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June 7, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of
Antidumping Duty Administrative Review of Circular Welded
Non-Alloy Steel Pipe from the Republic of Korea; 2015-2016

Summary

We analyzed the comments filed in the administrative review of the antidumping duty (AD) order on circular welded non-alloy steel pipe (CWP) from the Republic of Korea (Korea) for the period of review (POR) November 1, 2015, through October 31, 2016. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues for which we have received comments and rebuttal comments from interested parties:

- Comment 1: Particular Market Situation
- Comment 2: Additional Particular Market Situation Adjustments
- Comment 3: Allegations of Improper Political Influence
- Comment 4: Differential Pricing
- Comment 5: Universe of Sales (Husteel Co., Ltd. (Husteel))
- Comment 6: Certain Grades Sold (Husteel)
- Comment 7: Universe of Sales (Hyundai Steel Company (Hyundai Steel))
- Comment 8: Advertising Expenses (Hyundai Steel)
- Comment 9: Assessment Rates (Hyundai Steel)



Background

On December 6, 2017, the Department of Commerce (Commerce) published the *Preliminary Results* of the administrative review.¹ We invited interested parties to comment on the *Preliminary Results* and received case and rebuttal briefs from interested parties.²

Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018.³ Because the new deadline was on a non-business day, in accordance with Commerce's practice, the revised deadline for the final results of this review became the next business day, April 9, 2018. On March 16, 2018, we postponed the final results of this review until June 7, 2018.⁴

Scope of the 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.⁵

¹ See *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) (*Preliminary Results*).

² See the case briefs from Wheatland Tube, Husteel Co., Ltd., Hyundai Steel Company, and SeAH Steel Corporation dated January 12, 2018, and the rebuttal briefs from Wheatland Tube, Husteel Co., Ltd., Hyundai Steel Company, and SeAH Steel Corporation dated January 23, 2018.

³ See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by three days.

⁴ See Memorandum, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated March 16, 2018.

⁵ 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.

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.

Rates for Respondents Not Selected for Individual Examination

For the respondents not selected for individual examination, *i.e.*, AJU Besteel, NEXTEEL, and SeAH Steel Corporation (SeAH), we used the same calculation methodology we used in the *Preliminary Results*.⁶ The margin changes for Husteel and Hyundai Steel resulted in a margin change for the respondents not selected for individual examination for the final results of this review. The final rate for the five non-selected respondents subject to this review is 19.28 percent.

Discussion of the Issues

Comment 1: Particular Market Situation

Background:

In the *Preliminary Results*, we determined that a particular market situation (PMS) existed in Korea which distorted the cost of production (COP) of CWP, based on the cumulative effects of: (1) Korean subsidies on the hot rolled steel coil (HRC) input; (2) Korean imports of HRC from China; (3) strategic alliances between Korean HRC and CWP producers; and (4) distortions in the Korean electricity market. In the *Preliminary Results*, we quantified the impact of the PMS in Korea by making an upward adjustment to the respondents' reported HRC costs, basing that adjustment on the subsidy rates, net of export subsidies, from the countervailing duty (CVD) investigation in *HRS from Korea*.⁷

Husteel's Comments:

Commerce's determination that a PMS exists is contrary to law and not based on substantial record evidence.

- The PMS determination from *OCTG from Korea POR I*⁸ and the CVD rates from the *HRS from Korea* investigation are outdated.

⁶ See *Preliminary Results* and accompanying Preliminary Decision Memorandum at 4.

⁷ 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) (*HRS from Korea Final Determination*), as amended in *Certain Hot-Rolled Steel Flat Products from Brazil and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders*, 81 FR 67960 (October 3, 2016) (collectively, *HRS from Korea*).

⁸ 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 from Korea POR I*) and accompanying Issues and Decision Memorandum at Comment 3.

- Commerce’s PMS determination in *OCTG from Korea POR I*, relied upon by Wheatland⁹ in its allegation in this case and by Commerce in the *Preliminary Results*, is outdated and should not be applied to this case.
- The evidence presented in the allegation from the *OCTG from Korea POR I* and relied upon by Commerce in that determination are not relevant to this review or contemporaneous with this POR and therefore should not be relied upon.
- The CVD rates from the *HRS from Korea* investigation have been superseded by the most recent CVD proceedings involving POSCO and Hyundai Steel.¹⁰
- The CVD law is the only legitimate mechanism for addressing alleged unlawful subsidies.
 - The structure of the statute and the antidumping (AD) and CVD laws indicate that separate and distinct remedies are to be used to address AD and CVD allegations.
 - Commerce’s CVD determination in the *HRS from Korea* investigation, in conformance with the CVD law, is based specifically on that investigation and its facts and not the subject merchandise at issue in this review.
- Application of the CVD rates of POSCO and Hyundai Steel to Husteel amounts to applying adverse facts available (AFA) to a cooperative respondent.
 - The CVD rates used by Commerce to adjust Husteel’s costs, taken from *HRS from Korea*, are undeniably based almost exclusively on the use of AFA.
 - The statute dictates that in order to apply AFA to a respondent, Commerce must find that the respondent has failed to cooperate by not acting to the best of its ability to comply with a request for information.
 - The application of an AFA rate to a cooperating respondent is particularly inappropriate in this case, as Commerce found in *HRS from Korea* that the total AFA rate calculated for POSCO could not be used as the basis for calculating the rate for the non-reviewed respondents in that investigation.¹¹
- Record evidence refutes Commerce’s finding that a PMS exists in the Korean market by virtue of the combined impact of HRS subsidies to POSCO, Chinese imports, strategic alliances, and electricity distortions.
 - Commerce’s practice regarding the analysis of PMS allegations has evolved to recognize that a PMS determination must be based on quantitative evidence of cost distortions for particular producers in a particular market, rather than merely generalized assertions.¹²

⁹ The petitioner, Wheatland Tube Company (Wheatland), is a domestic producer of CWP.

¹⁰ See *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review and Rescission of Countervailing Duty Administrative Review, in Part*, 82 FR 39410 (August 18, 2017) (*CTL Plate from Korea*) and accompanying Issues and Decision Memorandum at 7.

¹¹ See *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (Aug. 12, 2016).

¹² See, e.g., Letter from Husteel, “Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, Case No. A-580-809: Particular Market Situation Allegation Comments,” dated November 13, 2017 (Husteel PMS Comments) at Attachment 9 (Memorandum, “2014-2016 Antidumping Duty Administrative Review of Certain Steel Nails from the Republic of Korea: Post-Preliminary Decision on Particular Market Situation Allegation,” dated October 23, 2017 (Nails from Korea Post-Prelim Memo) at 9); see also *Steel Concrete Reinforcing Bar from*

- The evidence provided in Wheatland's PMS allegation provides no specific quantitative evidence in support of its allegation that a PMS exists in Korea or that the costs of the respondents do not accurately reflect the cost of production in the ordinary course of trade for the respondents here.
- Commerce's determination that the Korean domestic steel market is distorted is not supported by record evidence, and Wheatland's PMS allegation does not fill the gap.
 - Prices for HRS in Korea are in line with world market prices and do not demonstrate any distortion due to a PMS.
- Commerce's determination that electricity prices in Korea contribute to a PMS is not supported by record evidence, and Wheatland's PMS allegation does not provide the necessary support.
 - Although there is government involvement in the electricity market in Korea, Commerce has repeatedly found in recent cases - including HRS from Korea - that electricity in Korea is not being provided for less than adequate remuneration.¹³
 - Commerce's determination that Korean government involvement in the electricity market contributes to a PMS goes against these determinations and thus fails to establish that electricity contributes to a PMS in the Korean market.
 - The petitioner's allegation on this issue likewise provides no evidence of a PMS in the Korean market due to electricity prices or that the electricity costs of the respondents are do not reflect prices in the ordinary course of trade.
- Commerce's determination that strategic alliances contribute to a PMS is not supported by record evidence, and Wheatland has provided no supporting evidence to fill the gap.
 - Commerce's determination that strategic alliances may have caused a PMS in this case is unsupported by the record evidence and should be reversed for the final results.
 - Commerce points to no evidence of the Korean market being distorted by these alliances, and provides no analysis of the respondents input prices and how they do not reflect costs in the ordinary course of trade due to strategic alliances.

Hyundai Steel's Comments:

Commerce should find that no PMS exists with respect to Hyundai Steel's HRC inputs.

- Although both the OCTG case and the instant case involve HRC and pipe production, there are key differences. By using the results from OCTG in this review, Commerce has disregarded these important factual differences.

Taiwan: Final Determination of Sales at Less Than Fair Value, 82 FR 34925 (July 27, 2017) (*Rebar from Taiwan*) and accompanying Issues and Decision Memorandum at comment 1; *Biodiesel from Argentina: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part*, 82 FR 50391 (October 31, 2017) (unchanged in final; 83 FR 8837, March 1, 2018 (*Biodiesel from Argentina Final*)) (collectively, *Biodiesel from Argentina*) and accompanying Issues and Decision Memorandum; and *Biodiesel from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 50379 (October 31, 2017) (unchanged in final; 83 FR 8835, March 1, 2018 (*Biodiesel from Indonesia Final*)) (collectively, *Biodiesel from Indonesia*) and accompanying Issues and Decision Memorandum.

¹³ See *HRS from Korea Final Determination*, 81 FR 53439, and accompanying Issues and Decision Memorandum at 36-53.

- Hyundai Steel is an integrated producer. While it does purchase some hot rolled coil from unaffiliated parties, Hyundai Steel also produces its own HRC for use in circular welded pipe production.
- Adjusting Hyundai Steel's reported costs based on an AFA rate assigned to an unaffiliated supplier does not make any commercial sense and is unmoored from any record information concerning the cost of hot rolled steel in the ordinary course of trade.
- Hyundai Steel was one of the respondents in *HRS from Korea*.
 - Even if Commerce were to determine that the adjustment is warranted, any adjustment should be capped at Hyundai Steel's own rate in the investigation rather than the rate for another company.
 - Commerce's *Preliminary Results* are contrary to the statute because Commerce did not consider the fact that Hyundai Steel's costs of production, in fact, accurately reflect the cost of production in the ordinary course of trade.
- POSCO's CVD rate from an unrelated proceeding provides no grounds for an affirmative PMS finding in this review.
 - Commerce's determination in *HRS from Korea* with respect to POSCO was based entirely on AFA and POSCO's alleged failure to cooperate in that segment of the proceeding covering calendar year 2014.
 - Commerce has recently confirmed in a more recent CVD investigation, *CTL Plate from Korea*, which covers calendar year 2015 and was based on actual calculations rather than AFA, that POSCO does not actually receive the subsidies for which it applied an AFA rate in the hot rolled steel CVD investigation.¹⁴
 - Should Commerce continue to apply an adjustment based on a CVD rate in the final results of this administrative review, Commerce should use the more recent rates in *CTL Plate from Korea*.

There is no ground for an affirmative PMS finding with respect to Chinese HRC.

- Hyundai Steel sourced very little hot rolled steel from Chinese producers during this review period.
- Hyundai Steel is itself a producer of hot rolled coil.
 - To the extent the market is "distorted" because of imports from China, such distortion cannot indicate that the actual cost of production in the ordinary course of trade is greater than Hyundai Steel's own costs.
- Imports from China, accounting for only approximately 20 percent of total imports into Korea, are not of a volume significant enough to impact the Korean market, which operates under normal market conditions.
- Overcapacity of Chinese steel is not directed towards the Korean market and therefore is not "particular" to the "market situation" in Korea.

¹⁴ See *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review and Rescission of Countervailing Duty Administrative Review, in Part*, 82 FR 39410 (August 18, 2017) (*CTL Plate from Korea*) and accompanying Issues and Decision Memorandum at 7.

- If Chinese imports were truly depressing prices in Korea, HRC producers like POSCO would have no reason to sell such product to compete with low-priced Chinese imports.
 - For example, Hyundai Steel, as a producer of HRC, would cease production and would not use its own production as an input into circular welded pipe.
- Record evidence supports a negative PMS finding with respect to electricity.
 - KEPCO, the largest electricity supplier in Korea, sold electricity at an operating profit ratio, which was much higher than the average profit ratio of listed companies in Korea.
 - The record shows that KEPCO's electricity price is competitive as compared to other countries due to advanced technologies and reliance on low-cost nuclear power plants.
 - The record shows that electricity prices in Korea are on par with those in the Czech Republic, a country with comparable GDP to Korea.
 - There is nothing aberrant with respect to Korean electricity prices.
- Hyundai Steel's reported HRC costs were incurred within the ordinary course of trade, as recognized by Commerce's current practice.
 - The record shows that Hyundai Steel's HRC input prices are at prices equal to or greater than various record benchmarks, thus demonstrating that there is nothing unusual or outside the ordinary course of trade concerning Hyundai Steel's purchases.
- Commerce's PMS analysis has evolved since *OCTG from Korea POR I*.
 - Commerce's standards of proof for finding, and quantifying a PMS have changed since *OCTG from Korea POR I*.
 - Commerce's evolved standard must guide Commerce's final results in the current review.
 - Commerce in other cases has declined to adopt the nebulous and unsupported "totality-of-the-circumstances" test employed in *OCTG from Korea POR I* in favor of a data-driven, quantitative analysis.
 - Applying Commerce's evolved PMS analysis, the record for this POR makes clear that Hyundai Steel's Korean HRC costs are reflective of market principles and costs incurred in the ordinary course of trade.
- Commerce should reverse its preliminary use of AFA CVD calculations in Hyundai Steel's normal value calculations
 - If Commerce continues to make an adjustment based on the petitioner's PMS allegation, Commerce should modify its calculations to ensure that the adjustment is not applied based on HRC purchases which were not used in the production of subject merchandise.
 - Commerce's preliminary PMS findings with respect to the alleged strategic alliance between pipe and steel producers has been fully discredited by the Court of International Trade.
 - Commerce made no effort on this record to confirm or corroborate its suspicion of the existence of a "strategic alliance" between Hyundai Steel and its suppliers or how that might have contributed to a PMS.

- Commerce has glossed over the fact that Commerce and the Court of International Trade has already addressed these arguments and rejected them.¹⁵

SeAH's Comments:

The *Preliminary Results* did not make the factual findings required by the statute before any adjustment to cost can be made for a PMS.

- Finding that a PMS exists does not, by itself, justify any adjustment to the respondents' reported costs.
 - An adjustment is permitted only if Commerce also finds that the respondents' cost of input materials and processing is less than the cost of production of those inputs in the ordinary course of trade.
 - Otherwise Commerce must rely solely on the costs recorded by the respondent in its normal accounting records.
 - Until Commerce demonstrates that the prices paid by the respondents for hot-rolled coil and/or other inputs did not accurately reflect the cost of production in the ordinary course of trade, Commerce must revise its calculations to eliminate any PMS adjustment.
- Commerce did not provide a legally sufficient explanation for its conclusion that a PMS exists in this case
 - Commerce has not provided any explanation in *OCTG from Korea POR 1* or in its preliminary determination in the CWP review as to how the four alleged distortions combine to create a PMS when none of them individually had done so.
 - Instead, Commerce provided only a conclusory assertion that "each of these allegations are contributing factors that, taken together, lead Commerce to conclude a PMS exists.
- Commerce cannot lawfully rely on the determination in *HRS from Korea* as evidence that the Korean producers of HRC received subsidies.
 - The evidence that those subsidies existed is found in the questionnaire responses and other information placed on the record of *HRS from Korea*; none of that information has been placed on the record of this review.
 - It is well-settled that a determination in a previous case is binding on the parties in a subsequent case only in limited situations.
 - If Commerce wishes to make a determination of subsidies to POSCO that is binding with respect to the parties to the CWP review, it must place the entire record of the *HRS from Korea* CVD investigation on the record of this review, and give the parties an opportunity to comment on that evidence and to submit rebuttal factual information.
 - Because Commerce has not done so, any reliance on the previous findings in the CVD investigation of *HRS from Korea* to find that a PMS exists in this review would constitute a violation of the respondents' due process rights.
- The evidence on the record does not support a finding of a PMS with respect to strategic

¹⁵ See *Husteel v. United States*, 98 F.3d 1315, 1359 (CIT 2015).

alliances.

- Commerce has consistently found that there is no affiliation, through strategic alliances or otherwise, between SeAH and Korean HRC producers.
- Husteel has reported no purchases of raw material inputs from affiliates.
- Hyundai Steel is an integrated steel producer that does not have purchases from legally separate affiliated steel producers.
- Commerce has explicitly found that SeAH and other Korean pipe and steel producers did not obtain any subsidy benefits from Korean electricity pricing.
- The subsidy finding with respect to POSCO was based on AFA due to POSCO's alleged non-cooperation and not on evidence of actual subsidies received by POSCO.
 - Even if the subsidies found in that case were real, there is no evidence that POSCO passed them along to customers in the form of lower prices. Commerce itself has found that the Korean government's subsidies to POSCO were much lower in 2015 (a rate of 4.31 percent) than they were in 2014.
- Commerce's preliminary finding that imports of hot-rolled coil from China put downward pressure on Korean domestic steel prices is equally unpersuasive.
 - The Korean government has not made any determinations that the Chinese producers have been dumping hot-rolled coil in Korea, and there is no evidence indicating that the Chinese producers charged prices in Korea that were below their cost of production in the ordinary course of trade.

Nexteel's Comments:

NEXTEEL supports the case briefs and arguments submitted by Husteel, Hyundai Steel, and SeAH (collectively, the respondents).

Wheatland's Rebuttal Comments:

Commerce correctly found that a PMS exists.

- There has been no change in Commerce's analysis of a PMS as claimed by the respondents.
- *Rebar from Taiwan*, *Biodiesel from Argentina*, and *Biodiesel from Indonesia* all explicitly cite *OCTG from Korea PORI* as precedent for the proposition that the Commerce's PMS analysis is specific to the facts and allegations of each individual case. Thus, there is no basis for the argument that Commerce has abandoned the analytical framework that was employed in the preliminary results.
- Nothing in the plain language of the TPEA, the legislative history of the TPEA, or Commerce's decisions implementing the TPEA suggests that Commerce must compare the prices of inputs paid by respondents to other benchmarks to determine whether a PMS exists for that input.

Korean Government subsidization of HRC supports a finding that a PMS exists in Korea.

- There has not been any administrative review or other proceeding in which Commerce has determined that POSCO stopped receiving any of the subsidies that the company was found to receive in *HRS from Korea* or that the level of subsidization has somehow

decreased.

- Record evidence demonstrates that, during the POR for the instant review, the Korean government not only continued to subsidize Korean HRC producers, but actually increased the subsidies as part of its response to the onslaught of Chinese imports of HRC into Korea.
- The subsidy rate calculated for POSCO in *CTL Plate from Korea* is not a superior basis for determining whether a PMS exists for HRC in Korea.
 - Commerce's findings in *HRS from Korea* are more specific to the HRC input consumed by the respondents in the production of CWP.
 - Such findings are far more relevant to whether a PMS exists for HRC than Commerce's findings regarding a product that is not even consumed in the CWP production process.
 - To the extent that *CTL Plate from Korea* is at all relevant, it supports a finding that a PMS exists, because it corroborates the fact that Korean HRC producers such as POSCO receive countervailable subsidies from the Korean government.
- The respondents' argument that the subsidy rate calculated for POSCO is not an appropriate basis to adjust their reported HRC costs to correct for the PMS because that rate was based on AFA should be rejected.
 - POSCO, an experienced respondent, was well aware of Commerce's AFA practice in CVD proceedings. If POSCO could have shown that its subsidy rates were lower than the rates used by Commerce as AFA, it would have cooperated and provided the information showing this to be the case.
 - Because POSCO failed to cooperate in the CVD investigation of *HRS from Korea*, it is reasonable to infer that its overall subsidy rate would have been even higher if it had cooperated.

The flood of Chinese imports of HRC supports a finding that a PMS exists in Korea.

- Record evidence demonstrates that import volumes have increased from 2010 through 2016 and that per-unit values have decreased during that time frame.
- Record evidence demonstrates that low-priced Chinese imports into Korea have been particularly aggressive in driving down the Korean producers' prices, market share, and overall profitability.
- Export statistics show that Korea is one of the largest single destinations for Chinese exports of steel, including HRC.
- The benchmarks on the record show that low-priced Chinese HRC was placing significant downward pressure on HRC prices in Korea, thereby contributing to a PMS for that input.

Commerce should continue to find that the distortions in the electricity market in Korea that existed in *OCTG from Korea POR 1* continued to be a contributing factor towards the PMS for HRC in Korea during the POR for this review.

- The respondents have not presented any evidence to undermine Commerce's preliminary determination regarding this issue.
- Although Hyundai Steel references KEPCO's overall operating profit, the question is not whether KEPCO is making a profit on its average electricity rates, the question is whether KEPCO is giving a special discount to Korean steel companies so that they pay

less than other KEPCO customers.

Commerce’s Position: Section 504 of the TPEA¹⁶ added the concept of “particular market situation” in the definition of the term “ordinary course of trade,” 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.”

In the instant review, the petitioner, Wheatland, alleged that “particular market situations affecting pipe production costs in Korea exist as a result of: subsidies for Korean HRC; strategic alliances between HRC suppliers and downstream pipe producers; the distortive effects of Chinese HRC; and government subsidization of electricity.”¹⁷ Section 504 of the TPEA does not specify whether to consider these allegations individually or collectively. In *OCTG from Korea POR 1*, the petitioner alleged that a PMS existed in Korea based on the same four factors and, upon analyzing the four allegations as a whole, we found that a PMS existed in Korea.¹⁸ For this review, after analyzing Wheatland’s allegation, as well as the factual information and case briefs subsequently submitted by interested parties, we determine that the circumstances present during this review – that is, the PMS allegation itself and the record evidence concerning the allegation – remained largely unchanged from those which led to the finding of a PMS in Korea in *OCTG from Korea POR 1*.¹⁹ Therefore, we find that, based on the collective impact of Korean HRC subsidies, Korean imports of HRC from China, strategic alliances, and government involvement in the Korean electricity market, a PMS exists in Korea which distorts the cost of production for CWP.

In this administrative review, as in *OCTG from Korea POR 1*, we considered the four aspects underlying the PMS allegation as a whole, based on their cumulative effect on the COP for Korean CWP. Based on the existence of these conditions in the Korean market, we continue to find that a single PMS exists which impacts the COP for CWP. The record evidence demonstrates that the Korean government has subsidized HRC and that the mandatory respondents have purchased HRC from entities receiving these subsidies, including POSCO.²⁰ The record evidence also shows that the subsidies received by certain Korean HRC producers totaled up to nearly 60 percent of the cost of HRC, the primary input into CWP production.²¹ Additionally, we note that HRC as an input of CWP constitutes a substantial proportion of the cost of CWP production; thus, distortions in the HRC market due to government subsidization

¹⁶ See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015).

¹⁷ See Letter from Wheatland, “Certain Circular Welded Non-Alloy Steel Pipe from Korea: Allegation of a Particular Market Situation,” dated October 16, 2017 (PMS Allegation) at 6.

¹⁸ See *OCTG from Korea POR 1* and accompanying Issues and Decision Memorandum, at Comment 3.

¹⁹ *Id.*

²⁰ See 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, at 6 and footnote 18, and sources cited therein).

²¹ *Id.* at 7 (citing *OCTG from Korea POR 1*, 82 FR 18105, and accompanying Issues and Decision Memorandum at 40, citing *HRS from Korea*, 81 FR at 53439).

have a significant impact on the COP for CWP.²²

Further, as a result of significant overcapacity in Chinese steel production, which stems, in part, from the distortions and interventions prevalent in the Chinese economy, the Korean steel market has been flooded with imports of low-priced Chinese steel products, placing downward pressure on Korean domestic steel prices.²³ This, along with the domestic steel production being heavily subsidized by the Korean government, distorts Korean market prices of HRC, the main input in Korean CWP production.

With respect to Wheatland's contention that certain Korean HRC suppliers and Korean CWP producers attempt to compete by engaging in strategic alliances, we agree that the record evidence supports that such strategic alliances exist in Korea,²⁴ and that these strategic alliances affected prices in the period covered by the original less-than-fair value investigation of OCTG from Korea. Because strategic alliances have led to distortions in the prices of HRC, as evidenced by the record information, we find that such strategic alliances are a contributing factor to the PMS in Korea impacting the COP for CWP.

With respect to the allegation of distortion present in the electricity market, consistent with the SAA accompanying the Uruguay Round Agreements Act, a PMS may exist where there is government control over prices to such an extent that home market prices cannot be considered to be competitively set.²⁵ Moreover, electricity in Korea functions as a tool of the government's industrial policy.²⁶ Furthermore, the largest electricity supplier, KEPCO, is a government controlled entity.²⁷ Accordingly, the Korean government's involvement in the electricity market in Korea is a contributing factor to the PMS in Korea impacting the COP for CWP.

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

²² See PMS Allegation 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, at 3) and at Attachment 11.

²³ *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, at Exhibit 4).

²⁴ *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, at Attachment 4).

²⁵ See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1, at 822, reprinted at 1994 U.S.C.A.N. 4040, 4162 (1994).

²⁶ *Id.*, at Attachment 12, Exhibit 1 (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, at Exhibits 6 and 7).

²⁷ *Id.* at Attachment 13, Exhibit 5 (containing Letter from Maverick, "Certain Oil Country Tubular Goods from the Republic of Korea: Particular Market Situation Allegation on Electricity," dated February 3, 2016, at 13-14 and Exhibit 2, p. 50).

We disagree with the respondents' arguments that the facts present in this review have changed significantly since Commerce's PMS determination in *OCTG from Korea POR I*. Conversely, we find that the same factors that led to the finding that a PMS existed in Korea in *OCTG from Korea POR I* are still present in this administrative review, and that the facts of this record support the continued finding that a PMS existed during this POR. Specifically, the facts in this review are largely identical to the facts in *OCTG from Korea POR I*, and the same evidence is on the record of this review.

Husteel argues that the appropriate and legally permissible remedy to address any subsidies related to HRC that allegedly pass through to the respondents is available solely through the CVD laws and that the application of a CVD rate from another case to the respondents' costs in this AD case is unlawful.²⁸ We disagree; the statute is silent with respect to what action Commerce takes in using an alternative calculation methodology where a PMS is found to exist. Here, part of the PMS is the provision of subsidies by the Government of Korea (GOK), so it is both lawful and reasonable for Commerce to look to various measures of the extent of GOK subsidization in order to adjust respondents' cost accordingly. Moreover, this is consistent with the approach Commerce applied in other cases where it found a PMS based, in part, upon government subsidization of inputs into the production of subject merchandise.²⁹ As explained below, we find that these rates are an appropriate basis for making the adjustment in this review.

The respondents contend that POSCO's subsidy rate from *HRS from Korea* is not an appropriate basis for an alternative calculation methodology because it covered 2014 (*i.e.*, it is not contemporaneous with the POR), was based on total AFA, and does not relate to production of CWP.³⁰ As for the fact that the rates from the CVD investigation on *HRS from Korea* precede the instant POR in this proceeding, we note that these are the rates still in effect for this proceeding because, to date, no CVD review has been completed.³¹ The respondents' contention that the subsidization finding did not pertain to CWP is misplaced because it relates to the inputs used in the production of CWP, *i.e.*, HRC, and we apply the adjustment, *i.e.*, the relevant CVD rate, to the cost of inputs used in the production of CWP. This is consistent with the approach taken in *OCTG from Korea POR I*, as both OCTG and CWP production processes rely on HRC as an input.

²⁸ See Letter from Husteel, "Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, 11/1/2015–12/31/2016 Administrative Review, Case No. A-580-809: Case Brief," dated January 12, 2018, at 13-14.

²⁹ See *OCTG from Korea POR I*, 82 FR 18105, and accompanying Issues and Decision Memorandum at Comment 3. See also *Welded Line Pipe from Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 1023 (January 9, 2018), and accompanying Preliminary Decision Memorandum at 14.

³⁰ See Letter from Husteel, "Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, 11/1/2015–12/31/2016 Administrative Review, Case No. A-580-809: Case Brief," dated January 12, 2018, at 9-12, Letter from Hyundai Steel, "Certain Circular Welded Non-Alloy Steel Pipe from Korea: Hyundai Steel Company's Affirmative Case Brief," dated January 12, 2018, at 8, and Letter from SeAH, "Administrative Review of the Antidumping Order on Circular Welded Non-Alloy Steel Pipe from Korea – Case Brief of SeAH Steel Corporation," dated January 12, 2018, at 8-9.

³¹ See *HRS from Korea Final Determination*, 81 FR 53439.

Contrary to the respondents' arguments, and, as explained in the *Preliminary Results*, we continue to find that the subsidy rates from *HRS from Korea* are more appropriate than the subsidy rates from Commerce's CVD investigation of *CTL Plate from Korea*, because the former rates are for HRC, the input used to make CWP, whereas the latter are not.³² In our view, the difference in the periods under examination of these two determinations does not outweigh our consideration that it is preferable to rely on CVD rates which apply to the relevant input, versus CVD rates which apply to other products and not the respondents' input. Accordingly, we continue to find that the CVD rates from the investigation on *HRS from Korea* are an appropriate basis for making a PMS adjustment in this review.

With respect to the PMS adjustment to the respondents' costs of production, as explained in the *Preliminary Results*, we disagree with the respondents' argument that the CVD rates applied in *HRS from Korea* are not an appropriate basis for the adjustment. The respondents argue that it would not be appropriate to make a PMS adjustment based on the CVD rate applied to POSCO in *HRS from Korea*, because that rate was based on total AFA and is based on a POI that does not overlap with the POR in this review. Regarding the fact that the CVD rates we used were based on total or partial AFA,³³ we disagree that this alone should discredit their use in making a PMS adjustment. The total or partial AFA rates were imposed because the respondents failed to cooperate to the best of their abilities. As the CVD rates currently being applied to HRC were produced by Korean producers, we determine that the CVD rates from *HRS from Korea* represent an accurate measure of the subsidies being received by the producers for the production of HRC, and is a reasonable basis for the adjustment being enacted by Commerce to reflect GOK subsidization of HRS products in Korea.

With respect to the question of whether an AFA rate can, in fact, be an accurate measure of the subsidies in question, and as argued by the petitioner, POSCO and Hyundai Steel are experienced respondents in trade remedy proceedings, and could have chosen to act to the best of their abilities in responding to Commerce's requests for information in *HRS from Korea*. The fact that they did not suggests that their full cooperation may have resulted in a higher CVD rate than the one based on total or partial AFA. Regardless of the producers' motives, however, nothing on the record of this proceeding demonstrates that the CVD rates assigned to the producers in *HRS from Korea* are inaccurate or unlawful. Indeed, to date, the producers' rates remains the rates applied to relevant subject merchandise entering the United States. Further, we find the respondents' argument that it was contradictory for Commerce to find that it could not accurately calculate a subsidy rate for POSCO in *HRS from Korea*, yet use that same subsidy rate to quantify a PMS adjustment, to be misplaced. In determining to apply AFA to POSCO in *HRS from Korea*, Commerce did not find that the AFA rate itself was inaccurate but, rather, that we could not calculate an accurate rate for POSCO in that proceeding due to POSCO's failure to submit "complete, accurate and reliable data."³⁴ Therefore, there is no basis for the respondents' assertion that POSCO's AFA rate from *HRS from Korea* cannot be used to quantify a PMS adjustment.

³² See *CTL Plate from Korea*, 82 FR 39410.

³³ We used Hyundai Steel's CVD rate to make certain adjustments as well. Hyundai Steel's CVD rate was based on partial AFA.

³⁴ See *HRS from Korea Final Determination*, and accompanying Issues and Decision Memorandum at Comment 5.

With respect to the contention that the Korean government did not make a formal finding that Chinese HRC is being dumped, we do not consider such a finding to be a prerequisite for finding that the distortive pricing of unfairly traded Chinese HRC contributes to a PMS. Although a formal finding of dumping or subsidization could be evidence of the existence of unfair trade practices, such practices could exist even without a formal finding. In most cases, dumping investigations are initiated based on a petition by the domestic industry, which would require both the demonstration of the existence of dumping and the existence or threat of material injury to the domestic industry. In this case, however, record evidence shows subsidization of HRC producers by the Korean government, as well as purchases of HRC by the mandatory respondents from Korean HRC producers, which received such subsidies.³⁵

We also disagree with the respondents' arguments that Commerce's "totality of the circumstances" analysis used in *OCTG from Korea POR I* has been superseded by a different standard in *Rebar from Taiwan*, *Biodiesel from Argentina*, and *Biodiesel from Indonesia* requiring quantitative analysis based on empirical examination of evidence.³⁶ In *Rebar from Taiwan*, Commerce acknowledged the "totality of the circumstances" PMS determination made in *OCTG from Korea POR I*, and stated that "the record in this case {(i.e., *Rebar from Taiwan*)} does not include the same facts or allegations as in *OCTG from Korea*."³⁷ In *Biodiesel from Argentina Final*, Commerce stated specifically that "Commerce's conclusions in *OCTG from Korea* are consistent with this {(i.e., the *Biodiesel from Argentina*)} final determination." Commerce further acknowledged that, "in certain contexts, an ordinary course of trade analysis may involve a comparison of specific sales and transactions to the general market," but also stated that "a PMS analysis is, by definition, concerned with distortions in the overall 'market,' rather than distortions in particular sales or transactions in relation to the general market."³⁸ Finally, in *Biodiesel from Indonesia Final*, we stated "{a}s in *OCTG from Korea*, here too Commerce's finding is based on a totality of the circumstances analysis" and that "Commerce's conclusions in *OCTG from Korea* are consistent with this final determination."³⁹ Accordingly, we find the respondents' arguments unpersuasive, and find that we appropriately analyzed the facts and allegations on the records of each individual case in making its determinations.

³⁵ See PMS Allegation at Exhibit 12 (containing Letter from Maverick, "Oil Country Tubular Goods from South Korea: Particular Market Situation Case Brief," dated March 1, 2017, at 6 and footnote 18, and sources cited therein).

³⁶ That being said, our determination in the instant review that a PMS exists in Korea was not devoid of numerical analysis. For example, we considered record evidence showing that the input costs associated with HRC, the production of which is subsidized by the GOK, comprise a substantial portion of the total cost of production of CWP (see PMS Allegation at 13 and Attachment 3; see also Letter from Husteel, "Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, Case No. A-580-809: Sections B-D Questionnaire Response," dated May 10, 2017, at D-9 and Letter from Hyundai Steel, "Certain Circular Welded Non-Allow Steel Pipe from Korea: Hyundai Steel Company's Section A Questionnaire Response," dated April 6, 2017, at A7). We also considered record evidence showing that Chinese imports of hot-rolled steel in the Korean market are rising and are low-priced (see PMS Allegation at Attachment 14 at Exhibit 1, which shows that Chinese imports of hot-rolled steel products increased from 3.157 million net tons in 2010 to 4.211 million net tons in 2016, while the per-net ton price decreased during the same period from \$541.15 to \$313.08).

³⁷ See *Rebar from Taiwan*, 82 FR 34925, and accompanying Issues and Decision Memorandum at Comment 1.

³⁸ See *Biodiesel from Argentina Final*, 83 FR 8837, and accompanying Issues and Decision Memorandum at Comment 3.

³⁹ See *Biodiesel from Indonesia Final*, 83 FR 8835, and accompanying Issues and Decision Memorandum at Comment 3.

Furthermore, regarding the argument that we relied on speculation about combined effects that we conceded are unquantifiable, we find that the lack of appropriate data on the record with which to quantify an adjustment does not constitute evidence that the underlying condition does not exist. Rather, we continue to find that the record demonstrates distortions within the market, but that it does not contain reliable external benchmarks with which to quantify certain adjustments.

Regarding Hyundai Steel's argument⁴⁰ that our finding in the *Preliminary Results* that a PMS existed with respect to HRC inputs is contrary to the statute because we did not conduct an empirical analysis of the data to determine whether the HRC were acquired in the ordinary course of trade, no such analysis is necessary. We disagree with the notion that a company-specific analysis is necessary and appropriate in a situation where, as here, there is sufficient evidence demonstrating that the market as a whole is distorted and a PMS exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade. Companies do not operate in a vacuum but, rather, purchase their inputs in a market. If a particular market is distorted as a whole, it would be illogical to conclude that one company operating in that particular market is insulated from the market distortions with respect to cost.

Concerning the respondents' argument that Chinese imports into Korea are not significant enough to have an impact on the Korean market, we disagree. Record evidence shows that POSCO's profits have been affected by "a deluge of Chinese exports" which "pushed global prices to their lowest in at least a decade."⁴¹ Despite the respondents' contention that imports of Chinese HRC account for only about 20 percent of HRC imports into Korea, we find that 20 percent is not an insignificant percentage. To put this into perspective, based on the COMTRADE data provided by Wheatland, Korean imports of Chinese HRC during calendar year 2016 amounted to 973,881 metric tons out of total imports of 4,903,387 metric tons.⁴²

We agree with the respondents that the petitioner has not pointed to any evidence that Chinese overcapacity is a phenomenon *specific* to the Korean market. That Chinese steel overcapacity affects the whole world is not disputed. In fact, information on the record indicates that, "{a}ccording to OECD statistics, China's production capacity will continue to grow until 2017. Therefore, China's oversupply situation does not seem to improve, and is expected to result in increased exports and price decline pressures."⁴³ However, we find the fact that overcapacity affects other markets is irrelevant; certainly, one aspect of a PMS could be a contributing factor to a PMS in more than one country.

⁴⁰ See Letter from Hyundai Steel, "Certain Circular Welded Non-Alloy Steel Pipe from Korea: Hyundai Steel Company's Affirmative Case Brief," dated January 12, 2018, at 21.

⁴¹ See PMS Allegation at Attachment 13, Exhibit 6 (containing Maverick Letter, "Certain Oil Country Tubular Goods from the Republic of Korea: Particular Market Situations and Other Factual Information Submission," dated September 6, 2016, at Exhibit 4, "Posco Posts Smallest Ever Profit Amid Chinese Steel Deluge," Bloomberg (January 28, 2016)).

⁴² See PMS Allegation at Attachment 12 (containing Maverick August 7, 2017 Letter, at Exhibit 10).

⁴³ See PMS Allegation at Attachment 14, Exhibit 2 (containing article, "China's Steel Exports Reaching 100 Mt: What It Means to Asia and Beyond," Asian Steel Watch (January 2016)).

With respect to the respondents' arguments based on a comparison of their purchases to Steel Benchmark data,⁴⁴ COMTRADE data,⁴⁵ GTA import data,⁴⁶ American Metal Markets data,⁴⁷ Steel Orbis data,⁴⁸ and SBB Platts data,⁴⁹ we find that the data from these sources are not appropriate benchmarks for the HRC Husteel and Hyundai Steel used in the production of CWP. For example, the Steel Benchmark prices are for "hot-rolled band," not HRC.⁵⁰ With respect to COMTRADE prices, the data are only for Korean imports of HRC;⁵¹ given that we have found a PMS in Korea caused, in part, by the distortive pricing of unfairly traded Chinese HRC, we determine that it is not clear that these data would be an appropriate source for benchmarking. With respect to GTA import data, we only have data on the record for Mexico and Italy,⁵² and it is not clear that using individual countries for comparison is an appropriate substitute for world prices. Finally, with respect to the data from American Metal Markets, Steel Orbis, and SBB Platts, it is not clear whether these data are for HRC suitable for the production of CWP because the record shows that hot-rolled steel is a broad product description involving many different Harmonized Tariff Schedule categories,⁵³ but that only a few are suitable for the production of CWP.⁵⁴

We also disagree with the respondents' arguments that they are not involved in any strategic alliances, and that we should not find a PMS, in part, on this basis. We agree with Wheatland that record evidence supports that such strategic alliances exist in Korea,⁵⁵ and continue to find that strategic alliances between certain Korean HRC suppliers and Korean CWP producers are relevant as an element of our PMS analysis. Further, we evaluate the existence of a PMS based on the totality of circumstances in the market. Accordingly, to the extent that strategic alliances may have a distortive effect on the market as a whole, in our view, it is unnecessary for every company operating in the market to be a member of a strategic alliance.

With respect to SeAH's argument that any reliance on the previous findings in the CVD investigation of *HRS from Korea* would violate its due process rights, we disagree. SeAH, like the other interested parties in this review, had the opportunity to comment on the applicability of the CVD rates used for the purposes of calculating a PMS adjustment. The discussion related to Commerce's methodology in *HRS from Korea* was made publicly-available in the *Federal Register* notice and accompanying issues and decision memorandum in that proceeding. Beyond the ability to comment on the public aspects of the CVD rates in *HRS from Korea*, there is no statutory or regulatory requirement that we take proprietary calculation information from one

⁴⁴ See Hyundai Steel's November 13, 2017 Letter, at Exhibit 7.

⁴⁵ See PMS Allegation at Attachment 12 (containing Maverick August 7, 2017 Letter, at Exhibit 10).

⁴⁶ See PMS Allegation at Attachment 16.

⁴⁷ See Husteel's November 13, 2017 Letter, at Attachment 8.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ See Hyundai Steel's November 13, 2017 Letter, at Exhibit 7.

⁵¹ See PMS Allegation at Attachment 16.

⁵² *Id.*, and Hyundai Steel's November 13, 2017 Letter, at Exhibit 7.

⁵³ See PMS Allegation at Attachment 16.

⁵⁴ See Hyundai Steel's November 13, 2017 Letter, at 13.

⁵⁵ See PMS Allegation 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, at Attachment 4).

entirely different proceeding filed by exporters of different merchandise not subject to this proceeding or involved in any way in this proceeding, and place it on the record of this proceeding. That is not how Commerce's administrative protective orders (APOs) operate,⁵⁶ would pose serious complications for the agency and interested parties that participate in agency proceedings, and, again, there is no legal obligation requiring us to take such measures.

The CVD rate in *HRS from Korea* is an existing, public rate. Like a surrogate value under section 773(c) of the Act, a CVD benchmark under 19 CFR 351.511(a)(2), or facts otherwise available under section 776(a) of the Act, there are many examples throughout Commerce's law and practice of the use by the agency of rates and values which are publicly available without analyzing the proprietary calculations behind the creation of those rates and values. Our use of those rates and values does not violate due process rights – it simply shows the finality of a rate once an investigation or review is completed.

Regarding the respondents' argument that Commerce has recently examined allegations of subsidized electricity in Korea several times in the context of CVD investigations and has not found any countervailable subsidies with respect to electricity, we disagree that this should have an impact on our PMS determination in this case. As an initial matter, as indicated in Comment 2, below, because we were unable to quantify the effect of distortions in the electricity market, we did not include an adjustment factor for electricity in the PMS adjustment. However, the fact that we were not able to quantify the amount of the distortion, based on the record evidence in this review, does not undermine the fact that the GOK's policies have an effect on electricity prices.⁵⁷ Moreover, the fact that KEPCO had an overall profit is not relevant; the question is whether there is government control over prices to such an extent that home market prices cannot be considered to be competitively set. We have previously found that there is such control⁵⁸ and the record supports this finding.⁵⁹ Furthermore, the Czech rates to which Hyundai Steel cited⁶⁰ to support its claim that there is nothing aberrant with respect to Korean electricity prices is no more dispositive than the rates from Japan, New Zealand, or Italy which Wheatland suggested we use to quantify the effect of the electricity market on the cost of Korean HRC inputs.⁶¹ Finally, we evaluate the existence of a PMS based on the totality of circumstances in the market. Accordingly, we continue to determine that the record supports the that government involvement in the Korean electricity market distorts the cost of producing CWP and, in conjunction with the other three factors, support the conclusion that a PMS exists.

⁵⁶ See *Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order*, 63 FR 24391 (May 4, 1998).

⁵⁷ See PMS Allegation at Attachment 13, Exhibit 5 (containing Letter from Maverick, "Certain Oil Country Tubular Goods from the Republic of Korea: Particular Market Situation Allegation on Electricity," dated February 3, 2016, at 13-14 and Exhibit 2, p. 50).

⁵⁸ See *OCTG 2014-2015* and accompanying Issues and Decision Memorandum at 41.

⁵⁹ See PMS Allegation at Attachment 13, Exhibit 5 (containing Letter from Maverick, "Certain Oil Country Tubular Goods from the Republic of Korea: Particular Market Situation Allegation on Electricity," dated February 3, 2016, at 13-14 and Exhibit 2, p. 50).

⁶⁰ See Hyundai Steel case brief dated January 12, 2018, at 14.

⁶¹ See Comment 2, below.

With respect to Hyundai Steel's argument that the adjustment should be capped at the rate determined for Hyundai Steel in HRS from Korea, because our position involves a discussion of business proprietary information, we have addressed this argument in the final analysis memorandum for Hyundai Steel.⁶²

Finally, we agree with Hyundai Steel's argument that we should modify our calculations to ensure that the adjustment is not applied based on HRC purchases not used in the production of subject merchandise. This was an inadvertent error and we have corrected it for these final results.

Comment 2: Additional Particular Market Situation Adjustments

Wheatland's Comments:

HRC from Chinese Suppliers

Commerce should make an adjustment to account for the effect of Chinese overcapacity on Chinese and Japanese HRC sold in Korea.

- If Commerce recognizes that it needs additional information in order to quantify an adjustment that it concludes is justified, its standard practice is to ask the party that has the information to provide it, and to use facts available if that party is uncooperative. It is not Commerce's practice to give up and simply conclude that it cannot make the adjustment.
- In its allegation, Wheatland had recommended that Commerce make an adjustment by relying upon the average surrogate value for the basket of applicable HTSUS categories for HRC imported into Mexico. Wheatland respectfully suggests that it had submitted reasons in its PMS allegation for choosing Mexico as a surrogate country. Wheatland does not necessarily object to using a different country as a surrogate country, although it believes that Mexico provides good information on steel products.
- The surrogate value methodology is an existing calculation methodology used by Commerce to determine what a product should cost if not produced in a market economy. Because Congress also authorized Commerce to use any other calculation methodology when constructing normal value, there is no legal bar to employing a surrogate methodology to correct a PMS. When comparing what a product should cost to what the product in another market does cost, it is not relevant to the analysis that Chinese HRC is also driving down prices globally.
- In *CORE*, Commerce used Mexico as the surrogate country after disagreeing with the respondents' argument that "the appropriate use of surrogate values is limited to determining normal value for purposes of comparing export/constructed export prices with domestic price, and determining the existence of and amount of a subsidy," and that "{n}o provision in the above Agreements contemplates or permits the use of surrogate

⁶² See Memorandum to File, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results Analysis Memorandum for Hyundai Steel Company," dated concurrently with this memorandum (Hyundai Steel Final Analysis Memo).

values in any other context.”⁶³

- In the alternative, Commerce could employ the current AD margins from the order on HRC from China and, using a multiplier, create a proxy for depressed Korean prices.

Strategic Alliances between Korean HRC Suppliers and Korean CWP Producers

Commerce should make an adjustment for strategic alliances.

- In its allegation, Wheatland requested that Commerce collect additional information in order to be able to quantify this adjustment; Commerce did not do this. If Commerce does not ask for additional information in the current review, Commerce should seek this information in other proceedings and/or in a subsequent review regarding CWP from Korea.

Distorted Electricity Costs in Korea

Commerce should make an adjustment for electricity.

- Commerce should account for the market distortion in Korean electricity costs by using industrial sector electricity rates from Japan, New Zealand, or Italy. All three countries have gross national incomes comparable to Korea.
- Commerce did not specify any particular deficiencies with the information on the record other than claiming it was insufficient for determining the impact.

Husteel’s Rebuttal Comments:

HRC from Chinese Suppliers

Commerce should continue to reject Wheatland’s attempts to quantify a PMS adjustment to reflect the alleged impact of imports of HRC from China and Japan.

- Wheatland’s argument that Commerce should use a non-market economy surrogate-value methodology to quantify the alleged distortion to prices of Chinese and Japanese imports of HRC into Korea fails to address Commerce’s reasons for declining to do so as stated in the *Preliminary Results*.
- Because Wheatland has provided no rebuttal to Commerce’s position, Commerce should continue to find that the surrogate-value methodology is inappropriate in the context of this case.
- Commerce correctly noted that this methodology is dependent on the AD margins calculated for exports of Chinese HRC to the United States, and there is no evidence to indicate that these margins would have any bearing on exports of Chinese HRC to Korea.
- Commerce should continue to find that the use of the “multiplier” proposed by Wheatland is inappropriate.

⁶³ See *Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Affirmative Preliminary Determination of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 82 FR 58170, December 11, 2017) (CORE), and accompanying preliminary Decision Memorandum at 11.

Distorted Electricity Costs in Korea

Commerce's determination to not attempt to quantify alleged distortions due to electricity prices in Korea is correct and should be maintained.

- Commerce correctly refused to attempt to quantify any alleged distortion due to electricity, as it has refused in past cases such as *OCTG from Korea POR 1* and the subsequent review of that proceeding.
- There is no basis to compare 2009 Korean electricity prices to 2014 and 2016 prices from other surrogate countries picked by Wheatland, and there is no justification for the use of the prices from the surrogate countries picked by Wheatland.
- Commerce has recognized that electricity is not a type of commodity that can be compared across countries and, thus, the prices in these other countries are not relevant to prices in Korea.

Strategic Alliances between Korean HRC Suppliers and Korean CWP Producers

Commerce's Determination to Not Attempt to Quantify the Alleged Distortion Due to Strategic Alliances Was Correct.

- Commerce is correct that the record does not contain any evidence that any alleged distortions were caused by strategic alliances.
- Wheatland also admits that there is no record evidence to quantify any such distortion.

Hyundai Steel's Rebuttal Comments:

HRC from Chinese Suppliers

Commerce should not follow the petitioner's surrogate value adjustment suggestion for either Japanese or Chinese HRC.

- Even if a PMS did exist with respect to Chinese imports, Commerce cannot, as a legal matter, resort to using surrogate values to calculate normal value in a market economy context.
- Relying on surrogate values wholesale necessarily introduces many distortions and inaccuracies and simply serves to replace accurate costs specific to the production and physical characteristics of the subject merchandise with irrelevant data from another market.
- Commerce should not base any adjustment to Hyundai Steel's purchase prices on external surrogate sources, but instead Commerce should limit such adjustments to Hyundai Steel's own cost of production, as there is no basis to conclude that Hyundai Steel's steel production costs are subject to a PMS.
- Should Commerce look to a surrogate-value methodology, Commerce should choose a source intended to mimic Korea, not China; alternatively, Commerce could use Hyundai Steel's purchases from Japanese suppliers as a surrogate.
- There are fundamental flaws with the petitioner's proposed Mexican HRC value which renders it unusable.

- The petitioner has proposed using a simple average of the import values classified in the various HTSUS categories; Commerce must correct the calculations to use a weighted average of the values for the relevant HTSUS categories.
- The petitioner includes HTSUS codes which cover hot rolled steel, but not all of those HTSUS codes relate to inputs which are used in standard pipe production.

Distorted Electricity Costs in Korea

Record evidence supports a negative PMS finding with respect to electricity.

- Commerce should find that any perceived government intervention on electricity, on its own, does not support a finding of a PMS in this case.
- Commerce need not look at benchmark information submitted by the petitioner, because Commerce has already examined allegations of subsidized electricity in Korea several times in the context of CVD investigations and has not found any countervailable subsidies with respect to electricity.

Strategic Alliances between Korean HRC Suppliers and Korean CWP Producers

Commerce should reverse its finding of strategic alliances between pipe producers and HRC suppliers.

SeAH's Rebuttal Comments:

SeAH did not specifically rebut the petitioner's arguments summarized above; rather, SeAH used its rebuttal brief to "restate" from its case brief "certain fundamental legal and logical principles that Wheatland's argument simply ignores."⁶⁴

- A finding of dumping reflects a comparison of prices charged in two markets. it does not require that prices in either of the markets being compared were below cost
 - The fact that an exporter has been found to have dumped products in the United States does not mean that the prices in any market were below "the cost of production in the ordinary course of trade."
- A finding of subsidies does not imply anything about the manner in which the subsidy recipient used the money received
 - A finding of a subsidy to a hot-rolled coil producer does not imply that the prices charged by that producer to its downstream pipe customers were in any way distorted.
- Determinations of subsidies and dumping are, by their nature, valid only for the specific period actually examined
 - A finding that an exporter received subsidies or engaged in dumping in the first review of a case does not imply that the exporter received the same number of subsidies or made sales at the same dumping margin in the second review.
- The prices for steel products within a single product category (such as hot-rolled coil) may vary substantially by grade and by time period

⁶⁴ See Letter from SeAH, "Administrative Review of the Antidumping Order on Circular Welded Non-Alloy Steel Pipe from Korea – Rebuttal Case Brief of SeAH Steel Corporation," dated January 23, 2018.

- Comparisons of average unit values for purchases may be distorted by differences in product mix or time period.
- Any reliance on a decision by Commerce (or another investigating agency) that was made in a proceeding in which SeAH (and other respondents) did not participate raises serious Constitutional issues
 - The fact that the Tariff Act does not permit foreign customers of a respondent producer to participate in an investigation or review as an interested party means that a finding of subsidies or dumping in a prior proceeding cannot be treated as a binding on customers of the respondent producer in a subsequent proceeding.
 - Commerce was correct not to make adjustments to the respondent's costs for (1) the alleged effect of Chinese overcapacity on Chinese and Japanese hot-rolled coil sold in Korea; (2) alleged distortions in Korean electricity prices; and (3) alleged strategic alliances between Korean steel coil and pipe producers.

Commerce's Position: As explained in Comment 1, above, we continue to find that a PMS existed in Korea during the POR, which distorted the cost of production of CWP, based on the cumulative effect of: (1) Korean subsidies on the HRC input; (2) Korean imports of HRC from China; (3) strategic alliances between Korean HRC and CWP producers; and (4) distortions in the Korean electricity market. In the current administrative review, as in *OCTG from Korea POR I*, we considered the four facets of the PMS allegation as a whole, based on their cumulative effect on the Korean CWP market through the cost of production for CWP. After consideration of interested parties' comments regarding the application of additional adjustments, we continue to find that the subsidy rates from *HRS from Korea* are the best information available on the record with which to make an adjustment, and that the record of this review does not contain appropriate data with which to make further adjustments.

With respect to the price effects of Chinese (and Japanese) HRC imports into Korea, we continue to find that Wheatland's first suggested adjustment, involving the use of Mexican import prices as a proxy for such HRC imports into Korea, lacks sufficient record support. Although Wheatland advocates using such a proxy, it also contends that it is not relevant that the overproduction of Chinese HRC is driving down prices *globally*. Wheatland contends that higher Mexican HRC import prices – as compared to prices for Chinese and Japanese HRC imports into Korea – demonstrates that Mexican import prices are not impacted by the effects of Chinese overcapacity in the global steel sector. We find this argument unavailing. Wheatland has failed to identify why the use of Mexican import prices would lead to identification of the appropriate market value for Chinese and Japanese HRC imports in the Korean market. Indeed, Wheatland has even indicated that, if we do not use Mexican import prices, it could rely on import prices from another country (without identifying what country or countries), suggesting that, on this record, there is no particular reason behind Wheatland's support for the use of Mexican import prices.

With respect to the second remedy proposed by Wheatland – the use of current rates from the AD order on *HRS from China*⁶⁵ – Wheatland did not address our finding in the *Preliminary*

⁶⁵ See Notice of the Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China, 66 FR 59561 (November 29, 2001) (*HRS from China*).

Results that such a remedy is inappropriate because there is no record evidence suggesting that the margin of dumping of Chinese HRC in the United States is representative of what such margins would be for Chinese HRC sold in Korea. In particular, there is no discernible connection between the extent of dumping of Chinese HRC in the United States and the price depression of HRC in the Korean market due to Chinese overproduction and low-priced HRC exports in Korea. Accordingly, we continue to find the use of rates from the order on *HRC from China* to be inappropriate.

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

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

As explained in the *Preliminary Results*, we continue to develop the concepts and types of analysis that are necessary to address future allegations of PMSs under section 773(e) of the Act.⁶⁶

Comment 3: Allegations of Improper Political Influence

Hyundai Steel alleges that Commerce reversed its PMS findings in *OCTG from Korea POR 1* under political pressure from the White House.⁶⁷ It argues that improper political interference by a White House Policy Advisor does not provide a justification for finding a PMS. It asserts that Commerce cannot employ the PMS provisions in the TPEA without reference to record evidence and without due consideration of the implications of its actions. For the final results, Hyundai Steel argues that Commerce should return to its reasoned preliminary conclusion in the first administrative review and find that no PMS exists for Hyundai Steel. Wheatland did not comment on this issue.

Commerce Position: We disagree with the arguments that our decision process regarding the PMS in Korea was improperly influenced by certain interventions by White House officials. Rather, we analyzed the allegations and information on the records of the instant review in reaching our determinations.

In *OCTG from Korea POR 1*, Commerce placed a memorandum on the record containing an email message from the Director of the National Trade Council to Commerce.⁶⁸ Commerce

⁶⁶ See Preliminary Decision Memorandum, at 14.

⁶⁷ See Letter from Hyundai Steel, "Certain Circular Welded Non-Alloy Steel Pipe from Korea: Hyundai Steel Company's Affirmative Case Brief," dated January 12, 2018, at 34-5.

⁶⁸ See *OCTG from Korea POR 1*, and accompanying Issues and Decision Memorandum, at Comment 4.

placed the communication on the record of that administrative review in accordance with the requirements of the law. In particular, section 516A(b)(2)(A) of the Act states that the administrative records of AD and CVD proceedings shall consist of “a copy of all information presented to or obtained by the Secretary, the administering authority, or the Commission during the course of the administrative proceeding, including all governmental memoranda pertaining to the case and the record of *ex parte* meetings required to be kept by section 777(a)(3).” No such email communications were received regarding the instant administrative review; accordingly, the record of this review does not contain the above-referenced memorandum.

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

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

Comment 4: Differential Pricing

In the *Preliminary Results*, we applied its differential pricing methodology (DPM) and determined a pattern of significant price differences for Husteel’s U.S. sales, with 67.68 percent of the value of U.S. sales passing the Cohen’s *d* test. We determined that the price differences were meaningful because there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average (A-to-A) method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction (A-to-T) method to all U.S. sales. Thus, we applied the A-to-T methodology to all of Husteel’s U.S. sales.

Husteel argues that Commerce must revise its use of the DPM because its application of the differential pricing methodology is contrary to United States’ WTO obligations in that it violates Article 2.4.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping Agreement).⁶⁹ Husteel notes that, according to the Appellate Body, the DPM impermissibly identifies a pattern across purchasers, regions and time periods rather than “among purchasers, or time periods” because it is impossible to discern a

⁶⁹ See Appellate Body Report, *United States – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea*, WT/DS464/AB/R, adopted Sept. 26, 2016, found at www.wto.org.

“regular and intelligible form or sequence” across these factors. Husteel continues that the Appellate Body held that if Commerce does find such a pattern, it may apply an A-to-T methodology only to those sales identified as part of the pattern; it cannot apply an A-to-T methodology to all sales. Furthermore, the Appellate Body has also held that “zeroing” of negative dumping margins is not permitted even when the A-to-T methodology is justified. Lastly, the Appellate Body stated that Commerce must provide a qualitative explanation that examines the circumstances that render alternative comparisons insufficient for taking into account the differences in the export prices that for the pattern. Husteel claims that the WTO compliance panel directed the United States to discontinue the DPM in its present form by December 26, 2017.

Wheatland did not comment on this issue.

Commerce’s Position: We disagree with Husteel that we did not provide an explanation of why the A-to-A methodology cannot account for pricing differences.⁷⁰ As explained in the *Preliminary Results*, if the difference in the weighted-average dumping margins calculated using the A-to-A method and an appropriate alternative comparison method is meaningful, then this demonstrates that the A-to-A method cannot account for such differences and, therefore, an alternative comparison method would be appropriate.⁷¹ We determined that a difference in the weighted-average dumping margin is considered meaningful if there is a 25 percent relative change in the weighted-average dumping margin between the A-to-A method and the appropriate alternative method.⁷²⁷³ Using this method is reasonable because comparing the weighted-average dumping margins calculated using the two comparison methods allows us to quantify the extent to which the A-to-A method cannot take into account different pricing behaviors exhibited by the exporter in the U.S. market. Therefore, for these final results, we find that the A-to-A method cannot take into account the observed differences.

As previously noted in *Nails from China*⁷⁴, we disagree that employing the differential pricing methodology violates the Antidumping Agreement. As a general matter, the Court of Appeals for the Federal Circuit has held that WTO findings are without effect under U.S. law “unless and until such {a report} has been adopted pursuant to the specified statutory scheme.”⁷⁵ Indeed, the SAA noted that “WTO dispute settlement panels will have no power to change U.S. law or order such a change. Only Congress and the Administration can decide whether to implement a WTO panel recommendation and, if so, how to implement it.”⁷⁶ Husteel’s reliance on *Washers from Korea*⁷⁷ is unfounded because, to date, the Appellate Body’s interpretation of the Antidumping

⁷⁰ See Letter from Husteel, “Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, 11/1/2015–12/31/2016 Administrative Review, Case No. A-580-809: Case Brief,” dated January 12, 2018, at 28-29.

⁷¹ See *Preliminary Results* at 7.

⁷² *Id.*

⁷³ See Memorandum to File, “Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Analysis Memorandum for Husteel Co., Ltd.” (November 30, 2017).

⁷⁴ See *Certain Steel Nails from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 11683 (March 16, 2018) (*Nails from China*).

⁷⁵ See, e.g., *Corus Staal BV v. United States*, 395 F.3d 1343 (Fed. Cir. 2005).

⁷⁶ See SAA at 659.

⁷⁷ See *Large Residential Washers from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2014-2015*, 81 FR 62715 (September 12, 2016) (*Washers from Korea*).

Agreement and conclusions in that case with respect to the United States' obligations have not been implemented under U.S. law. We have not revised or changed its use of the differential pricing methodology, nor has the United States adopted changes to its comparison methodology pursuant to the URAA's implementation procedure. Accordingly, Husteel's citation to the Appellate Body report in *Washers from Korea* is of no consequence to the differential pricing methodology as applied in this review.

Comment 5: Universe of Sales (Husteel)

Husteel argues that Commerce's program incorrectly defined the reporting period as it did not consider each U.S. sale of subject merchandise that was entered for consumption during the POR and thereby excluded home-market sales in the 90-day front end window period. Consistent with its long-standing practice, Husteel contends, Commerce should correct this error for the final results.

Wheatland did not comment on this issue.

Commerce's Position: We agree with Husteel and have revised our calculations to capture all U.S. sales which entered the United States for consumption during the POR and all home-market sales which were contemporaneous with those U.S. sales.⁷⁸

Comment 6: Certain Grades Sold (Husteel)

Wheatland's Comments:

- The petitioner notes that Husteel provided mill test certificates for the steel used to make sales of CWP and contends that these certificates show that there are no differences in standard pipe made to two different specifications.
- The petitioner argues that Commerce should re-assign the grade code of 1000 to certain products with a grade code 800 because certain characteristics in the mill test certificates for the HRC used to produce these products are similar.

Husteel's Rebuttal Comments:

- Husteel argues that the petitioner's assertion that Commerce should reassign grade codes should be rejected. Husteel also believes the briefing stage of the 24th review of the Order is not the appropriate time to argue for the first-time changes to the grade codes in Commerce's model match product characteristics.
- Husteel contends that the petitioner's claims are factually inaccurate and that it is clear that the two standard pipe products are made to different specifications.
- Husteel states that these grade codes were established long ago by Commerce after consideration of the specifications, and input by interested parties, to weight the various specifications and grades for model matching purposes. Husteel notes that the grade is the

⁷⁸ See Memorandum to File, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results Analysis Memorandum for Husteel Co., Ltd.," dated concurrently with this memorandum (Husteel Final Analysis Memo).

first element of the control number and thus the most important of the model matching criteria.

- Husteel claims that it is generally accepted in the industry that different specifications are for different products, and that customers order different specifications based on their needs for different uses and purposes. Husteel notes that the fact that they sold pipe products made to both specifications in the home market is evidence that there is a difference and that customers choose to buy pipe products based on one or the other specifications for different purposes.

Commerce's Position: We disagree with the petitioner and will continue to assign the grade codes as in the *Preliminary Results*. Because our position involves a discussion of business proprietary information, we have addressed this argument in the final analysis memorandum for Husteel.⁷⁹

Comment 7: Universe of Sales (Hyundai Steel)

Hyundai Steel argues that Commerce improperly excluded U.S. sales which were shipped prior to the POR but which entered the United States during the POR. Hyundai Steel also argues that Commerce improperly excluded certain home market sales that were contemporaneous with such U.S. sales.

Wheatland did not comment on this issue.

Commerce's Position: We agree with Hyundai Steel and have revised our calculations to capture all U.S. sales which entered the United States during the POR and all home market sales which were contemporaneous with those U.S. sales.⁸⁰

Comment 8: Advertising Expenses (Hyundai Steel)

Hyundai Steel argues that Commerce should revise its treatment of advertising expenses to ensure that they are not double counted: when Commerce asked for an explanation as to why Hyundai Steel treated certain advertising expenses as general and administrative (G&A) expenses given that such expenses are often treated as indirect selling expenses, Hyundai Steel provided Commerce with alternate indirect selling expense and G&A expense calculations; Commerce used the alternate indirect selling expense calculations but did not use the alternate G&A expense ratio; as a result, the advertising expenses were double counted, as Commerce's calculations retained these expenses in the G&A costs, but also used a rate that included them in indirect selling expenses.

Wheatland did not comment on this issue.

Commerce's Position: We agree with Hyundai Steel and have revised the calculation of Hyundai Steel's G&A expenses to avoid double counting these advertising expenses.

⁷⁹ *Id.*

⁸⁰ See Hyundai Steel Final Analysis Memo.

Comment 9: Assessment Rates (Hyundai Steel)

Hyundai Steel argues that Commerce should calculate importer-specific assessment rates and revise its instructions to U.S. Customs and Border Protection accordingly.

Wheatland did not comment on this issue.

Commerce's Position: Although we do normally calculate importer-specific assessment rates in accordance with 19 CFR 351.212(b)(1), in cases where two or more importers are affiliated with each other and a foreign exporter, we calculate a combined assessment rate for all affiliated importers to prevent affiliates from manipulating individual assessment rates to their advantage.⁸¹ Thus, because Hyundai Steel's importers were all affiliated with each other and with Hyundai Steel,⁸² we properly calculated a single assessment rate for Hyundai Steel's affiliated importers and have not modified our calculation for the final results.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this review and the final dumping margins for all the reviewed companies in the *Federal Register*.

☒

Agree

☐

Disagree

6/7/2018

X

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

⁸¹ See, e.g., *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661 (September 1, 2010) and accompanying Issues and Decision Memorandum at Comment 7.

⁸² See Letter from Hyundai Steel, "Certain Circular Welded Non-Allow Steel Pipe from Korea: Hyundai Steel Company's Section A Questionnaire Response," dated April 6, 2017, at A-1.