



A-580-876  
AR: 5/22/15-11/30/16  
Public Document  
ADCVDOpsII: DJG

January 2, 2018

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

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

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

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on welded line pipe (WLP) from the Republic of Korea (Korea), in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). The period of review (POR) is May 22, 2015, through November 30, 2016. The administrative review covers 24 producers/exporters of the subject merchandise. Commerce selected two respondents for individual examination, Hyundai Steel Company (Hyundai Steel), and SeAH Steel Corporation (SeAH). We preliminarily determine that sales of the subject merchandise have been made at prices below normal value (NV) during the POR.

## II. BACKGROUND

In December 2015, Commerce published in the *Federal Register* an AD order on WLP from Korea.<sup>1</sup> On December 1, 2016, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the AD order on WLP from Korea for the period May 22, 2015, through November 30, 2016.<sup>2</sup>

Pursuant to section 751(a)(1) of the Act, and 19 CFR 351.213(b)(1), the following parties submitted requests to conduct an administrative review: California Steel Industries, Tex-Tube

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<sup>1</sup> See *Welded Line Pipe from the Republic of Korea and the Republic of Turkey: Antidumping Duty Orders*, 80 FR 75056 (December 1, 2015).

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 81 FR 86694 (December 1, 2016).



Company, TMK IPSCO, Welspun Tubular LLC USA, Maverick Tube Corporation (Maverick), SeAH, Hyundai Steel, Husteel Co., Ltd. (Husteel), Nexteel Co. Ltd. (Nexteel), Stupp Corporation (Stupp Corp.), and American Cast Iron Pipe Company (ACIPCO).<sup>3</sup> On February 13, 2017, based on these timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of WLP from Korea.<sup>4</sup>

In the *Initiation Notice*, Commerce indicated that, in the event that we would limit the respondents selected for individual examination in accordance with section 777A(c)(2) of the Act, we would select mandatory respondents for individual examination based upon U.S. Customs and Border Protection (CBP) entry data.<sup>5</sup> On February 16, 2017, Commerce released U.S. import data from CBP for the purpose of respondent selection, and provided an opportunity for interested parties to comment on these data.<sup>6</sup> On February 21, 2017, we received comments on respondent selection from Hyundai Steel.<sup>7</sup>

In March 2017, after considering the large number of potential producers/exporters involved in this administrative review, and the resources available to Commerce, we determined that it was not practicable to examine all exporters/producers of subject merchandise for which a review was requested.<sup>8</sup> As a result, pursuant to section 777A(c)(2)(B) of the Act, we determined that we could reasonably individually examine the two largest producers/exporters accounting for the largest volume of WLP from Korea during the POR (*i.e.*, Hyundai Steel and SeAH).<sup>9</sup> Accordingly, in March 2017 we issued the AD questionnaire to these companies.

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<sup>3</sup> See letter from California Steel Industries, Tex-Tube Company, TMK IPSCO, Welspun Tubular LLC USA, entitled, “Welded Line Pipe from the Republic of Korea: Request for Administrative Review,” dated December 30, 2016; letter from Maverick, entitled, “Welded Line Pipe from the Republic of Korea: Request for Administrative Review,” dated December 30, 2016; letter from SeAH entitled “Antidumping Investigation of Welded Line Pipe from Korea — Request for Administrative Review,” dated December 30, 2016; letter from Hyundai Steel entitled “Antidumping Investigation of Welded Line Pipe from Korea — Request for Administrative Review,” dated December 30, 2016; letter from Husteel entitled “Welded Line Pipe from Korea, Case No. A-580-876: Request for Administrative Review,” dated December 30, 2016; letter from Nexteel entitled “Welded Line Pipe from the Republic of Korea: Administrative Review Request,” dated December 30, 2016; and letter from Stupp Corp. and ACIPCO entitled “Welded Line Pipe from the Republic of Korea: Request for Administrative Review,” dated December 30, 2016.

<sup>4</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 10457 (February 13, 2017) (*Initiation Notice*). Dongbu Steel Co., Ltd. was inadvertently omitted from the *Initiation Notice*. The initiation of the review for this company was published in *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 13795 (March 15, 2017).

<sup>5</sup> See *Initiation Notice*.

<sup>6</sup> See 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.

<sup>7</sup> See Letter from Hyundai Steel Company, “Welded Line Pipe from the Republic of Korea: Respondent Selection Comments,” dated February 21, 2017.

<sup>8</sup> See Memorandum, “Selection of Respondents for Individual Review,” dated March 7, 2017 (Respondent Selection Memorandum).

<sup>9</sup> In the underlying less-than-fair-value (LTFV) investigation, we found that, effective July 1, 2015, Hyundai HYSCO completed its merger with Hyundai Steel Company and no longer uses the HYSCO name. See *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015), and accompanying Issues and Decision Memorandum (IDM) at 1. Thus, in the Respondent Selection Memorandum, we combined entries from Hyundai Steel and Hyundai HYSCO in determining the respondents accounting for the largest volume of entries of subject merchandise during the period of investigation. Accordingly,

In April and May 2017, Hyundai Steel and SeAH, respectively, submitted timely responses to Commerce's AD questionnaire. From May through November 2017, we issued supplemental questionnaires to Hyundai Steel and SeAH. We received timely responses to the supplemental questionnaires from June through December 2017.

In July 2017, we extended the preliminary results of this review to no later than November 1, 2017.<sup>10</sup> On September 22, 2017, one of the petitioners in this proceeding, Maverick, submitted factual information demonstrating that Commerce should find that a particular market situation (PMS) existed in Korea during the POR.<sup>11</sup>

On October 3, 2017, we further extended the preliminary results of this review to no later than January 2, 2018.<sup>12</sup> On October 27, 2017, Commerce issued a letter inviting all interested parties to submit factual information and comments regarding the alleged PMS in this administrative review.<sup>13</sup> On November 8, 2017, and November 16, 2017, respectively, Maverick, Hyundai Steel, and SeAH submitted factual information and comments,<sup>14</sup> and rebuttal factual information and rebuttal comments,<sup>15</sup> concerning the PMS allegation.

### **III. SCOPE OF THE ORDER**

The merchandise covered by this order is circular welded carbon and alloy steel (other than stainless steel) pipe of a kind used for oil or gas pipelines (welded line pipe), not more than 24 inches in nominal outside diameter, regardless of wall thickness, length, surface finish, end finish, or stenciling. Welded line pipe is normally produced to the American Petroleum Institute (API) specification 5L, but can be produced to comparable foreign specifications, to proprietary grades, or can be non-graded material. All pipe meeting the physical description set forth above,

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our examination of Hyundai Steel, including the calculation of its cash deposit and assessment rates, includes entries made by Hyundai HYSCO prior to the date of the merger.

<sup>10</sup> See Memorandum, "Welded Line Pipe from the Republic of Korea: Extension of Deadline for Preliminary Results of 2015-2016 Antidumping Duty Administrative Review," dated July 20, 2017.

<sup>11</sup> See Letter from Maverick, "Welded Line Pipe from the Republic of Korea: Particular Market Situation Allegation and Factual Information," dated September 22, 2017 (Maverick PMS Allegation).

<sup>12</sup> See Memorandum, "Welded Line Pipe from the Republic of Korea: Extension of Deadline for Preliminary Results of 2015-2016 Antidumping Duty Administrative Review," dated October 3, 2017.

<sup>13</sup> See Letter to All Interested Parties, "2015-2016 Administrative Review of the Antidumping Duty Order on Welded Line Pipe from the Republic of Korea: Deadline for Submission of Factual Information Relating to Particular Market Situation Allegations," dated October 27, 2017 (PMS Letter to IPs).

<sup>14</sup> See Letter from Maverick, "Welded Line Pipe from the Republic of Korea: Submission of Factual Information Relating to Particular Market Situation Allegations," dated November 8, 2017; Letter from Hyundai Steel, "Welded Line Pipe from the Republic of Korea: Particular Market Situation Comments," dated November 8, 2017; and Letter from SeAH, "Administrative Review of the Antidumping Duty Order on Welded Line Pipe from Korea – Response to the Department's October 27 Request for Comments on 'Particular Market Situation Allegations,'" dated November 8, 2017.

<sup>15</sup> See Letter from Maverick, "Welded Line Pipe from the Republic of Korea: Particular Market Situation Comments," dated November 16, 2017; Letter from Hyundai Steel, "Welded Line Pipe from the Republic of Korea: Particular Market Situation Allegation Rebuttal Comments and Factual Information," dated November 16, 2017; and Letter from SeAH, "Administrative Review of the Antidumping Duty Order on Welded Line Pipe from the Republic of Korea – Response to the Department's October 27 Request for Comments on 'Particular Market Situation Allegation,'" dated November 16, 2017.

including multiple-stenciled pipe with an API or comparable foreign specification line pipe stencil is covered by the scope of this order.

The welded line pipe that is subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.5000, 7305.12.1030, 7305.12.5000, 7305.19.1030, 7305.19.5000, 7306.19.1010, 7306.19.1050, 7306.19.5110, and 7306.19.5150. The subject merchandise may also enter in HTSUS 7305.11.1060 and 7305.12.1060. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

#### **IV. DISCUSSION OF THE METHODOLOGY**

##### **A. 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 Hyundai Steel's and SeAH's sales of the subject merchandise from Korea to the United States were made at less than NV, Commerce compared the export price (EP) and constructed export price (CEP) to the NV as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

##### **1. 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 EPs (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, Commerce examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction 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 nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in LTFV investigations.<sup>16</sup>

In recent investigations, Commerce applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>17</sup> Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of

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<sup>16</sup> 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 *JBF RAK LLC v. United States*, 790 F.3d 1358, 1363-65 (Fed. Cir. 2015) ("{t}he fact that the statute is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties") (citations omitted).

<sup>17</sup> See, e.g., *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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 average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EPs (or 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 average-to-average 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.*, state) 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 period of review 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 EP (or 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, 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 account 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 average-to-transaction method to all sales as an alternative to the average-to-average 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 average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average 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 average-to-average 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 average-to-average 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 average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average 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 average-to-average 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 average-to-average 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.

## 2. Results of the Differential Pricing Analysis

For Hyundai Steel, based on the results of the differential pricing analysis, Commerce preliminarily finds that 65.00 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>18</sup> which confirms 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 those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. 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.

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<sup>18</sup> See Memorandum, "Preliminary Results Margin Calculation for Hyundai Steel," dated concurrently with this memorandum (Hyundai Steel Calculation Memo).

For SeAH, based on the results of the differential pricing analysis, Commerce preliminarily finds that 47.04 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>19</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, Commerce is applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test to calculate the weighted-average dumping margin for SeAH.

## **B. Product Comparisons**

In accordance with section 771(16) of the Act, we considered all products produced and sold by Hyundai Steel and SeAH in Korea during the POR that fit the description in the "Scope of the Order" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market for Hyundai Steel, and third country market for SeAH. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. Pursuant to 19 CFR 351.414(f), we compared U.S. sales of WLP to sales of WLP made in the comparison market within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the month of the last U.S. sale.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: epoxy finish, grade, outside diameter, wall thickness, end finish, and surface finish. Where there were no sales of identical or similar merchandise, we made product comparisons using constructed value (CV), as discussed in the "Calculation of Normal Value Based on Constructed Value" section below.<sup>20</sup>

## **C. Export Price and Constructed Export Price**

In accordance with section 772(a) of the Act, we calculated EP for certain of Hyundai Steel's sales where the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of the record. For the remainder of Hyundai Steel's sales, we used CEP because the merchandise under consideration was sold in the United States by U.S. sellers affiliated with Hyundai Steel, in accordance with section 772(b) of the Act. For SeAH, we used CEP because the merchandise

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<sup>19</sup> See Memorandum, "Preliminary Results Margin Calculation for SeAH," dated concurrently with this memorandum (SeAH Preliminary Calculation Memorandum).

<sup>20</sup> See section 773(a)(4) of the Act.

under consideration was sold in the United States by U.S. sellers affiliated with SeAH and EP, as defined by section 772(a) of the Act, was not otherwise warranted.

### Hyundai Steel

We based EP on packed prices to the first unaffiliated purchaser in the United States. We increased the starting price by the amount of billing adjustments, where appropriate, pursuant to 19 CFR 351.401(c). We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, U.S. brokerage and handling, and U.S. duty.

We calculated CEP based on packed prices to the first unaffiliated purchaser in the United States. We increased the starting price by the amount of billing adjustments, where appropriate, pursuant to 19 CFR 351.401(c). We made deductions from the starting price for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, U.S. brokerage and handling, and U.S. duty.

In accordance with section 772(d)(1) of the Act, we calculated CEP by deducting selling expenses associated with economic activities occurring in the United States, which include direct selling expenses (*i.e.*, imputed credit expenses, bank charges, and other direct selling expenses) and indirect selling expenses. Finally, we made an adjustment for CEP profit allocated to these expenses, in accordance with section 772(d)(3) of the Act. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Hyundai Steel and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

### SeAH

We calculated CEP based on packed prices to the first unaffiliated purchaser in the United States. We made adjustments, where appropriate, from the starting price for billing adjustments and early payment discounts. We made deductions for any movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, as appropriate, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight from port to warehouse, U.S. inland freight from warehouse to customer (offset by freight revenue), U.S. brokerage and handling, and U.S. customs and harbor maintenance fees. Regarding foreign inland freight, SeAH used an affiliated company to deliver its merchandise to the port of exportation. Because SeAH did not provide the same service to unaffiliated parties, nor did SeAH use unaffiliated companies for its deliveries, we were unable to test the arm's-length nature of the fees paid by SeAH. Therefore, we based these expenses on the affiliate's costs.<sup>21</sup>

In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which include direct

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<sup>21</sup> See SeAH Preliminary Calculation Memorandum.



selling expenses (*i.e.*, imputed credit expenses, warranty expenses, and bank charges) and indirect selling expenses. We recalculated U.S. credit expenses for SeAH's back-to-back sales using the period between factory shipment date and payment date.<sup>22</sup> We also made an adjustment for CEP profit allocated to these selling expenses, in accordance with section 772(d)(3) of the Act. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by SeAH and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.<sup>23</sup> Finally, in accordance with section 772(d)(2) of the Act, we deducted further manufacturing expenses in calculating CEP.

## **D. Normal Value**

### **1. Particular Market Situation**

#### **a. Background**

As noted above, in September 2017, Maverick submitted factual information demonstrating that Commerce should find that a PMS exists in Korea during the POR. For similar reasons that Commerce determined that a PMS existed in the 2014-2015 administrative review of oil country tubular goods (OCTG),<sup>24</sup> Maverick argued that a PMS existed in Korea which distorted the cost of production (COP) of WLP, based on the cumulative effects of: (1) Korean subsidies on 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 suppliers and Korean CWP producers; and (4) government involvement in the Korean electricity market.<sup>25</sup>

As a result, in October 2017, Commerce invited interested parties to submit factual information and comments regarding the alleged PMS in this administrative review. In this letter, we stated that "The Department has reason to believe or suspect that a PMS may exist in the current segment of the proceeding with respect to WLP costs of production, which warrants further examination in this administrative review."<sup>26</sup> In November 2017, Maverick, Hyundai Steel and SeAH submitted factual information and comments, as well as rebuttal factual information and rebuttal comments, concerning the PMS allegation.

#### **b. Interested Parties' Arguments**

Maverick asserts that a PMS exists in Korea based on both the individual and collective effects of Korean imports of HRC from China, strategic alliances, subsidies to Korean HRC producers, and distortive government control over electricity prices in Korea that Commerce observed in *OCTG 2014-2015 Final*. Maverick contends that Commerce's determination in *OCTG 2014-*

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> See *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 2014-2015 Final*), and accompanying IDM at Comment 3, unchanged in *Certain Oil Country Tubular Goods from the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Review; 2014–2015*, 82 FR 31750 (July 10, 2017).

<sup>25</sup> See Maverick PMS Allegation.

<sup>26</sup> See PMS Letter to IPs.

*2015 Final* is relevant to this administrative review because the same Korean producers and mills produce both WLP and OCTG, using similar processes, the same equipment, and the same inputs, including HRC and electricity. Maverick claims that the PMS in Korea has worsened since Commerce's PMS determination in *OCTG 2014-2015 Final* due to the continued flood of unfairly traded steel imports from China into the Korean market and weak demand in the Korean shipbuilding and pipe industries, as both of these have placed downward pressure on Korean steel prices. According to Maverick, as it also stated in the 2015-2016 administrative review of OCTG from Korea,<sup>27</sup> the sharp decline in the Korean shipbuilding industry has pushed large volumes of steel into the Korean pipe industry, which in turn is exporting large volumes of unfairly traded hot-rolled steel pipe to the United States. Maverick argues that, to combat the massive volume of steel imports from China and the decline in the shipbuilding industry, the Korean government is actively trying to bolster the Korean steel industry by increasing its subsidization of it.

Maverick urges Commerce to make separate adjustments to account for each of the aspects of its PMS allegation. Specifically, Maverick argues that, for Korean HRC subsidies, Commerce should adjust the respondents' HRC costs in the same manner as it did in the *OCTG 2014-2015 Final* (i.e., make an adjustment based on the countervailing duty (CVD) rates determined in *Hot-Rolled Steel from Korea*).<sup>28</sup> Maverick also asserts that Commerce should make an adjustment for HRC purchased from suppliers in China using the subsidy rates determined in a recent CVD final determination by the European Union on hot-rolled flat products from China or, alternatively, the CVD rates found in Commerce's recent final determination on cold-rolled steel flat products from China. Additionally, Maverick contends that, to account for the effect of overcapacity in China on the price of Japanese HRC imports into Korea, Commerce should make an adjustment to HRC purchased from Japanese suppliers. For this adjustment, Maverick proposes options that include the AD margins calculated in Commerce's 2016 final determination on hot-rolled steel flat products from Japan, the CVD rates from Commerce's Korean HRC and the European Union's CVD investigations into China, and Korean import data for hot-rolled steel to derive an adjustment factor. Regarding strategic alliances, Maverick argues that Commerce should collect additional information from respondents regarding their relationships with HRC suppliers outside the strategic alliances and make an adjustment based on the differences between the prices offered to WLP producers inside and outside the strategic alliances. Finally, Maverick argues Commerce should base electricity costs on industrial rates from Japan, New Zealand, or Italy.

Hyundai Steel observes that the PMS decision related to HRC used in OCTG production was specific to the OCTG AD administrative review should not automatically be applied to the instant review. Hyundai Steel notes that, while both OCTG and WLP use HRC as inputs to production, the differences between the two industries include the following: a) Hyundai Steel is

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<sup>27</sup> See Maverick PMS Allegation at Exhibit 29 (containing Letter from Maverick, "Certain Oil Country Tubular Goods from the Republic of Korea: Submission of Factual Information Relating to Particular Market Situation Allegations," dated August 7, 2017).

<sup>28</sup> See *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016), 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*).

an integrated producer which produces as well as purchases HRC for use in WLP production, unlike the respondents in the *OCTG 2014-2015 Final*; b) many of Maverick's allegations pertain to subsidies which are appropriately addressed in the context of a CVD case, which Commerce conducted on WLP and reached a negative determination;<sup>29</sup> c) adjusting Korean HRC costs based on rates from Commerce's CVD investigation of HRC from Korea is improper because the rates were based on adverse facts available (AFA), not subsidy findings for this POR; and d) not only are OCTG and WLP different products which use different types of HRC, but WLP is also produced using cut-to-length (CTL) plate. Hyundai Steel adds that, if Commerce were to consider any adjustment to its HRC purchase prices from unaffiliated suppliers, Commerce should rely on Hyundai Steel's own cost data as the basis for any such adjustment.

SeAH argues that Commerce's PMS determination in *OCTG 2014-2015 Final* was flawed and failed to identify any correlation between these alleged distortions and SeAH's costs. Accordingly, SeAH contends there is no evidence of a PMS in this review. In addition, SeAH raises the same issues as Hyundai Steel regarding Commerce's reliance on the CVD investigation of HRC from Korea to make an adjustment to Korean HRC costs for WLP production, asserting that the CVD finding was based on total AFA and is outdated. SeAH contends that, if Commerce were to consider alleged subsidies to Korean input producers relevant to its analysis in this review, Commerce should make an adjustment based on its recent final determination in the CVD investigation of CTL plate from Korea, which relied on the information provided by the respondent, rather than total AFA.<sup>30</sup>

c. Analysis

Section 504 of the Trade Preferences Extension Act of 2015 (TPEA)<sup>31</sup> 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 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 COP in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology."

In this administrative 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 HRC from China; (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 the *OCTG*

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<sup>29</sup> See *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015) (*WLP CVD Final*).

<sup>30</sup> See *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).

<sup>31</sup> See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA).

*2014-2015 Final*,<sup>32</sup> as well as the subsequent *OCTG 2015-16 Prelim*<sup>33</sup> and *CWP 2015-16 Prelim*,<sup>34</sup> the petitioner in each review alleged that a PMS existed in Korea based on the same four factors and, upon analyzing the four allegations as a whole, Commerce found that a PMS existed in Korea during that POR.

Consistent with our determinations in the aforementioned reviews, we preliminarily find that a PMS exists in Korea which distorts the COP of WLP. This PMS results from the collective impact of Korean HRC subsidies, Korean imports of HRC from China, strategic alliances, and government involvement in the Korean electricity market.

In this administrative review, we considered the four PMS allegations as a whole, based on their cumulative effect on the Korean WLP market through the COP for WLP and its inputs. Based on the totality of the conditions in the Korean market, Commerce finds that the allegations represent facets of a single PMS.

The information on the record shows government assistance in the production of HRC by the Korean government and purchases of HRC by the mandatory respondents from POSCO, which received such assistance.<sup>35</sup> The record evidence Maverick provided from *OCTG 2014-2015 Final* also shows that the assistance received by Korean hot-rolled steel producers totaled almost 60 percent of the cost of hot-rolled steel, the primary input into OCTG production.<sup>36</sup> Additionally, in *OCTG 2014-2015 Final*, HRC as an input of OCTG constituted approximately 80 percent of the cost of OCTG production; thus, we found that distortions in the HRC market have a significant impact on production costs for OCTG.<sup>37</sup> Further, as a result of significant overcapacity in steel production in China, which stems in part from the distortions and interventions prevalent in China's economy, we found that the Korean steel market has been flooded with imports of cheaper steel products from China, placing downward pressure on Korean domestic steel prices.<sup>38</sup> Accordingly, Commerce found in *OCTG 2014-2015 Final* that this situation, along with the Korean government heavily assisting the domestic steel production, distorted the Korean market prices of HRC, the main input in Korean OCTG production. Because HRC is also the main input in WLP production, our findings in *OCTG 2014-2015 Final* are applicable to these preliminary results.

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<sup>32</sup> See *OCTG 2014-2015 Final* at Comment 3.

<sup>33</sup> See *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 2015-16 Prelim*), and accompanying Preliminary Decision Memorandum (PDM) at 14-20.

<sup>34</sup> See *Circular Welded Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 57583 (December 6, 2017) (*CWP 2015-16 Prelim*), and accompanying PDM at 10-14.

<sup>35</sup> See Maverick PMS Allegation at Attachment 13, Exhibit 12 (containing Letter from Maverick, "Oil Country Tubular Goods from South Korea: Particular Market Situation Case Brief," dated March 1, 2017).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at Attachment 13, Exhibit 4 (containing Letter from Maverick, "Certain Oil Country Tubular Goods from the Republic of Korea: Information and Comments Requiring Immediate Action," dated November 25, 2015).

<sup>38</sup> *Id.* at Attachment 13, Exhibit 6 (containing Letter from Maverick, "Certain Oil Country Tubular Goods from the Republic of Korea: Particular Market Situations and Other Factual Information Submission," dated September 6, 2016).

With respect to Maverick's contention that certain Korean HRC suppliers and Korean WLP producers attempt to compete by engaging in strategic alliances, Commerce agrees that the record evidence supports finding that such strategic alliances exist in Korea.<sup>39</sup> Although the record does not contain specific evidence showing that strategic alliances directly created a distortion in HRC pricing in the current POR, Commerce nonetheless finds that these strategic alliances between certain Korean HRC suppliers and Korean WLP producers are relevant as an element of Commerce's analysis in that they may have created distortions in the prices of HRC in the past, and may continue to impact HRC pricing in a distortive manner during both the instant POR and in the future.

With respect to the allegation of distortion present in the electricity market, 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.<sup>40</sup> Moreover, electricity in Korea functions as a tool of the government's industrial policy and the largest electricity supplier, KEPCO, is a government controlled entity.<sup>41</sup> To be clear, our determination of a PMS in this review is not based solely upon any support from the government of Korea (GOK) for electricity. To the contrary, as we stated above, each of these allegations are contributing factors that, taken together, lead Commerce to conclude a PMS exists in Korea.

These intertwined market conditions suggest that the production costs of WLP, especially the acquisition prices of HRC in Korea, may not be reflective of the ordinary course of trade. Furthermore, as noted above, we determined in *OCTG 2014-2015 Final*, *OCTG 2015-16 Prelim*, and *CWP 2015-2016 Prelim* that those conditions did, in fact, impact the acquisition prices of HRC in Korea. Thus, based on Commerce's previous determinations and record evidence in this administrative review, we preliminarily find that various market forces result in distortions which impact the COP for WLP from Korea. Put another way, considered collectively, Commerce preliminarily finds that the allegations support a finding that a PMS exists during the POR in this administrative review.

Interested parties provided comments on the allegations relating to HRC imports from China, strategic alliances, Korean HRC subsidies, and electricity market distortions. Commerce disagrees with respondents that it would not be appropriate to make a PMS adjustment based on the CVD rates applied in *Hot-Rolled Steel from Korea* because those rates were based on total AFA and do not overlap with the instant POR. Regarding the fact that the CVD rates were based on total AFA, we disagree that this fact alone should discredit their use in making a PMS adjustment. We find that the respondents in the CVD investigation on *Hot-Rolled Steel from Korea* could have chosen to act to the best of their ability in responding to Commerce's requests for information, but presumably did not do so because full cooperation might have resulted in a higher CVD rate. As for the fact that the rates from the CVD investigation on *Hot-Rolled Steel from Korea* precede the instant POR, we note that these rates are still in effect for this proceeding because to date no review has been completed. As explained below, Commerce finds 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. Finally, we disagree with the respondent's argument

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<sup>39</sup> *Id.* at Attachment 13, Exhibit 4.

<sup>40</sup> See *OCTG 2014-2015 Final* at Comment 3.

<sup>41</sup> *Id.* See also *WLP CVD Final*, and accompanying IDM at 13-15.



that, because Commerce made a negative determination in the *WLP CVD Final*, Commerce has already examined the potential subsidization at issue in the PMS. However, we note that the PMS allegation in this review is for the HRC input used to produce WLP, not the WLP ultimately produced. Therefore, we find it appropriate to use the results of *Hot-Rolled Steel from Korea* to adjust the HRC input into WLP, consistent with the HRC input treatment in as we did in *OCTG 2014-2015 Final*, *OCTG 2015-16 Prelim*, and *CWP 2015-2016 Prelim*.

Thus, having preliminarily found that a PMS exists for the respondents' production costs for WLP, Commerce examined whether there was sufficient record evidence to quantify the impact of the PMS in order to potentially employ an alternative calculation methodology, as contemplated by section 504 of the TPEA.

Commerce preliminarily determines to make an upward adjustment to Hyundai Steel's and SeAH's reported costs for HRC because of the GOK's subsidization of HRC. For HRC purchased from Korean producers, as well as Hyundai Steel's self-produced HRC, Commerce has based this adjustment on the subsidy rates found for POSCO and all other producers of HRC in the final determination in *Hot-Rolled Steel from Korea*.<sup>42</sup> Commerce has quantified this adjustment as the net domestic subsidization rate (*i.e.*, the CVD rate, excluding all export subsidies).<sup>43</sup> In Commerce's view, these rates appropriately quantify the impact of the GOK's assistance in the production of hot-rolled steel products, which is integral to the PMS that Commerce has preliminarily found to exist.<sup>44</sup>

However, for HRC purchased from suppliers in China, we have not made an adjustment for these preliminary results. Commerce finds that the information on the record of this review does not permit us to quantify the effect of imports of HRC from China on Korean HRC inputs. We find that it would not be appropriate to make an adjustment based on either: 1) a subsidy determination by another administering authority (*i.e.*, the European Union); or 2) Commerce's CVD determination on cold-rolled steel from China because cold-rolled steel is not an input used in WLP production.

Moreover, because we are unable to quantify the effect of imports from China on Korean HRC, we likewise cannot quantify the effect of the price of HRC from China on Japanese HRC that is in turn imported into Korea. We find that it would not be appropriate to make an adjustment based on: 1) a European Union determination, for the reasons noted above; 2) rates from Commerce's AD final determination on hot-rolled steel flat products from Japan, since that proceeding did not measure the effect of HRC from China prices on Japanese HRC, but rather involved company-specific comparisons of Japanese prices to U.S. prices; or 3) import data, because we find there is insufficient record evidence that Japanese HRC prices are distorted and require an adjustment.

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<sup>42</sup> While the Department has found for these preliminary results that all four allegations are part of the Department's PMS finding, the record did not contain sufficient information to make adjustments specifically relating to the electricity and strategic alliances allegations. Therefore, in order to adjust for the PMS, the Department used record information relating to HRC.

<sup>43</sup> See Hyundai Steel Preliminary Calculation Memorandum and SeAH Preliminary Calculation Memorandum.

<sup>44</sup> We find it appropriate to adjust Hyundai Steel's self-produced HRC in this same manner because, as a Korean producer of HRC, Hyundai Steel's HRC production is affected by the same factors as other Korean HRC producers.

Commerce finds that strategic alliances could not be used to quantify the impact of the PMS because the limited data on the record of this review do not enable Commerce to quantify the impact of such alliances on the costs of HRC during this POR. Nonetheless, we continue to find that such alliances tend to impact the way customer-supplier relationships are structured and contribute to the existence of a PMS.

Furthermore, Commerce is unable to quantify the effect of the electricity market on the PMS. In particular, we find that the information on the record is insufficient for determining the impact of government intervention with respect to electricity on the cost to produce WLP.

Finally, Commerce notes that excess steel-production capacity has created market distortions across the globe. Excess steel-production capacity causes serious market distortions and contributes to the downturn in global steel markets, including significant price suppression, displaced markets, unsustainable capacity utilization, negative financial performance, shutdowns, and lay-offs. The deterioration in steel demand, along with continued capacity expansions, are likely to place further pressure on country-specific steel markets and create incentives for government interventions which will further distort the production costs and prices for a wide range of steel products.

Commerce will continue to develop the concepts and types of analysis that are necessary to address future allegations of PMS under section 773(e) of the Act.

## 2. Home Market Viability and Selection of Comparison Market

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of Hyundai Steel's and SeAH's home market sales of the foreign like product to the volume of their U.S. sales of subject merchandise, in accordance with section 773(a) of the Act and 19 CFR 351.404.

For Hyundai Steel, based on this comparison, we determined that, pursuant to 19 CFR 351.404(b), Hyundai Steel had a viable home market during the POR because the volume of Hyundai Steel's home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise. Consequently, pursuant to section 773(a)(1)(B)(i) of the Act and 19 CFR 351.404(c)(1)(i), we based Hyundai Steel's NV on its home market sales.

For SeAH, based on this comparison, we determined that the aggregate volume of SeAH's home market sales of the foreign like product was insufficient to permit a proper comparison with U.S. sales of the subject merchandise, pursuant to 773(a)(1)(C)(ii) of the Act. Therefore, we used

Canada as SeAH's comparison market, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404, because SeAH reported that this was its only viable third country market.

### 3. Affiliated Party Transactions and Arm's-Length Test

In this review, Hyundai Steel sold foreign like product to affiliated and unaffiliated customers in the home market, as defined in section 771(33) of the Act.<sup>45</sup> Consequently, we tested these sales to ensure that they were made at arm's-length prices, in accordance with 19 CFR 351.403(c). To test whether the sales to affiliates were made at arm's-length prices, we compared the unit prices of sales to affiliated and unaffiliated customers net of all direct selling and packing expenses. Pursuant to 19 CFR 351.403(c) and, in accordance with Commerce's practice, where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm's length.<sup>46</sup> Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.<sup>47</sup>

#### Affiliated Producer

On April 13, 2017, Hyundai Steel submitted a consolidated response to section A of Commerce's questionnaire, in which it indicated that it was affiliated with WLP producer Hyundai RB.<sup>48</sup> On June 8, 2017, we issued a supplemental questionnaire to Hyundai Steel requesting further information regarding its relationship with its affiliated producer in order to determine whether Hyundai Steel and Hyundai RB should be collapsed and treated as a single entity under 19 CFR 351.401(f). On June 20, 2017, Hyundai Steel and Hyundai RB each submitted timely responses to Commerce.<sup>49</sup> Hyundai Steel stated that, while it owned over five percent of Hyundai RB until September 30, 2016, it reduced its interest to less than five percent of Hyundai RB after this date.<sup>50</sup> Under section 771(33)(E) of the Act, 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." Moreover, because there is no other basis on the record for affiliation under section 771(33) of the Act, we preliminarily determine that Hyundai Steel and Hyundai RB are no longer affiliated parties under section 771(33)(E) of the Act. As a result, we preliminarily find no basis to consider whether these two companies should be collapsed and treated as a single entity, under 19 CFR 351.401(f).

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<sup>45</sup> SeAH did not make sales to affiliated parties in the comparison market during the POR.

<sup>46</sup> See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 and 102 percent in order for sales to be considered in the ordinary course of trade and used in the NV calculation).

<sup>47</sup> See section 771(15) of the Act and 19 CFR 351.102(b).

<sup>48</sup> See Hyundai Steel's submission entitled "Welded Line Pipe from the Republic of Korea: Hyundai Steel Company's Section A Questionnaire Response," dated April 12, 2017 (AQR), at page A-8 and A-14- A-16.

<sup>49</sup> See Hyundai Steel's submission entitled "Welded Line Pipe from the Republic of Korea: Hyundai Steel Company's collapsing Supplemental Questionnaire Response," dated June 20, 2017; and Hyundai RB's submission entitled "Welded Line Pipe from the Republic of Korea: Hyundai RB's Information Pertaining to the Department's Collapsing Supplemental Questionnaire," dated June 20, 2017.

<sup>50</sup> See Hyundai Steel's AQR at page A-8.

#### 4. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>51</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>52</sup> In order to determine whether the comparison market sales are 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 and class of customer (customer category).

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),<sup>53</sup> 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)(2) of the Act.<sup>54</sup>

When Commerce is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>55</sup>

In this administrative review, we obtained information from Hyundai Steel and SeAH regarding the marketing stages involved in making their reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution.<sup>56</sup> Our LOT findings are summarized below.

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<sup>51</sup> See 19 CFR 351.412(c)(2).

<sup>52</sup> *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying IDM at Comment 7 (*OJ from Brazil*).

<sup>53</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative (SG&A) expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

<sup>54</sup> See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>55</sup> See, *e.g.*, *OJ from Brazil* at Comment 7.

<sup>56</sup> See Hyundai Steel April 12, 2017 AQR at A-16 – A-23, and Exhibits A-6 – A-12; see also Hyundai Steel July 14, 2017, Supplemental QR at S-11- S-13 and Exhibits SA-11- SA-13; SeAH's April 5, 2017 Section A Questionnaire Response at 25 to 33 and Appendix A-5; and SeAH's July 26, 2017 Supplemental Questionnaire Response at pages 15-16 and 84.

## Hyundai Steel

In the home market, Hyundai Steel reported that it made sales through one channel of distribution (*i.e.*, direct shipments to end-users or distributors). Hyundai Steel reported that it performed the following selling functions for sales to all home market customers: sales forecasting; strategic/economic planning; personnel training/exchange; advertising; sales promotion; packing; inventory maintenance; order input/processing; direct sales personnel, sales/marketing support; market research; technical assistance; provide cash discounts; provide warranty service; and freight and delivery arrangement.

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery services; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Based on these selling function categories, we find that Hyundai Steel performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for its reported sales in the home market. Because Hyundai Steel performed the same selling functions at the same relative level of intensity for all of its home market sales, we determine that all home market sales are at the same LOT.

With respect to the U.S. market, Hyundai Steel reported that it made sales through three channels of distribution (*i.e.*, CEP sales through its wholly-owned U.S. subsidiary, Hyundai Steel USA Inc. (HSU) (Channel 1); CEP sales through an affiliate which sold subject merchandise to the United States through the affiliate's U.S. subsidiary (Channel 2); and EP sales through resellers (Channel 3)).

With respect to the U.S. LOT for Channel 1 and 2 sales, Hyundai Steel reported that it performed the following selling functions in Korea for its sales through these channels: packing; order input/processing; direct sales personnel; provide warranty service; and freight and delivery arrangement. Based on the selling function categories noted above, we find that with respect to Channel 1 and 2 sales, Hyundai Steel performed sales and marketing, freight and delivery services, and warranty and technical support for U.S. sales. Because Hyundai Steel performed the same selling functions at the same relative level of intensity for its U.S. sales in Channels 1 and 2, we determine that U.S. sales in these channels are at the same LOT (CEP LOT).

With respect to the U.S. LOT for Channel 3 sales, Hyundai Steel reported that it performed the following selling functions for sales to U.S. customers: sales forecasting; strategic/economic planning; personnel training/exchange; advertising; sales promotion; packing; order input/processing; direct sales personnel; sales/marketing support; market research; technical assistance; and freight and delivery arrangements. Based on the selling function categories noted above, we find that Hyundai Steel performed sales and marketing; freight and delivery; and warranty and technical support for EP sales. Because there was only one channel of distribution for EP sales, we find that there is one LOT for EP sales (EP LOT).

We compared the EP LOT to the home market LOT and found that the selling functions Hyundai Steel performed for its home market customers are virtually the same as those performed for its U.S. customers. The only differences are that Hyundai Steel provides warranty services and cash



discounts for a limited number of home market customers, but not for its customers for EP sales. However, these differences in two selling activities affecting a limited number of sales are not sufficient to determine that Hyundai Steel's EP LOT is different from the home market LOT. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that sales to the home market during the POI were made at the same LOT as EP sales. Consequently, we matched EP sales to home market sales at the same LOT, and no LOT adjustment was warranted.

We also compared the CEP LOT to the home market LOT and found that the selling functions Hyundai Steel performed for its home market customers are at a more advanced stage of distribution than those performed for its U.S. customers. That is, there is a broader range of selling functions performed for home market sales than for CEP sales, and these functions are performed at a higher level of intensity in the home market. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that home market sales during the POI were made at a different LOT than CEP sales. Because Hyundai Steel's home market LOT is at a more advanced stage of distribution than its CEP LOT, and no LOT adjustment is possible, a CEP offset is warranted. Accordingly, we granted a CEP offset to Hyundai Steel, pursuant to section 773(a)(7)(B) of the Act.

#### SeAH

In the Canadian market, SeAH reported that it made sales through two channels of distribution: 1) back-to-back sales through its U.S. affiliate, Pusan Pipe America (PPA), to unaffiliated Canadian customers; and 2) sales to unaffiliated Canadian customers from State Pipe's Canadian warehouse of merchandise purchased from PPA. SeAH reported that it performed the following selling functions for all Canadian sales, regardless of channel of distribution: order input/processing, inventory maintenance, packing, and provide freight and delivery.

As noted above, selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery services; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Based on these selling function categories, we find that SeAH performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing, for its reported sales to customers in Canada. Because SeAH performed the same selling functions at the same relative level of intensity for all of its Canadian market sales, we determine that all Canadian market sales are at the same LOT.

In the U.S. market, SeAH reported that it made sales through three channels: 1) back-to-back sales through its U.S. affiliate PPA to unaffiliated U.S. customers; 2) sales to unaffiliated U.S. customers from State Pipe's U.S. warehouse of merchandise purchased from PPA; and 3) sales of further manufactured merchandise from PPA's inventory. For all three channels of distribution, SeAH reported that it performed the following selling functions for all sales to U.S. customers: order input/processing, inventory maintenance, packing, and provide freight and delivery. Based on these selling function categories, we find that SeAH performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for its reported sales to customers in the United States. Because SeAH performed the same selling

functions at the same relative level of intensity for all of its U.S. sales, we determine that all U.S. sales are at the same LOT.

Finally, we compared the U.S. LOT to the Canadian LOT and found that the selling functions SeAH performed for its sales to its U.S. and Canadian customers are the same. Therefore, we preliminarily determine that SeAH's sales to Canada during the POR were made at the same LOT as its U.S. sales. Consequently, we matched U.S. sales to Canadian market sales at the same LOT, and no LOT adjustment was warranted.

## 5. Cost of Production Analysis

Under the Trade Preferences Extension Act of 2015, numerous amendments to the AD and CVD laws were made. Pursuant to the amendment of section 773(b)(2)(A) of the Act, Commerce required that respondents provide CV and COP information to determine if there were reasonable grounds to believe or suspect that sales of foreign like product had been made at prices that represented less than the COP of the product.

### a. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses.<sup>57</sup>

#### Hyundai Steel

We relied on the COP data submitted by Hyundai Steel, except as follows:<sup>58</sup>

- We adjusted the reported HRC input costs to reflect the PMS, as discussed above.
- We adjusted the costs of certain services provided by affiliated parties in accordance with sections 773(f)(2) and 773(f)(3) of the Act.
- We revised the G&A expense rate numerator to exclude bad debt expenses. These expenses were added to the indirect selling expense calculation, as noted below.

#### SeAH

We relied on the COP data submitted by SeAH, except that we adjusted the reported HRC input costs to reflect the PMS, as discussed above.

### b. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs

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<sup>57</sup> See "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses.

<sup>58</sup> See Hyundai Steel Calculation Memo.

within a reasonable period of time. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, movement charges, actual direct and indirect selling expenses, and packing expenses.

c. Results of the COP Test

In determining whether to disregard comparison market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: ) 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 COPs for the POI, 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.

We found that, for certain products, more than 20 percent of Hyundai Steel's and SeAH's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

6. Calculation of NV Based on Comparison Market Prices

Hyundai Steel

We calculated NV based on prices to unaffiliated customers. We increased, where appropriate, the starting price to account for billing adjustments, early payment discounts, and late payment fees, in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for inland freight, under section 773(a)(6)(B)(ii) of the Act.

For comparisons made to EP sales, we made adjustments for differences in circumstances of sale pursuant to section 773(a)(6)(C)(iii) of the Act. We made circumstance of sale adjustments by deducting home market direct selling expenses (*i.e.*, imputed credit) and adding U.S. direct selling expenses (*i.e.*, imputed credit), where appropriate.

For comparisons to CEP sales, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we deducted from NV direct selling expenses (*i.e.*, imputed credit). We made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on home market sales or the indirect selling expenses deducted from the starting price in calculating CEP. We revised indirect

selling expenses incurred in Korea to include bad debt expenses that Hyundai Steel included in its G&A ratio calculation, as discussed above.<sup>59</sup>

When comparing EP and CEP sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of 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 product and subject merchandise.<sup>60</sup> For comparisons to both EP and CEP sales, we also deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

### SeAH

We calculated NV based on prices to unaffiliated customers. We decreased, where appropriate, the starting price to account for billing adjustments, in accordance with 19 CFR 351.401(c). We made a deduction from the starting price for any movement expenses, under section 773(a)(6)(B)(ii) of the Act, which included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, Canadian inland freight from port to warehouse, Canadian inland freight from warehouse to customer (offset by freight revenue), and Canadian brokerage and handling. Because SeAH used the same affiliated company to deliver third country and CEP sales to the port, we made the same adjustment to foreign inland freight as noted above.<sup>61</sup>

For comparisons to CEP sales, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we deducted from NV direct selling expenses (*i.e.*, imputed credit, warranty expenses, and bank charges). We recalculated imputed credit expenses for back-to-back sales in the same manner described above for CEP sales.<sup>62</sup>

Furthermore, when comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of 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 product and subject merchandise.<sup>63</sup> We also deducted comparison market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

## 7. Calculation of NV Based on CV

For Hyundai Steel and SeAH, where we were unable to find a comparison market match of identical or similar merchandise, we based normal value on CV in accordance with section

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<sup>59</sup> See Hyundai Steel Calculation Memo.

<sup>60</sup> See 19 CFR 351.411(b).

<sup>61</sup> See SeAH Sales Calculation Memo.

<sup>62</sup> *Id.*

<sup>63</sup> See 19 CFR 351.411(b).

773(a)(4) of the Act. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Hyundai Steel's and SeAH's material and fabrication costs, SG&A expenses, profit and U.S. packing costs. We calculated the COP component of CV for each respondent as described above in the "Calculation of Cost of Production" section of this memorandum. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized in connection with the production and sale of the foreign like product at the most similar LOT as the U.S. sale, as discussed above, in the ordinary course of trade, for consumption in the comparison market.

Finally, we made adjustments to CV for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For Hyundai Steel, we also made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on home market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

#### **E. Currency Conversion**

Commerce made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

#### **V. RECOMMENDATION**


We recommend applying the above methodology for these preliminary results of review.



Agree

Disagree

1/2/2018

X 

Signed by: CHRISTIAN MARSH

Christian Marsh  
Deputy Assistant Secretary  
for Enforcement and Compliance