emulsion Styrene-Butadiene Rubber from Brazil: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 38847 (June 29, 2020), and accompanying IDM at Comment 1 (where Commerce declined to find the existence of different LOTs or grant a CEP offset when the record lacked sufficient quantitative evidence corroborating a respondent’s LOT claims); see also *PET Film Korea* IDM at Comment 4.

⁹⁹ See Hyundai Steel AQR at A-25.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at Exhibit A-13-A.

¹⁰² *Id.* and at Exhibit A-13-B.

Because there is only one LOT in the home market, we were unable to calculate a LOT adjustment based on Hyundai Steel's home market sales of the domestic like product, and we have no other information that provides an appropriate basis for determining a LOT adjustment. Moreover, because the CEP LOT did not exist in the home market, there is no basis for a LOT adjustment. We find that Hyundai Steel provided source documentation, requested by Commerce in the initial questionnaires, that supports the performance of specific selling activities that each company claimed to have undertaken for different reported channels of distribution. Specifically, Hyundai Steel provided documentation establishing that certain reported selling activities were undertaken in certain channels and not in others (*e.g.*, sales forecasting, market research, strategic/economic planning for comparison market sales, but not for sales to the United States). Further, Hyundai Steel also provided the quantitative analysis requested by Commerce in the initial questionnaires that is substantiated with source documents to show how: (1) the expenses for sales made at different claimed LOTs impact price comparability; or (2) the claimed levels of intensity for the selling activities reported in the selling functions chart are quantitatively supported. Accordingly, for Hyundai Steel's CEP sales, we made a CEP-offset adjustment in accordance with section 773(a)(7)(B) of the Act. The CEP offset adjustment to NV is subject to the offset cap, which is calculated as the sum of home market indirect selling expenses up to the amount of U.S. indirect selling expenses deducted from CEP.

E. Overrun Sales

Section 773(a)(1)(B) of the Act provides that NV shall be based on the price at which the foreign like product is first sold, *inter alia*, in the ordinary course of trade. Section 771(15) of the Act defines "ordinary course of trade" as the "conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind."

Hyundai Steel reported home market sales of "overrun" merchandise, *i.e.*, sales of products that failed to meet the original customer's order specifications because of differences in size, chemical components, and/or strength. In the past, we examined various factors to determine whether "overrun" sales are in the ordinary course of trade.¹⁰³ We have the discretion to choose how best to analyze the many factors involved in determining whether sales are made within the ordinary course of trade.¹⁰⁴ These factors include, but are not limited to, the following: (1) whether the merchandise is "off-quality" or produced according to unusual specifications; (2) the comparative volume of sales and the number of buyers in the home market; (3) the average

¹⁰³ See *China Steel*, 264 F. Supp. 2d. 1364-65; see also, *e.g.*, 2014-15 Prelim and accompanying PDM at 10, unchanged in 2014-15 Final.

¹⁰⁴ See *Laclede Steel Co. v. United States*, 19 CIT 1076, 1078 (1995).

quantity of an overrun sale compared to the average quantity of a commercial sale; and (4) price and profit differentials in the home market.¹⁰⁵

Based on our analysis of these factors and the terms of sale, we preliminarily determine that Hyundai Steel's overrun sales are outside of the ordinary course of trade. Because our analysis includes business proprietary information, see the Hyundai Steel Overruns Memorandum.¹⁰⁶

F. Cost of Production

In accordance with section 773(b)(2)(A)(ii) of the Act, Commerce requested cost information from Husteel and Hyundai Steel and they submitted timely responses.¹⁰⁷ We examined the respondents' cost data and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

1. Calculation of Cost of Production

We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative and financial expenses, in accordance with section 773(b)(3) of the Act. We relied on the COP data submitted by Husteel in their questionnaire responses for the COP calculation. Hyundai also reported purchases of minor inputs from affiliated suppliers.¹⁰⁸ In instances where an input is not a major input, section 773(f)(2) of the Act directs Commerce to determine whether the transactions between affiliates fairly reflect the amount usually incorporated in sales of the merchandise under consideration in the market under consideration. We compared the average purchase price of scrap on a per-metric-ton (MT) basis from affiliated and unaffiliated suppliers and determined that Hyundai purchased scrap below fair market value from its affiliated suppliers.¹⁰⁹ Therefore, we adjusted Hyundai's purchases of steel scrap from its affiliates to reflect a market price.

2. Test of Comparison Market Sales Prices

As required under sections 773(b)(1) and (2) of the Act, we compared the weighted average of the COP for the POR to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below cost test by subtracting from the gross unit price any

¹⁰⁵ See, e.g., *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews and Rescission of Administrative Review, in Part; 2014-2015*, 81 FR 12870 (March 11, 2016), and accompanying PDM at 10, unchanged in final, 81 FR 62712 (September 12, 2016).

¹⁰⁶ See Memorandum, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Hyundai Steel's Home Market Overruns," dated concurrently with this memorandum (Hyundai Steel Overruns Memorandum).

¹⁰⁷ See Husteel BCDQR and Hyundai Steel BCDQR.

¹⁰⁸ See Hyundai Steel BCDQR at Exhibit D-4.

¹⁰⁹ *Id.*

applicable movement charges, discounts, billing adjustments, direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of a respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because (1) they were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act and (2) based on our comparison of prices to the weighted average of the COPs, they were at prices which would not permit the recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act.

Our cost tests for both respondents indicated that, for home market sales of certain products, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales to determine NV.

G. Calculation of Normal Value Based on Comparison Market Prices

For those comparison products for which there were sales at prices above the COP for the respondents, we based NV on home market prices. We calculated NV based on prices to unaffiliated customers in Korea.¹¹⁰ We adjusted the starting price for foreign inland freight pursuant to section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in circumstances of sale (for imputed credit expenses, warranty expenses, and other selling expenses) in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and the subject merchandise.¹¹¹

IX. CURRENCY CONVERSION

Where appropriate, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. These exchange rates are available on the Enforcement and Compliance's website at <http://enforcement.trade.gov/exchange/index.html>.

¹¹⁰ See *supra* "Affiliated Party Transactions and Arm's-Length Test" section.

¹¹¹ See 19 CFR 351.411(b).

X. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

Agree

Disagree

3/19/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance