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DATE: August 20, 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 P. Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Large Diameter Welded
Pipe from the Republic of Korea

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that large diameter welded pipe (welded pipe) from the Republic of Korea (Korea) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On January 17, 2018, Commerce received an antidumping duty (AD) petition covering imports of welded pipe from Korea, which was filed in proper form on behalf of American Cast Iron Pipe Company, Berg Steel Pipe Corp., Berg Spiral Pipe Corp., Dura-Bond Industries, Skyline Steel, and Stupp Corporation (petitioners).¹ Commerce initiated this investigation on February 9,

¹ See Petitioners’ Letters, “Large Diameter Welded Pipe from Canada, Greece, India, the People’s Republic of China, the Republic of Korea, and the Republic of Turkey: Petitions for the Imposition of Antidumping and Countervailing Duties,” dated January 17, 2018; “Large Diameter Welded Pipe from Canada, Greece, India, the People’s Republic of China, the Republic of Korea and the Republic of Turkey: Response to the Department’s January 23, 2018 Supplemental Questions Regarding Volume I of the Petition for the Imposition of Antidumping and Countervailing Duties,” dated January 26, 2018; “Large Diameter Welded Pipe from Canada, Greece, India, the People’s Republic of China, the Republic of Korea and the Republic of Turkey: Supplement to the Petitions for the Imposition of Antidumping and Countervailing Duties: Industry Support,” dated January 31, 2018; “Large



2018.²

In the *Initiation Notice*, Commerce stated that, where appropriate, Commerce intended to select respondents based on U.S. Customs and Border Protection (CBP) data for certain of the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.³ Accordingly, on February 5, 2018, Commerce released the CBP entry data to interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.⁴ On March 16, 2018, Commerce limited the number of respondents selected for individual examination to the three largest producers/exporters of the subject merchandise by volume, Hyundai RB Co. Ltd. (Hyundai RB), SeAH Steel Corporation (SeAH), and Samkang M&T Co., Ltd. (SKMT).⁵ We issued the AD questionnaire to these three companies on March 19, 2018.⁶

Also in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of welded pipe to be reported in response to Commerce's AD questionnaire.⁷ In March 2018, SeAH and the petitioners submitted scope comments and rebuttal comments, respectively.⁸ In the same month, Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S. (collectively Borusan), a Turkish producer of welded pipe, Corinth Pipeworks Pipe Industry S.A. (Corinth), a Greek producer of welded pipe, EVRAZ Inc. NA (EVRAZ), a Canadian producer of welded pipe, the petitioners, and SeAH submitted comments regarding the physical

Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea and the Republic of Turkey: Response to the Department's January 30, 2018 Additional Questions Regarding Volume VI of the Petition for the Imposition of Antidumping and Countervailing Duties," dated February 1, 2018; and "Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea and the Republic of Turkey: Petition Supplement on Scope and Industry Support," dated February 5, 2018 (collectively, the Petition).

² See *Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations*, 83 FR 7154 (February 20, 2018) (*Initiation Notice*) and accompanying Checklist.

³ *Id.* at 7159.

⁴ See Memorandum, "Large Diameter Welded Pipe from the Republic of Korea Antidumping Duty Petition: Release of Customs Data from U.S. Customs and Border Protection," dated February 5, 2018.

⁵ See Memorandum, "Less-Than-Fair-Value Investigation of Large Diameter Welded Pipe from the Republic of Korea: Respondent Selection," dated March 16, 2018.

⁶ See Commerce's Letters to Hyundai RB, SeAH, and SKMT, "Antidumping Duty Questionnaire," dated March 19, 2018.

⁷ See *Initiation Notice*, 83 FR at 7155-56.

⁸ See SeAH's Letter, "Antidumping Duty Investigation of Large Diameter Welded Pipe from Canada, China, Greece, India, Korea, and Turkey and Countervailing Duty Investigations of Large Diameter Welded Pipe from China, India, Korea, and Turkey – Scope Comments," dated March 1, 2018; and Petitioners' Letter, "Large Diameter Welded Pipe from Canada, China, Greece, India, Korea, and Turkey: Scope Rebuttal Comments," dated March 12, 2018.

characteristics of the merchandise under consideration to be used for reporting purposes;⁹ these same parties also submitted rebuttal comments.¹⁰

On March 6, 2018, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of welded pipe from Korea.¹¹

In April and May 2018, Hyundai RB and SeAH submitted timely responses to sections A-D and A-E of Commerce's AD questionnaire, respectively.¹² Also in this time period, SKMT submitted a timely response to section A of the AD questionnaire, as well as letters requesting to be excluded from the investigation.¹³ From May through July 2018, we issued supplemental questionnaires to Hyundai RB and SeAH and received responses to these supplemental questionnaires during the same time period.¹⁴

⁹ See Borusan's Letter, "Certain Large Diameter Welded Pipe from Canada, Greece, India, China, Korea, and Turkey, Case Nos. A-122-863, A-484-803, A-533-881, A-570-077, A-580-897, and A-489-833: Comments on Product Characteristics and Model Matching Hierarchy," dated March 1, 2018; Corinth's Letter, "Antidumping Investigations of Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey – CPW's Comments regarding Product Characteristics for Purposes of Model Matching," dated March 1, 2018; EVRAZ's Letter, "Large Diameter Welded Pipe from Canada, China, Greece, India, Korea, and Turkey: EVRAZ's Comments on the Model Match Methodology," dated March 1, 2018; Petitioners' Letter, "Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey: Petitioners' Comments on Model Match Criteria," dated March 1, 2018; and SeAH's Letter, "Antidumping Duty Investigations of Large Diameter Welded Pipe from Canada, China, Greece, India, Korea, and Turkey – Comments on Product-Matching Criteria," dated March 1, 2018.

¹⁰ See Borusan's Letter, "Certain Large Diameter Welded Pipe from Canada, Greece, India, China, Korea, and Turkey, Case Nos. A-122-863, A-484-803, A-533-881, A-570-077, A-580-897, and A-489-833: Rebuttal Comments on Product Characteristics and Model Matching Hierarchy," dated March 12, 2018; Corinth's Letter, "Antidumping Investigations of Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey – CPW's Rebuttal Comments on Product Characteristics for Purposes of Model Matching," dated March 12, 2018; EVRAZ's Letter, "Large Diameter Welded Pipe from Canada, China, Greece, India, Korea, and Turkey: EVRAZ's Rebuttal Comments on the Model Matching Methodology," dated March 12, 2018; Petitioners' Letter, "Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey: Petitioners' Rebuttal Comments on Model Match Criteria," dated March 12, 2018; and SeAH's Letter, "Antidumping Duty Investigations of Large Diameter Welded Pipe from Canada, China, Greece, India, Korea, and Turkey – Comments on Product-Matching Criteria," dated March 12, 2018.

¹¹ See *Large Diameter Welded Pipe from Canada, China, Greece, India, Korea, and Turkey Determinations*, 83 FR 10748 (March 12, 2018).

¹² See SeAH's and Hyundai's April 16, 2018 Section A Questionnaire Responses (SeAH April 16, 2018 AQR and Hyundai RB's April 16, 2018 AQR); SeAH's and Hyundai RB's May 9, 2018 Sections B-E and B-D Questionnaire Responses (SeAH May 9, 2018 B-EQR and Hyundai RB's May 9, 2018 B-DQR).

¹³ See SKMT's April 16, 2018 Section A Questionnaire Response (SKMT April 16, 2018 AQR). See also Commerce Letter, "Samkang M&T Co., Ltd.'s Section A Questionnaire Response," dated April 18, 2018, rejecting SKMT's original AQR due to business proprietary irregularities and allowing SKMT to refile. See also SKMT's Letters, "A Letter of Explanation," dated April 2, 2018 but submitted on April 10, 2018 (SKMT's April 10th Letter); "Request for Price Undertaking," dated April 16, 2018 (SKMT's April 16th Letter); and "Request Letter," dated May 8, 2018 (SKMT's May 8th Letter).

¹⁴ See SeAH's June 8, 2018 First Supplemental Questionnaire Response (SeAH's June 8, 2018 SQR1); Hyundai RB's June 11, 2018 First Supplemental Questionnaire Response (Hyundai RB's June 11, 2018 SQR1); Hyundai RB's June 22, 2018 Second Supplemental Questionnaire Response (Hyundai RB's June 22, 2018 SQR2); Hyundai RB's June 25, 2018 Third Supplemental Questionnaire Response (Hyundai RB's June 25, 2018 SQR3); Hyundai

On May 23, 2018, the petitioners requested that the date for the issuance of the preliminary determination in this investigation be extended until 190 days after the date of initiation.¹⁵ Based on the request, and pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), on June 15, 2018, Commerce published in the *Federal Register* a postponement of the preliminary determination by 50 days until no later than August 20, 2018.¹⁶

In July and August 2018, the petitioners submitted allegations that a particular market situation (PMS) exists in Korea.¹⁷ Counsel to the petitioners met with Commerce officials to discuss their PMS submission on July 12, and August 16, 2018.¹⁸ On August 8, 2018, Commerce issued a memorandum finding that the petitioners' submission of a cost-based PMS was timely and sufficient to warrant further analysis.¹⁹ We address this matter in the "Normal Value" section of this memorandum.

On August 2, 2018, the petitioners requested that Commerce postpone the final determination.²⁰ On August 1, 2018, and August 3, 2018, Hyundai RB and SeAH, respectively, requested that Commerce postpone the final determination, and that provisional measures be extended.²¹

RB's June 27, 2018 Fourth Supplemental Questionnaire Response (Hyundai RB's June 27, 2018 SQR4); SeAH's July 5, 2018 Second Supplemental Questionnaire Response (SeAH's July 5, 2018 SQR2); SeAH's July 13, 2018 Third Supplemental Questionnaire Response (SeAH's July 13, 2018 SQR3); and Hyundai RB's July 25, 2018 Fifth Supplemental Questionnaire Response (Hyundai RB's June 25, 2018 SQR5).

¹⁵ See Petitioners' Letter, "Large Diameter Welded Pipe from the Republic of Korea: Petitioners' Request for Postponement of the Preliminary Determination," dated May 23, 2018.

¹⁶ See *Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 83 FR 27953 (June 15, 2018).

¹⁷ See Petitioners' Letters, "Large Diameter Welded Pipe from Korea: Particular Market Situation Allegation and Supporting Factual Information," dated July 5, 2018 (Petitioners' July 5th Submission), and "Large Diameter Welded Pipe from Korea: Resubmission of Additional Factual Information Regarding the Particular Market Situation in Korea and Korean LDWP Producers' Price-Fixing in the Korean Market," dated August 9, 2018 (Petitioners' August 9th Submission). The petitioners' August 9th Submission was initially submitted on July 9, 2018. We rejected this July 9, 2018, submission, as it contained untimely information, and allowed the petitioners to file a redacted version. See Commerce's Letter, "Antidumping Duty Investigation of Large Diameter Welded Pipe from the Republic of Korea: Rejection of Sales-Based Particular Market Situation Allegation," and Memorandum, "The Petitioners' Allegation of a Particular Market Situation in the Less-Than-Fair-Value Investigation of Large Diameter Welded Pipe from Korea: Decision Memorandum and Deadline for Submission of Factual Information," dated August 8, 2018 (PMS Decision Memorandum) (collectively, Rejection Documents). See also, SeAH's Letter, "Antidumping Investigation of Large Diameter Welded Pipe from Korea – Response to Petitioners' July 5 and July 10 Letters Alleging the Existence of a Particular Market Situation," dated July 16, 2018, wherein SeAH argues that the petitioners' submissions are untimely.

¹⁸ See Memoranda, "Ex-Parte Memorandum," dated July 13 and 16, 2018.

¹⁹ See PMS Decision Memorandum.

²⁰ See Petitioners' Letter, "Large Diameter Welded Pipe from the Republic of Korea: Petitioners' Request for Postponement of the Final Determination," dated August 2, 2018.

²¹ See Hyundai RB's Letter, "Large Diameter Welded Pipe from the Republic of Korea: Request to Extend the Deadline for the Final Determination," dated August 1, 2018; see also SeAH's Letter, "Antidumping Duty Investigation of Large Diameter Welded Pipe from Korea — Request for Extension of Final Determination," dated August 3, 2018.

On August 3 and 9, 2018, the petitioners submitted pre-preliminary determination comments.²² On August 3, 2018, we provided interested parties an opportunity to comment and submit new factual information regarding constructed value (CV) profit and selling expenses.²³ On August 9, 2018, the petitioners, Hyundai RB, and SeAH submitted CV comments.²⁴ On August 13, 2018, we extended the deadline for parties to submit rebuttal CV comments.²⁵ The petitioners submitted CV rebuttal comment on August 15, 2018.²⁶ On August 17, 2018, Hyundai RB submitted rebuttal pre-preliminary comments.²⁷

We are conducting this investigation in accordance with section 733(b) of the Act.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2017, through December 31, 2017. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was January 2018.²⁸

IV. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,²⁹ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage *i.e.*, scope.³⁰ Certain interested parties commented on the scope of this investigation as it appeared in the *Initiation Notice*. Based on its analysis of these comments, Commerce made certain preliminary revisions to the scope, as reflected in the Appendix of the *Federal Register* notice which this preliminary

²² See Petitioners' Letters, "Large Diameter Welded Pipe from Korea: Supplemental Pre-Preliminary Comments," dated August 3, 2018, and "Large Diameter Welded Pipe from Korea: Resubmission of Pre-Preliminary Comments," dated August 9, 2018 (Pre-Preliminary Comments). Petitioners' August 9th submission was initially submitted on August 3, 2018. We rejected this August 3, 2018, submission, as it contained untimely information and allowed the petitioners to refile a redacted version. See Rejection Documents.

²³ See Commerce Letter, "Antidumping Duty Less Than Fair Value Investigation of Large Diameter Welded Pipe from Korea: Request for Constructed Value Profit and Selling Expense Comments and Information," dated August 3, 2018.

²⁴ See Petitioners' Letter, "Large Diameter Welded Pipe from Korea: Constructed Value Profit and Selling Expense Comments and Information," dated August 9, 2018; Hyundai RB's Letter, "Large Diameter Welded Pipe from the Republic of Korea: Factual Information Concerning CV Profit and Selling Expenses," dated August 9, 2018; and SeAH's Letter, "Antidumping Duty Investigation of Large Diameter Welded Pipe from Korea — Response to Request for CV Profit and Selling Expense Comments and Information," dated August 9, 2018. See also SeAH's Letter, "Antidumping Investigation of Large Diameter Welded Pipe from Korea — Correction of August 9 Submission," dated August 13, 2018, containing one page of English translation of a page from SeAH's financial statements which was inadvertently omitted from SeAH's August 9th CV comments. (The translation page was previously submitted with SeAH April 16, 2018 AQR.)

²⁵ See Memorandum, "Extension of the Deadline to Submit Rebuttal Comments Concerning Constructive Value," dated August 13, 2018.

²⁶ See Petitioner Letter, "Large Diameter Welded Pipe from Korea: Constructed Value Profit and Selling Expense Rebuttal Comments and Information," dated August 15, 2018.

²⁷ See Hyundai RB's Letter, "Large Diameter Welded Pipe from the Republic of Korea — Response to Petitioners' Pre-Preliminary Comments," dated August 17, 2018.

²⁸ See 19 CFR 351.204(b)(1).

²⁹ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

³⁰ See *Initiation Notice*, 83 FR at 7154-55.

decision memorandum accompanies. For a summary of the scope comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.³¹

V. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCES

As noted above, Commerce selected SMKT as a mandatory respondent in this investigation. SMKT received Commerce's AD questionnaire, responded to Section A of the questionnaire, but did not further participate in this investigation. For the reasons stated below, we determine that the use of facts otherwise available with an adverse inference is appropriate for the preliminary determination with respect to SMKT.

A. Application of Facts Available

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by Commerce; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty, and a suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In April 2018, SKMT requested that it be exempt from participating in this investigation and, further, proposed that Commerce enter into a price undertaking (*i.e.* a suspension agreement).³² We responded to SKMT's letters, informing SKMT that it remained subject to individual examination in this investigation. Therefore, SKMT was required to respond to the entire antidumping duty questionnaire by the established deadlines.³³ Despite responding to section A of Commerce's AD questionnaire, SKMT did not respond to the remaining sections B, C, and D.

³¹ See Memorandum, "Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations," dated June 19, 2018 (Preliminary Scope Decision Memorandum).

³² See SKMT's April 10th Letter and SKMT's May 8th Letter.

³³ See Commerce's Letter, "Antidumping Duty Investigation of Large Diameter Welded Pipe from the Republic of Korea," dated May 7, 2018.

As a result, we preliminarily find that the necessary information is not available on the record of this investigation, that SKMT withheld information Commerce requested, that SKMT failed to provide information by the specified deadlines, and that SKMT significantly impeded the proceeding. Moreover, because the information provided by SKMT was so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, and could not be verified, section 782(e) of the Act is inapplicable. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available to determine a preliminary weighted-average dumping margin for SKMT.

B. Use of Adverse Inference

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available.³⁴ In doing so, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.³⁵ In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”³⁶ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.³⁷ It is Commerce’s practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.³⁸

We preliminarily find that SKMT has not acted to the best of its ability to comply with Commerce’s requests for information. Based on the above, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), Commerce preliminarily determines to use an adverse inference when selecting from among the facts otherwise available.³⁹

³⁴ See 19 CFR 351.308(a); see also *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

³⁵ See section 776(b)(1)(B) of the Act.

³⁶ See SAA, H.R. Doc. 103-316, Vol. 1 (1994) at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

³⁷ See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Preamble*, 62 FR at 27340.

³⁸ See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum (IDM) at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

³⁹ See, e.g., *Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR

C. Preliminary Estimated Weighted-Average Dumping Margins Based on AFA

Section 776(b)(2) of the Act states that when employing an adverse inference, Commerce may rely upon information derived from the petition, the final determination from the LTFV investigation, any previous administrative review, or any other information placed on the record.⁴⁰ In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁴¹ Commerce's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation.⁴²

D. Selection and Corroboration of the AFA Rate

To determine the appropriate rate for SKMT based on AFA, Commerce first examined whether the highest petition margin was less than or equal to the highest calculated margin for any respondent and determined that the highest calculated margin of 22.21 percent was the higher of the two. Therefore, for purposes of this preliminary determination, we assigned SKMT, as AFA, a dumping margin of 22.21 percent. Because this rate was a calculated rate, based on a mandatory respondent's data in this segment of the proceeding, it does not constitute secondary information and, therefore, there is no need to corroborate it.

VI. DISCUSSION OF THE METHODOLOGY

A. Comparisons to Fair Value

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

29423 (May 22, 2014), and accompanying Preliminary Decision Memorandum (PDM) at 7-11, unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances*, in Part, 79 FR 61609 (October 14, 2014); see also *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where Commerce applied total adverse facts available (AFA) when the respondent failed to respond to the antidumping questionnaire).

⁴⁰ See also 19 CFR 351.308(c).

⁴¹ See SAA at 870.

⁴² See *Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), and accompanying IDM.

B. 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 (A-A) 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 (A-T) method, as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In numerous investigations, Commerce has applied a “differential pricing” analysis for determining whether application of the A-T method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁴³ Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the A-A method in calculating a respondent’s weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination 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 purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the A-A method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code, *i.e.*, zip code, 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 POI 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,

⁴³ 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).

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 A-T method to all sales as an alternative to the A-A method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an A-T method to those sales identified as passing the Cohen's *d* test as an alternative to the A-A method, and application of the A-A method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the A-A method.

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

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.⁴⁴

⁴⁴ The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods Private Ltd. v. United States*, 862

C. Results of the Differential Pricing Analysis

Hyundai RB

For Hyundai RB, based on the results of the differential pricing analysis, Commerce preliminarily finds that 50.14 percent of the value of Hyundai RB's U.S. sales pass the Cohen's *d* test,⁴⁵ and confirms the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. This result supports consideration of an alternative to the A-A method based on applying the A-T method to those U.S. sales which passed the Cohen's *d* test and the A-A method to those sales which did not pass the Cohen's *d* test. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the A-A method and the weighted-average dumping margin calculated using the above-described alternative method. Thus, for this preliminary determination, Commerce applied the A-A method for all U.S. sales to calculate the weighted-average dumping margin for Hyundai RB.

SeAH

For SeAH, based on the results of the differential pricing analysis, Commerce preliminarily finds that 43.54 percent of the value of SeAH's U.S. sales pass the Cohen's *d* test,⁴⁶ and confirms the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. This result supports consideration of an alternative to the A-A method based on applying the A-T method to those U.S. sales which passed the Cohen's *d* test and the A-A method to those sales which did not pass the Cohen's *d* test. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the A-A method and the weighted-average dumping margin calculated using the above-described alternative method. Thus, for this preliminary determination, Commerce applied the A-A method for all U.S. sales to calculate the weighted-average dumping margin for SeAH.

VII. DATE OF SALE

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁴⁷ Finally, Commerce has a long-standing practice of finding that, where the

F.3d 1322 (Fed. Cir. 2017) recently affirmed much of Commerce's differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

⁴⁵ See Memorandum, "Preliminary Determination Calculations for Hyundai RB," dated August 20, 2018 (Hyundai RB Preliminary Calculation Memorandum).

⁴⁶ See Memorandum, "Preliminary Determination Calculations for SeAH," dated August 20, 2018 (SeAH Preliminary Calculation Memorandum).

⁴⁷ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT

shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.⁴⁸

Regarding home market sales, Hyundai RB reported the shipment date as the date of sale.⁴⁹ SeAH reported the invoice date as the date of sale for all home market sales.⁵⁰ For U.S. sales, Hyundai RB reported the shipment date as the date of sale.⁵¹ SeAH reported the earlier of factory shipment date or the invoice date as the date of sale for its U.S. sales.⁵² We preliminarily followed Commerce’s long-standing practice of basing the date of sale for all of Hyundai RB and SeAH home market and U.S. sales on the earlier of the invoice date or the shipment date.⁵³

VIII. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in Korea during the POI that fit the description in the “Scope of Investigation” section of the accompanying *Federal Register* notice 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, where appropriate.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by Hyundai RB and SeAH in the following order of importance: steel chemistry, minimum specified chromium content, minimum specified nickel content, minimum specified molybdenum content, product type, outer coating, minimum specified yield strength, nominal outside diameter, nominal wall thickness, weld type, and inner coating.

IX. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE

In accordance with section 772(a) of the Act, we calculated EP for all of Hyundai RB’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 SeAH’s U.S. sales, we calculated CEP because the subject merchandise was sold before or after importation to the first unaffiliated purchaser in the United States by sellers in the United States affiliated with SeAH, in accordance with section 772(b) of the Act, and EP, as defined by section 772(a) of the Act, was not otherwise warranted.

2001) (quoting 19 CFR 351.401(i)).

⁴⁸ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007) (*Shrimp from Thailand*), and accompanying IDM at Comment 11; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002) (*Steel Beams from Germany*), and accompanying IDM at Comment 2.

⁴⁹ See Hyundai RB’s May 9, 2018 B-DQR at B-23

⁵⁰ See SeAH’s May 9, 2018 B-EQR at B-22.

⁵¹ See Hyundai RB’s May 9, 2018 B-DQR at C-20.

⁵² SeAH’s May 9, 2018 B-EQR at C-22.

⁵³ See, e.g., *Shrimp from Thailand*, and accompanying IDM at Comment 11; see also *Steel Beams from Germany* and accompanying IDM at Comment 2.

Hyundai RB

We based EP on packed prices to the first unaffiliated purchaser in the United States. 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, and marine insurance.

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 processing revenue. We made deductions for 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 including port to warehouse, warehouse to customer, and between storage facilities, U.S. brokerage and handling, and U.S. customs and harbor maintenance fees. For certain U.S. sales, SeAH reported an amount for freight revenue. In accordance with our practice,⁵⁴ we capped the freight revenue by the amount of the freight expense.

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 selling expenses (*i.e.*, imputed credit expenses and warranty expenses) and indirect selling expenses (including bank charges and inventory carrying costs). 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. affiliates on their sales of the subject merchandise in the United States and the profit associated with those sales. Finally, in accordance with section 772(d)(2) of the Act, we deducted further manufacturing expenses in calculating CEP.

X. NORMAL VALUE

A. Particular Market Situation

1. Petitioners' Allegation

On July 5, 2018, the petitioners alleged that a PMS existed in Korea during the POI, distorting the cost of production (COP) of welded pipe subject to this investigation.⁵⁵ The petitioners attributed the PMS to four factors: (1) Korean subsidies on hot-rolled steel (HRS) inputs (including both hot-rolled coil (HRC) and hot-rolled plate (HRP), the primary inputs for welded pipe); (2) the impact of Chinese global overcapacity on the price of Korean imports of HRS inputs from China and Japan; (3) strategic alliances between Korean pipe producers and HRS

⁵⁴ See, *e.g.*, *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) (*OJ from Brazil*) and accompanying IDM at Comment 2.

⁵⁵ See Petitioners' July 5th Submission.

suppliers; and (4) government involvement in the Korean electricity market.⁵⁶ Accordingly, the petitioners argue that Commerce should make remedial cost adjustments as it has done in recent administrative reviews of circular welded pipe (CWP), welded line pipe (WLP), and oil country tubular goods (OCTG) from Korea.⁵⁷

On August 8, 2018, we determined that the petitioners' allegation of a cost-based PMS was timely, pursuant to 19 CFR 351.301(c)(2)(v), and sufficient to warrant further analysis.⁵⁸ Accordingly, we established a schedule for interested parties to submit factual information to rebut, clarify or correct the allegations contained in the petitioners' cost-based PMS allegation. We did not receive any rebuttal comments or factual information from interested parties. The petitioners assert that a PMS exists in Korea based on both the individual and collective effects of Korean imports of HRS inputs from China and Japan, strategic alliances, subsidies to Korean HRS producers, and distortive government control over electricity prices in Korea, as Commerce has observed in recent AD proceedings involving Korea. The petitioners submit that Commerce's determinations in those cases are relevant to this investigation because of the substantial similarities in the hot-rolled inputs and production processes used to produce the products at issue, and the overlap in respondents, suppliers, equipment and mills.⁵⁹ Further, the petitioners claim that the PMS in Korea has worsened since Commerce's PMS determination in those cases due to the continued flood of unfairly traded steel imports from China into the Korean market and weak demand in the Korean shipbuilding industry, which has placed downward pressure on Korean steel prices.⁶⁰ According to the petitioners, 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.⁶¹

Moreover, the petitioners allege that Korean pipe producers engage in strategic alliances due to historic price collusion among Korean pipe manufacturers.⁶² As support, the petitioners submitted a December 2017 report from the Korean Fair Trade Commission (KFTC), which

⁵⁶ *Id.*, citing *Welded Line Pipe from Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 1023 (January 9, 2018) and accompanying PDM at 14, unchanged in *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 33919 (July 18, 2018) (*Welded Line Pipe 2015-2016 Final*) (collectively WLP).

⁵⁷ *Id.*, citing *WLP 2015-2016 Final*; *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), 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); *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 17146 (April 18, 2018), and accompanying IDM at Comment 1 (collectively OCTG); and *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 27541 (June 13, 2018) (CWP), and accompanying IDM at Comments 1 and 2.

⁵⁸ See Memorandum, "The Petitioners' Allegation of a Particular Market Situation in the Less-Than-Fair-Value Investigation of Large Diameter Welded Pipe from Korea: Decision Memorandum and Deadline for Submission of Factual Information," dated August 8, 2018.

⁵⁹ See Petitioners' July 5th Submission at 53.

⁶⁰ *Id.* at 30-34.

⁶¹ *Id.* at 32 citing to *Welded Line Pipe 2015-2016 Final*.

⁶² See Petitioners' August 9th Submission.

found a price-fixing scheme among six Korean steel pipe producers, including SeAH, from January 2003 to December 2013.⁶³ According to the petitioners, in this scheme, producers arranged which companies won certain bids, the prices of the bids, and the quantity of steel pipe offered to one customer (the Korean Gas Corporation).⁶⁴ The petitioners add that it is reasonable to assume that similar practices continued into the POI due to a pattern of collusion among Korean pipe producers, including SeAH, and cite to KFTC decisions issued in 1997 and 1998 as support.⁶⁵ Accordingly, the petitioners submit that Commerce should consider this additional evidence as further support for a finding that strategic alliances in the Korean market contribute to a PMS affecting the COP of welded pipe in Korea.

The petitioners argue that Commerce should make separate adjustments to account for each of the four factors in their PMS allegation. First, to combat the Korean subsidies on HRS, the petitioners assert that Commerce, as it has done in the previous Korean cases involving PMS, should make a cost adjustment to Korean-origin HRS inputs based on the subsidy rates in *Hot-Rolled Steel—Korea (CVD)*.⁶⁶ Second, the petitioners assert that Commerce should account for the distortion created by strategic alliances between Korean pipe producers and HRS suppliers by increasing the costs of HRS purchased from allied suppliers. The petitioners further allege that the increase in costs of HRS should equal the percentage that prices of non-allied line pipe producers exceed prices of allied line pipe producers.⁶⁷ Third, the petitioners argue that Commerce should adjust the respondents' reported energy costs to account for the market distortion created by the Korean government's involvement in the Korean electricity market by using industrial sector electricity rates from Japan, New Zealand, or Italy.⁶⁸ Finally, to address distortions to COP caused by a global oversupply of HRS, the petitioners argue that Commerce should either: (1) increase the respondents' reported costs for HRS sourced from non-Korean producers using a regression analysis submitted in their July 5th Submission, (2) replace the reported import prices for HRS with the domestic HRS prices, as adjusted using the subsidy rates in *Hot-Rolled Steel—Korea (CVD)*, or (3) use the subsidy rates calculated in a recent European Union determination to adjust the price of imported HRS upward.⁶⁹

2. Analysis

Section 504 of the Trade Preferences Extension Act of 2015 (TPEA)⁷⁰ added the concept of the term "particular market situation" to the definition of "ordinary course of trade," under section 771(15) of the Act, and for purposes of CV under section 773(e) of the Act. Through section 773(e), "particular market situation" also applies to 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}

⁶³ *Id.* at Exhibit 1.

⁶⁴ *Id.*

⁶⁵ See Petitioners' August 9th Submission at 4-5 and Exhibits 4-5.

⁶⁶ *Id.* at 9, citing *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016) (*Hot-Rolled Steel—Korea (CVD)*).

⁶⁷ *Id.* at 44.

⁶⁸ *Id.* at 53.

⁶⁹ *Id.* at 47-51.

⁷⁰ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).

in the ordinary course of trade, {Commerce} may use another calculation methodology under this subtitle or any other calculation methodology.”

In this investigation, the petitioners alleged that a PMS existed in Korea during the POI which distorted welded pipe costs of production based on four factors, as described above. Section 504 of the TPEA does not specify whether to consider these allegations individually or based on a totality of the circumstances. The petitioners, in the previously cited Korean cases, alleged that a PMS existed in Korea based on virtually the same four factors alleged here. In those cases, Commerce analyzed the four factors, based on a totality of the circumstances and determined that a PMS existed in Korea.

Consistent with our determinations in the aforementioned cases, and based on the record evidence in this investigation, we preliminarily find that a PMS exists in Korea, which distorts the COP of welded pipe. This PMS results from the collective impact of the four factors described above.

Having preliminarily determined that a PMS exists for the respondents’ production costs for welded pipe, we then 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. In the cited Korean cases, the only adjustment Commerce made concerns the alleged subsidized HRS inputs. With respect to the allegations concerning global overcapacity, strategic alliances, and government involvement in the Korean electricity market, we have so far been unable to quantify the effects of these factors on the COP of the products at issue. Although the petitioners propose various methodologies to do so in this case, including a regression analysis to address the impact of Chinese global overcapacity, there was insufficient time before this preliminary determination in which to analyze them.

In this investigation, we preliminarily determine to apply an upward adjustment to Hyundai RB’s and SeAH’s reported costs for their HRS inputs on the basis that a PMS exists. Our adjustment for this preliminary determination is derived from the Korean government’s subsidization of HRS. For all HRS inputs purchased during the POI by Hyundai RB and SeAH, we are making an adjustment based on the subsidy rates found in *CTL—Korea*,⁷¹ *HRS—Korea*,⁷² *Steel CTL—Korea*,⁷³ and *CTL Plate—Korea*,⁷⁴ where applicable. Commerce has quantified these adjustments as the net domestic subsidization rate (*i.e.*, the CVD rate, excluding all export subsidies).⁷⁵ In our view, these rates appropriately quantify the impact of

⁷¹ See *Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate from India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea*, 65 FR 6587 (February 10, 2000).

⁷² See *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) (*HRS—Korea*).

⁷³ See *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Countervailing Duty Order*, 82 FR 24103 (May 25, 2017).

⁷⁴ 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*, 83 FR 32840 (July 16, 2018) (*CTL Plate—Korea*).

⁷⁵ See Hyundai RB Preliminary Calculation Memorandum and SeAH Preliminary Calculation Memorandum.

the Korean government's assistance in the production of HRS products, which is integral to the PMS that we have preliminarily found to exist.

We will seek additional information regarding the proposed regression analysis and the impact of Chinese overcapacity, and we will continue to develop the concepts and types of analysis that are necessary to address allegations of PMS under section 773(e) of the Act.

A. 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 RB'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 RB and SeAH, based on this comparison, we determined that, pursuant to 19 CFR 351.404(b), both had a viable home market during the POI because the volume of 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 RB's and SeAH's NVs on their home market sales.

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

Pursuant to 19 CFR 351.403(c) and (d), and consistent with Commerce's practice,⁷⁶ if an exporter or producer sold foreign like product to an affiliated party as defined in section 771(33) of the Act, Commerce may calculate NV based on that sale only if it is made at arm's-length, where the price is, on average, within a range of 98 to 102 percent of the price at which the same exporter or producer sold the same or comparable merchandise at same level of trade (LOT) to unaffiliated parties.

In this investigation, SeAH sold foreign like product to affiliated customers in the home market as defined in section 771(33) of the Act.⁷⁷ Consequently, we conducted the arm's-length test on these sales and excluded sales that failed the test from the NV calculation because we considered the failed-test sales to be outside the ordinary course of trade.⁷⁸

⁷⁶ 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).

⁷⁷ See SeAH April 16, 2018 AQR at 28.

⁷⁸ See section 771(15) of the Act and 19 CFR 351.102(b)(35).

C. Affiliation⁷⁹

Hyundai RB

The petitioners allege that Hyundai RB and Company B are affiliated because Company B's ownership percentage in Hyundai RB is sufficient to find the two entities affiliated pursuant to section 771(33)(E) of the Act.⁸⁰ As discussed in detail in the Affiliation Memo, the record evidence provided by the petitioners, however, does not support a finding of affiliation between Hyundai RB and Company B.

SeAH

The petitioners further allege that SeAH and POSCO are affiliated, pursuant to section 771(33) of the Act, due to 1) POSCO's previous ownership in SeAH and 2) their shared common control over POSCO-affiliated entities. The petitioners argue that, by virtue of the alleged affiliation, Commerce should treat any sales by SeAH to POSCO-affiliated companies as affiliated-party sales.⁸¹ Commerce has previously reviewed this allegation and found no affiliation to exist between POSCO and SeAH.⁸² Further, POSCO sold its shareholdings in SeAH in 2013, or four years prior to the POI.⁸³ Therefore, no record evidence exists to indicate that SeAH and POSCO were affiliated during the POI.

D. 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 LOT as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁸⁴ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁸⁵ 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), we consider the

⁷⁹ Commerce's full analysis of this issue involves extensive discussion of business proprietary information, and therefore, is contained in the Memorandum, "Affiliated Party Issues in the Antidumping Duty Investigation of Large Diameter Welded Pipe," dated August 20, 2018 (Affiliation Memo), which is incorporated herein by reference, and summarized below in a form that may be publicly released.

⁸⁰ See Pre-Preliminary Comments at 34-40.

⁸¹ *Id.* at 15-16.

⁸² See "Decision Memorandum for the Preliminary Results of the Antidumping Administrative Review: Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea; 2013-14," December 21, 2015, at 7-8; *see also* "Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Welded Line Pipe from the Republic of Korea," May 14, 2015, at 18.

⁸³ SQA at 15.

⁸⁴ See 19 CFR 351.412(c)(2).

⁸⁵ *Id.*; *see also* *OJ from Brazil* and accompanying IDM at Comment 7.

starting prices before any adjustments.⁸⁶ 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.⁸⁷

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.⁸⁸

In this investigation, we obtained information from Hyundai RB 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. Our LOT findings are summarized below.

Hyundai RB

In the home market, Hyundai RB reported that it made sales through two channels of distribution: through an affiliate to unaffiliated end users or distributors (Channel 1) and directly to unaffiliated end users or distributors (Channel 2).⁸⁹ Hyundai RB reported that it performed the following selling functions for sales to all home market customers: sales forecasting; strategic/economic planning; marketing; packing; inventory management; order input; direct sales personnel; freight and delivery arrangement.⁹⁰

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 categories, we find that Hyundai RB performed three selling functions: sales and marketing; freight and delivery services; and inventory maintenance and warehousing for its reported sales in the home market. Because Hyundai RB 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 RB reported that it made sales through two channels of distribution: to unaffiliated Korean traders (Channel 1) and directly to U.S. customers (Channel

⁸⁶ 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).

⁸⁷ *See Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

⁸⁸ *See, e.g., OJ from Brazil*, and accompanying IDM at Comment 7.

⁸⁹ *See* Hyundai RB April 16, 2018 AQR at A21.

⁹⁰ *Id.* at Exhibit A-10.

2).⁹¹ Hyundai RB reported that it performed the following selling functions in Korea for its sales through these channels: sales forecasting; strategic/economic planning; marketing; packing; inventory maintenance; order input/processing; direct sales personnel; freight and delivery arrangement.⁹² These selling activities fall into the same three categories as the home market selling activities: sales and marketing; freight and delivery services; and inventory maintenance and warehousing. Because Hyundai RB 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 (EP LOT).

We compared the EP LOT to the home market LOT and found that the selling functions Hyundai RB performed for its home market customers are virtually the same as those performed for its U.S. customers. 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.

SeAH

In the home market, SeAH reported that it made sales through two channels of distribution: direct shipments from SeAH's factories to unaffiliated customers (Channel 1); and sales that underwent processing before sale to the final user (Channel 2).⁹³ SeAH reported that it performed the following selling functions for sales to all home market customers: sales forecasting; strategic/economic planning; sales negotiation; invoicing; receipt of customer payment, personnel training; sales promotion; packing; inventory maintenance; warehouse operation; order input/processing; direct sales personnel; sales marketing; market research; warranty service; customer guarantees; freight and delivery.⁹⁴ Based on the above-mentioned 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 home market. Because SeAH performed these same selling functions at the same relative level of intensity for all of its home market sales, regardless of channel, we determine that all home market sales are at the same LOT.

In the U.S. market, SeAH reported that it made sales through three channels: back-to-back sales through its U.S. affiliate Pusan Pipe America Inc. (PPA) (Channel 1); sales to unaffiliated U.S. customers from affiliate State Pipe & Supply, Inc.'s (State Pipe) U.S. warehouse of merchandise purchased from PPA (Channel 2); and sales of further manufactured merchandise from PPA's inventory (Channel 3).⁹⁵ We preliminarily determine that SeAH performed packing, freight and delivery services, and some inventory maintenance in all three U.S. Channels. Because SeAH performed these same selling functions at the same level of intensity for all of its U.S. sales, regardless of channel, we determine that all of SeAH's CEP sales to the U.S. market during the POI were at the same LOT.

⁹¹ *Id.* at A20 – AA21.

⁹² *Id.* at Exhibit A-9.

⁹³ *See* SeAH April 16, 2018 AQR at 21 – 22.

⁹⁴ *Id.* at Appendix A-5.

⁹⁵ *Id.* at 22 – 24.

Finally, we compared the U.S. LOT to the home market LOT, and found, after deducting selling functions corresponding to economic activities in the United States (*i.e.*, those performed by SeAH's U.S. affiliates), that the selling functions SeAH performed for its home market customers were either not performed for its U.S. sales, or were performed at a significantly higher degree of intensity compared to the selling functions performed for its U.S. sales.⁹⁶ Specifically, we find that SeAH performed substantially more selling activities, and at a higher degree of intensity, in the home market than in the U.S. market. Therefore, we preliminarily determine the home market sales to be at a different LOT and at a more advanced stage of distribution than the CEP LOT.

Because there is only one LOT in the home market, we were unable to calculate a LOT adjustment based on SeAH's home market sales of the foreign like product and we have no other information that provides an appropriate basis for determining a LOT adjustment. Moreover, because the CEP LOT did not exist in the home market, there is no basis for a LOT adjustment. Accordingly, for the respondents' CEP sales, we made a CEP-offset adjustment, in accordance with section 773(a)(7)(B) of the Act. The CEP offset adjustment to NV is subject to the offset cap, which is calculated as the sum of home market indirect selling expenses up to the amount of U.S. indirect selling expenses deducted from CEP.

E. Cost of Production Analysis

Pursuant to 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.

1. 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.⁹⁷

Hyundai RB

In addition to adjusting Hyundai RB's reported HRC input costs to reflect the PMS, as discussed above, we made the following adjustments to Hyundai RB's submitted COP data:⁹⁸

- We weight-averaged the direct materials costs for control numbers (CONNUMs) that have identical physical characteristics associated with the direct material costs.

⁹⁶ See SeAH April 16, 2018 AQR at Exhibit A-5.

⁹⁷ See "Test of Comparison Market Sales Prices" section below for treatment of home market selling expenses.

⁹⁸ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Hyundai RB Co. Ltd.," dated August 20, 2018.

- We reallocated Hyundai RB’s raw material purchase discounts and disallowed its reported scrap offset. We included raw material inventory write-down in the G&A expenses.
- We revised the financial expense ratio to include “other bad debt” expenses and imputed interest expenses related to affiliated party loans.

SeAH

In addition to adjusting SeAH’s reported HRC and HRP input costs to reflect the PMS, as discussed above, we made the following adjustment to SeAH’s submitted COP data:⁹⁹

- We weight averaged the direct materials costs and conversion costs for CONNUMs that have identical physical characteristics associated with the direct material costs.
- We revised SeAH’s interest expense ratio calculation to only allow the short-term interest income offset supported by SeAH’s unconsolidated 2017 audited financial statements.

2. 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 COP to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, movement charges, direct and indirect selling expenses, and packing expenses.

3. 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: (1) they were made within an extended period of time in “substantial quantities,” in accordance with sections 773(b)(2)(B) and (C) of the Act; and, (2) based on our comparison of prices to the weighted-average 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.

⁹⁹ See Memorandum, “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – SeAH Steel Corporation and its Affiliates,” dated August 20, 2018.

We found that, for certain products, more than 20 percent of Hyundai RB'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.

F. Calculation of NV Based on Comparison Market Prices

Hyundai RB

We calculated NV based on prices to unaffiliated customers. We made a deduction from the starting price for inland freight expenses, 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.*, bank charges and imputed credit) and adding U.S. direct selling expenses (*i.e.*, bank charges and imputed credit), where appropriate. We also included "bad debt" in the calculation of the indirect selling expense ratio.

Furthermore, when comparing U.S. sales with home market sales of similar merchandise, where applicable, 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.¹⁰⁰ 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.

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, inland freight from plant to warehouse, warehousing expenses, and inland freight from warehouse to customer.

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).

Furthermore, when comparing U.S. sales with home market sales of similar merchandise, where applicable, 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.¹⁰¹ We also deducted comparison market packing costs and added U.S. packing costs, in accordance with section

¹⁰⁰ See 19 CFR 351.411(b).

¹⁰¹ *Id.*

773(a)(6)(A) and (B) of the Act. Finally, 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.

XI. CURRENCY CONVERSION

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

XII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

☒

Agree

☐

Disagree

8/20/2018

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