



A-580-809
Administrative Review
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MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Results of
Antidumping Duty Administrative Review: Circular Welded Non-
Alloy Steel Pipe from the Republic of Korea: 2016-2017

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on circular welded non-alloy steel pipe (CWP) from the Republic of Korea (Korea) covering the period of review (POR) November 1, 2016, through October 31, 2017. We selected two companies for individual examination in this administrative review: Husteel Co., Ltd. (Husteel) and Hyundai Steel Company (Hyundai Steel). We preliminarily determine that Husteel and Hyundai Steel made sales of the subject merchandise at prices below normal value (NV).

II. BACKGROUND

On November 2, 1992, we published in the *Federal Register* an AD order on CWP from Korea.¹ On November 15, 2017, Husteel requested an administrative review.² On November 28, 2017,

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

² See Letter to Commerce from Husteel, "Circular Welded Non-Alloy Steel Pipe from Korea, Case No. A-580-809: Request for Administrative Review," dated November 15, 2017.



Hyundai Steel requested an administrative review.³ On November 30, 2017, SeAH Steel requested an administrative review.⁴ On November 30, 2017, the petitioner⁵ timely requested a review of 24 entities.⁶

On January 13, 2018, Commerce initiated this administrative review.⁷ On January 25, 2018, we released entry data we obtained from U.S. Customs and Border Protection (CBP) for comment by interested parties regarding our selection of respondents for this review.⁸ On February 1, 2018, Hyundai Steel submitted comments.⁹ On February 20, 2018, we selected Husteel and Hyundai Steel as mandatory respondents for individual examination in this review.¹⁰

On February 20, 2018, Commerce issued the AD questionnaire to Husteel and Hyundai Steel.¹¹ Husteel and Hyundai Steel submitted timely questionnaire responses.¹² Commerce issued supplemental questionnaires to Husteel¹³ and Hyundai Steel¹⁴ and received timely responses.¹⁵

³ See Letter to Commerce from Hyundai Steel Company, “Certain Circular Welded Non-Alloy Steel Pipe from Korea – Request for Administrative Review,” dated November 28, 2017.

⁴ See Letter to Commerce from SeAH Steel Corporation, “Circular Welded Non-Alloy Steel Pipe from Korea – Request for Administrative Review,” dated November 30, 2017.

⁵ The petitioner, Wheatland Tube Company (Wheatland), is a domestic producer of CWP.

⁶ See Letter to Commerce from Wheatland Tube, “Certain Circular Welded Non-Alloy Steel Pipe from Korea: Request for Administrative Review,” dated November 30, 2017.

⁷ See *Initiation Notice*.

⁸ See Letter to All Interested Parties, “Release of U.S. Customs and Border Protection Data,” dated January 25, 2018.

⁹ See Letter from Hyundai Steel to Commerce, “Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Respondent Selection Comments,” dated February 1, 2018.

¹⁰ See Memorandum, “Antidumping Duty Administrative Review: Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Respondent Selection Memorandum,” dated February 20, 2018.

¹¹ See Letters to Husteel and Hyundai Steel, dated February 20, 2018.

¹² See Letter from Husteel to Commerce, “Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, Case No. A-580-809: Section A Questionnaire Response,” dated March 20, 2018 (Husteel AQR); Letter from Husteel to Commerce, “Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, Case No. A-580-809: Sections B-D Questionnaire Response,” dated April 19, 2018 (Husteel BCDQR); Letter from Hyundai Steel to Commerce, “Certain Circular Welded Non-Alloy Steel Pipe from Korea: Hyundai Steel Company’s Section A Questionnaire Response,” dated March 20, 2018 (Hyundai Steel AQR); and Letter from Hyundai Steel to Commerce, “Certain Circular Welded Non-Alloy Steel Pipe from Korea: Hyundai Steel Company’s Sections B-D Questionnaire Response,” dated April 17, 2018 (Hyundai Steel BCDQR).

¹³ See Letters from Commerce to Husteel, dated June 28, 2018 (Husteel SQ1) and July 27, 2018 (Husteel SQ2).

¹⁴ See Letters from Commerce to Hyundai Steel, dated August 17, 2018 (Hyundai Steel SQ1), September 24, 2018 (Hyundai Steel SQ2), November 2, 2018 (Hyundai Steel SQ3), and November 6, 2018 (Hyundai Steel SQ4).

¹⁵ See Letter from Husteel, “Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Case No. A-580-809: Supplemental Sections A-D Questionnaire Response,” dated July 12, 2018 (Husteel SQR1); Letter from Husteel, “Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Case No. A-580-809: Supplemental Section D Questionnaire Response,” dated August 8, 2018 (Husteel SQR2); Letter from Hyundai Steel, “Certain Circular Welded Non-Alloy Steel Pipe from Korea: Response to the August 17th Supplemental Sections A-C Questionnaire,” dated September 13, 2018 (Hyundai Steel SQR1); and Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Response to the September 24th Supplemental Section D Questionnaire,” dated October 10, 2018 (Hyundai Steel SQR2), “Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Response to the November 2nd Third Supplemental Questionnaire,” dated November 19, 2018 (Hyundai Steel SQR3), and “Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Response to the November 6th Fourth Supplemental Questionnaire,” dated November 19, 2018 (Hyundai Steel SQR4).

III. SCOPE OF ORDER

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

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of the order except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit.¹⁶

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

IV. RATES FOR RESPONDENTS NOT SELECTED FOR INDIVIDUAL EXAMINATION

Twenty-three companies were not selected for individual examination in this review. Generally, Commerce looks to section 735(c)(5) of the Tariff Act of 1930, as amended (the Act), which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents not selected for individual examination in an administrative review. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based on total facts available. Accordingly, our usual practice has been to average the rates for the selected companies excluding zero, *de minimis*, and rates based entirely on facts available.¹⁷

¹⁶ 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.

¹⁷ See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

In these preliminary results, we found non-*de minimis* weighted-average margins for Husteel and Hyundai Steel. We cannot apply our normal methodology of calculating a weighted-average margin using the actual net U.S. sales values and dumping margins for Husteel and Hyundai Steel because doing so could indirectly disclose business-proprietary information to both of these companies. Alternatively, we have previously applied the simple average of the dumping margins we determined for the selected companies.¹⁸ In order to strike a balance between our duty to safeguard parties' business proprietary information and our attempt to adhere to the guidance set forth in section 735(c)(5)(A) of the Act, we calculated a weighted-average margin for non-selected respondents using the publicly available, ranged total U.S. sales values of the selected respondents, compared the resulting public, weighted-average margin to the simple average of the antidumping duty margins, and used the amount which is closer to the actual weighted-average margin of the selected respondents as the margin for the non-selected respondents.¹⁹ Accordingly, for the preliminary results of this review, we are assigning the simple average of these two companies' dumping margins.²⁰

V. DISCUSSION OF THE METHODOLOGY

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

(1) Comparisons to Normal Value

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

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average export prices (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 less-than-fair-value 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. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR

¹⁸ See, e.g., *Ball Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008).

¹⁹ See *Ball Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53662 (September 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

²⁰ See Memorandum to Abdelali Elouaradia, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Calculation of the Margin for Respondents Not Selected for Individual Examination," dated concurrently with this memorandum.

351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.²¹

In recent investigations and the last completed administrative review of this order, Commerce applied a “differential pricing” analysis for determining whether application of the A-T method is appropriate in a particular situation, pursuant to section 777A(d)(1)(B) of the Act and 19 CFR 351.414(c)(1) and 19 CFR 351.414(c)(1).²² Commerce finds that the differential pricing analysis used in recent investigations and reviews may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the A-A method in calculating weighted-average dumping margins for respondents.

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

²¹ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012) and accompanying Issues and Decision Memorandum at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

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

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

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

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

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

B. Results of the Differential Pricing Analysis

Husteel

For Husteel, based on the results of the differential pricing analysis, we preliminarily find that 79.89 percent of the value of U.S. sales pass the Cohen's *d* test,²³ confirming the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and the alternative comparison methods. Thus, for these preliminary results, Commerce is applying the average-to-transaction comparison method to all U.S. sales to calculate the weighted-average dumping margin for Husteel.

Hyundai Steel

For Hyundai Steel, based on the results of the differential pricing analysis, Commerce preliminarily finds that 83.08 percent of the value of U.S. sales pass the Cohen's *d* test,²⁴ confirming the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because there is a meaningful difference in the weighted-average dumping margins when calculated using the average-to-average method and the alternative comparison methods. Thus, for these preliminary results, Commerce is applying the average-to-transaction comparison method to all U.S. sales to calculate the weighted-average dumping margin for Hyundai Steel.

VI. DATE OF SALE

Section 351.401(i) of Commerce's regulations states that, "{i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business." The regulation provides further that Commerce may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.²⁵ Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.²⁶

²³ See "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Analysis Memorandum for Husteel Co., Ltd.," dated concurrently with this memorandum (Husteel Preliminary Analysis Memorandum).

²⁴ See "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Analysis Memorandum for Hyundai Steel Company," dated concurrently with this memorandum (Hyundai Steel Preliminary Analysis Memorandum).

²⁵ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) (*Allied Tube*).

²⁶ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; see also *Notice of Final*

Husteel

For its comparison market sales, Husteel has reported the shipment date as the date of sale, because Husteel establishes the material terms of sale at the time of shipment.²⁷ For its U.S. CEP sales, Husteel reported the earlier of the date of shipment from Korea or the date of its U.S. affiliate Husteel USA's invoice to the unaffiliated U.S. customer as the date of sale.²⁸ Therefore, consistent with our practice, we are relying on the sale dates reported by Husteel for both the comparison and U.S. market sales.²⁹

Hyundai Steel

For its comparison market sales, Hyundai Steel reported that quantity can change up until the date of shipment from Hyundai Steel's factory, and price can change up until the date Hyundai Steel issues its tax and commercial invoice. For U.S. sales, both the quantity and the terms are no longer subject to change once the merchandise is shipped.³⁰ Therefore, consistent with our practice, we are relying on the earlier of shipment date or invoice date for home-market sales, and we are relying on the shipment date for U.S. sales.

VII. PRODUCT COMPARISONS

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

VIII. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c)" of section 772 of the Act. Section 772(b) of the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States to an unaffiliated purchaser in the United States before or after the date of importation by or for the account of the producer or exporter of such

Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

²⁷ See Husteel AQR at 16.

²⁸ *Id.*

²⁹ This is consistent with our practice with respect to Husteel in prior reviews. See, e.g., *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 57583 (December 6, 2017) and accompanying Decision Memorandum at 6-7 (unchanged in the final results of review; 82 FR 26910, June 12, 2017).

³⁰ See Hyundai Steel AQR at A-27-29.

merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)” of section 772 of the Act. As explained below, we based the U.S. price on CEP for Husteel and Hyundai Steel.

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

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

IX. NORMAL VALUE

A. Particular Market Situation (PMS)

1. Background

In the previous administrative review of CWP from Korea, Commerce found that a particular market situation existed in Korea which distorted the COP of CWP, based on our considerations of cumulative effects of: (1) Korean subsidies on hot-rolled coil (HRC), the primary input for CWP; (2) Korean imports of HRC from the People’s Republic of China (China); (3) alleged strategic alliances between Korean HRC suppliers and Korean CWP producers; and (4) government involvement in the Korean electricity market.³¹ On August 27, 2018, the petitioner submitted factual information and a letter in which it argued that Commerce should find that a particular market situation continues to exist in Korea in the instant POR.³²

On September 14, 2018, Commerce issued a letter inviting all other interested parties to submit factual information to rebut, clarify or correct the petitioner’s factual information supporting its PMS allegation, and comments regarding the alleged particular market situation in this review.³³ On September 28, 2018, Husteel, Hyundai Steel, and SeAH Steel Corporation (a non-selected

³¹ See *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 26910 (June 12, 2017) and accompanying Decision Memorandum at Comment 1 (CWP AR15-16).

³² See Letter from Wheatland, “Certain Circular Welded Non-Alloy Steel Pipe from Korea: Re-Allegation of a Particular Market Situation,” dated August 27, 2018 (PMS Allegation).

³³ See Letter to All Interested Parties, “2016-2017 Administrative Review of the Antidumping Duty Order on Circular Welded Non-Alloy Steel Pipe (CWP) from the Republic of Korea: Schedule for Submission of Factual Information Relating to Particular Market Situation Allegation,” dated September 14, 2018.

Korean CWP producer) submitted factual information and comments concerning the particular market situation allegations.³⁴

2. Parties' Arguments

The petitioner argues that the PMS that Commerce has already determined to exist in Korea continues to exist. The petitioner contends that Commerce was misguided in requesting evidence relating to this POR, because a finding that a PMS exists is persistent, similar to a finding that country is a non-market economy. Therefore, the onus is not on the petitioner to demonstrate repeatedly that a PMS continues to exist, according to the petitioner, but rather on the respondents to show that something has changed that warrants a reexamination of Commerce's prior findings regarding a PMS.

In support of its allegation that a PMS continues to exist, the petitioner placed on the record its PMS allegation from the previous administrative review and three new pieces of information: a WTO Trade Policy Report (TPR) relating to Korea; information relating to findings by the Korean Fair Trade Commission that Korean pipe producers have colluded on setting prices and bidding on government contracts; and, ITA's Global Steel Trade Monitor Report on South Korea published in December 2017.

Husteel and SeAH allege that the original PMS decision in *OCTG AR14-15*³⁵ was not based on an objective analysis of the facts and law, but was the result of outside influence. Husteel contends that the law and Commerce's practice, as demonstrated by *Certain Tapered Roller Bearings from Korea*, are clear that the party making the allegation bears the burden of substantiating that allegation. Husteel argues that the petitioner has failed to provide any evidence that a PMS exists or evidence relating to the respondents' costs of producing the subject merchandise during the POR. Husteel asserts that the new factual information placed on the record by the petitioner falls far short of proving that a PMS exists during this POR. Husteel argues that the adverse effects that Commerce found in *OCTG AR14-15* are not present during this POR and, contrary to the petitioner's allegation, articles and data from the POR show that the steel industry in Korea is profitable and prices are rising. Husteel contends that the petitioner has failed to identify any relationship between Chinese steel exports and steel prices in Korea or distortions to the COP of CWP producers. Moreover, according to Hustel, the conditions cited by Commerce in support of Chinese exports suppressing prices in Korea no longer exist during the POR. Husteel claims that the Court of International Trade (CIT) affirmed Commerce's

³⁴ See 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 September 28, 2018 (Husteel PMS Comments); Letter from Hyundai Steel, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Rebuttal Factual Information Relating to Alleged Particular Market Situation," dated September 28, 2018; and Letter from SeAH Steel Corporation, "Administrative Review of the Antidumping Duty Order on Circular Welded Non-Alloy Steel Pipe from Korea — Response to the Department's September 14 Request for Comments on 'Particular Market Situation' Allegation" dated September 28, 2018.

³⁵ 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 AR14-15*) and accompanying Issues and Decision Memorandum at Comment 3.

determination that electricity prices in Korea are consistent with market principles and that there is no evidence that strategic alliances have contributed to a PMS. Husteel concludes that if Commerce were to find that a PMS exists in this POR, it should, as it has in all previous reviews relating to this PMS, continue to decline to apply a cost adjustment to account for the effect of China-sourced HRC, electricity, and strategic alliances. Additionally, Husteel argues that Commerce has no basis under the law to recognize the countervailable subsidies from a separate proceeding in the calculation of costs in this antidumping administrative review; however, if Commerce were to do so, Commerce should not rely on AFA rates from the CVD investigation of *Hot-Rolled Steel from Korea (HRS from Korea CVD)*³⁶ because they are out of date and would result in the application of AFA based on non-cooperation in that investigation to cooperating respondents in this review.

Hyundai Steel argues that the petitioner is mistaken in its belief that once Commerce makes a PMS finding in a proceeding, that finding should remain applicable in perpetuity. Hyundai Steel asserts that each segment of a proceeding stands on the administrative record and the burden falls on the party making the allegation to establish the grounds for that finding. Hyundai Steel contends that the analysis must focus on whether these alleged distortions occurred in the current POR and not during previous review periods. Hyundai Steel and SeAH argue that Commerce's determination in the previous administrative review relied heavily on POSCO's rate from *HRS from Korea CVD*; however, the CIT recently determined that Commerce's calculation of POSCO's AFA rate in that investigation was improper, and Commerce recently conceded in its redetermination of *Cold-Rolled Steel from Korea* investigation that its AFA rate for POSCO was incorrect and overstated. Hyundai Steel and SeAH also raise to Commerce's recent *Cut-to-Length Steel Plate from Korea CVD* investigation where POSCO's non-AFA rate, which includes many of the same subsidy programs as *HRS from Korea CVD*, establishes that POSCO's AFA rate from *HRS from Korea CVD* is overstated. Hyundai Steel also contends that Commerce's recent preliminary determination in *Large Diameter Welded Pipe from Korea CVD*, in which Hyundai Steel received a *de minimis* rate, demonstrates that Hyundai has not received countervailable subsidies for HRC used in pipe manufacturing. Hyundai Steel argues that if Commerce preliminarily determines that a PMS exists in this review, the rate from *HRS from Korea CVD* should not be used in the calculation of a PMS adjustment. Additionally, Hyundai Steel requests that Commerce place the proprietary analysis memoranda from the preliminary determination of the first administrative review of *HRS from Korea CVD* onto this record and allow parties to comment on that data.

As for the other factors involved in the PMS analysis, Hyundai Steel provided contemporaneous electricity data, which it claims will demonstrate that electricity prices in the POR are market-based. Hyundai Steel argues that Commerce should focus on the standard pipe market in its analysis of strategic alliances and not on the OCTG or line pipe markets, because the HRC used to manufacture OCTG is distinct from the HRC used to manufacture standard pipe and the finished products are sold to different customers, in different grades, for different uses, and at different price points. Hyundai Steel alleges that the petitioner has failed to submit factual

³⁶ See *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016), as amended in *Certain Hot-Rolled Steel Flat Products from Brazil and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders*, 81 FR 67960 (October 3, 2016).

evidence that strategic alliances that distort costs in the standard pipe market exist between each of the two mandatory respondents and their HRC suppliers. According to Hyundai Steel, the petitioner has failed to establish a link between Hyundai's manufacturing costs in the current POR to distortions that they alleged to have existed in the previous review period.

Hyundai Steel argues that because Commerce is using a Korean price-to-U.S. price comparison methodology for almost all sales, there is no basis for a PMS adjustment. Hyundai Steel contends that Section 504 of the TPEA³⁷ permits adjustment to a producer's actual costs of production based on a PMS allegation only for purposes of calculating constructed value. According to Hyundai Steel, Section 504 did not change the statutory provisions regarding the calculation of cost of production for below-cost-sales purposes or application of the sales-below-cost test.

SeAH argues that the petitioner has failed to identify any link between the alleged distortions and the costs reported by the mandatory respondents in this review. SeAH asserts that evidence in recent *OCTG from Korea* and *Welded Line Pipe from Korea* reviews demonstrates that SeAH's hot-rolled costs have not been distorted, that Commerce has not found affiliation or existence of strategic alliances between SeAH and other Korean HRC producers, and that Commerce has consistently found that there is no government subsidization of electricity prices in Korea. SeAH requests that Commerce place the entirety of the records of the *HRS from Korea CVD* investigation and the first administrative review on the record of this review so that it may respond to the record evidence in those proceedings.

3. Analysis

Section 504 of the TPEA added the concept of "particular market situation" to the definition of the term "ordinary course of trade," found at section 771(15) of the Act. This expanded Commerce's consideration of the existence of a particular market situation not only in the circumstances of determining normal value under section 773(a)(1)(A), but also for purposes of constructed value (CV) under section 773(e), and through these provisions for purposes of the COP under section 773(b)(3). Section 773(e) states that "if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology."

In this review, the petitioner alleged that a particular market situation continues to exist in Korea which distorts CWP costs of production based on the following four factors: (1) subsidization of Korean hot-rolled steel products by the Korean government; (2) the distortive pricing of unfairly traded Chinese HRC; (3) strategic alliances between Korean HRC suppliers and Korean CWP producers; and (4) distortive government control over electricity prices in Korea. Section 773(e) does not specify whether to consider these allegations individually or collectively. In *OCTG AR14-15*, the domestic industry alleged that a particular market situation existed in Korea based on the same four factors alleged in this review, and upon analyzing the four allegations as a whole, Commerce found that a particular market situation existed in Korea during that review

³⁷ See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA).

period.³⁸ Subsequent to that finding, Commerce has repeatedly determined that a PMS continues to exist because the record evidence has demonstrated that the circumstances present in *OCTG AR14-15* have remained largely unchanged in the periods under investigation or review in other proceedings, including in the previous administrative review in this proceeding.³⁹ The record evidence in this review supports a finding that the circumstances present in *OCTG AR14-15* have remained largely unchanged and, thus, a preliminary finding that a particular market situation exists in Korea which distorts the cost of production of CWP. This particular market situation results from the collective impact of Korean HRC subsidies, strategic alliances, government involvement in the Korean electricity market, and to a certain extent, Korean imports of HRC from China.

In this administrative review, we considered the four components of the petitioner's particular market situation allegation as a whole, based on their cumulative effect on the Korean market for the inputs to produce CWP. Based on the totality of the conditions in the Korean market, Commerce preliminarily finds that the allegation represent facets of a single particular market situation. The information on the record shows the Korean government provides subsidies for the production of hot-rolled steel, which includes HRC to produce CWP,⁴⁰ and that the mandatory respondents sourced HRC from Korean HRC producers that have been determined to have received subsidies from the Korea government.⁴¹ Record evidence also shows that the assistance received by Korean hot-rolled steel producers was nearly 60 percent of the cost of hot-rolled steel, the primary input into CWP production.⁴² Additionally, HRC, as an input of CWP, constitutes a substantial proportion of the cost of CWP production; thus, distortions in the HRC market have a significant impact on production costs for CWP.⁴³

With respect to the petitioner's contention that certain Korean HRC suppliers and Korean CWP producers attempt to compete by engaging in strategic alliances, Commerce agrees that the record evidence demonstrates that such strategic alliances exist in Korea.⁴⁴ Although the record does not contain specific evidence showing that strategic alliances directly created a distortion in HRC pricing in the current POR, we nonetheless find that these strategic alliances between certain Korean HRC suppliers and Korean pipe producers are relevant as an element of our analysis, in that they may have created distortions in the prices of HRC in the past, and may continue to affect HRC pricing in a distortive manner during this POR and in the future.

³⁸ See *OCTG AR14-15 IDM* at Comment 3.

³⁹ See, e.g., *CWP AR15-16 IDM* at Comment 1; *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 17146 (April 18, 2018) (*OCTG AR15-16*) and accompanying Issues & Decision Memorandum at Comment 1 and *Certain Oil Country Tubular Goods From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 51442 (October 11, 2018) (*OCTG AR16-17*) and accompanying Preliminary Determination Memorandum at 16-23.

⁴⁰ See *HRS from Korea CVD*.

⁴¹ *Id.*

⁴² *Id.*

⁴³ See Hyundai Steel BCDQR at Exhibit D-3 and Husteel SQR2 at Exhibit D-27.

⁴⁴ See PMS Allegation at Attachment A (containing Letter from the petitioner, "Certain Circular Welded Non-Alloy Steel Pipe from Korea: Allegation of a Particular Market Situation," dated October 16, 2017, at Attachment 15).

With respect to the allegation of distortion present in the electricity market, consistent with the SAA, a particular market situation may exist where there is government control over prices to such an extent that home market prices cannot be considered to be competitively set. Commerce has previously found that electricity in Korea functions as a tool of the government's industrial policy.⁴⁵ Furthermore, the largest electricity supplier, KEPCO, is a government-controlled entity.⁴⁶ To be clear, our determination of a particular market situation in this review is not based solely upon any support from the government of Korea for electricity. To the contrary, as we stated above, each of these allegations is a contributing factor that, taken together, lead Commerce to conclude that a particular market situation exists in Korea.

Finally, there is no evidence on the record that Chinese overcapacity in steel production, a well-documented and global problem which has been recognized and addressed across Commerce's proceedings, including in *OCTG AR14-15*, has ceased.⁴⁷ We do not disagree with Husteel that the record reflects that some steel manufacturers in Korea have realized a profit over the POR.⁴⁸ We also do not disagree that the prices, overall, of imported steel into Korea have increased as well.⁴⁹ However, there is no data on the record which indicates that Chinese imported steel prices have increased to such an extent that market distortion or price suppression caused by Chinese overcapacity did not exist during the POR. Because a significant volume of Chinese steel products continue to be imported into Korea, and those prices unquestionably have an effect on the domestic price of HRC in Korea, we find that this, along with the significant assistance provided by the Korean government to assisting the domestic steel producers, distorts the Korean market prices of HRC, and in turn distorts the costs of Korean CWP production.⁵⁰

All of the above factors suggest that the production costs of CWP, including the acquisition prices of HRC in Korea, are distorted, and this demonstrates that the costs of HRC to Korean CWP producers are not in the ordinary course of trade. Thus, we preliminarily find that various market forces result in distortions which impact the cost of production for CWP from Korea and that the evidence on the record supports a finding that a particular market situation exists during the POR of this administrative review.

Having found that a particular market situation exists that affects the respondents' production costs for CWP, Commerce examined whether there was sufficient record evidence to quantify the impact of the particular market situation in order to potentially employ an alternative calculation methodology, as contemplated by section 504 of the TPEA. For these preliminary results of review, we have made an upward adjustment to Husteel's and Hyundai Steel's reported costs for HRC based on the subsidy rates found in *HRS from Korea CVD*. We disagree with the respondents that it is not appropriate to base a PMS adjustment on the CVD rates from *HRS from Korea CVD* because those rates were based on total AFA and they do not overlap with the instant POR. With respect to the fact that one of the CVD rates in *HRS from Korea CVD* was

⁴⁵ See *OCTG 14-15 IDM* at Comment 3.

⁴⁶ See PMS Allegation at Attachment A 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).

⁴⁷ See *OCTG AR14-15 IDM* at Comment 3.

⁴⁸ See Husteel PMS Comments at Exhibit 3.

⁴⁹ See PMS Allegation at Attachment A at Attachment 12, Exhibit 7; and at Attachment D.

⁵⁰ See PMS Allegation at Attachment D.

based on total AFA, we disagree that this alone should discredit their use in making a PMS adjustment. The respondents in the CVD investigation in *HRS from Korea CVD* could have chosen to act to the best of their ability in responding to Commerce's requests for information, but presumably did not do so because full cooperation might have resulted in higher CVD rates. As for the fact that the rates from the CVD investigation of *HRS from Korea CVD* precede the POR for this administrative review, and they are under review by the CIT, these countervailing duty rates are still in effect because the final determination has not been amended and no administrative review has been completed to date.

As for the argument that we should use rates from Commerce's CVD investigation of cut-to-length plate from Korea, as Hyundai Steel and SeAH propose, we find that the rates from *HRS from Korea CVD* are more appropriate because those rates are for hot-rolled steel, the input used to make CWP. If there is an amended final determination or a final results of review in the *HRS from Korea CVD* proceeding prior to the publication of the final results in this review, we will take those rates into consideration for our final results.

In this administrative review, we preliminarily determine to make an upward adjustment to all HRC inputs purchased by Husteel and Hyundai Steel during the POR based on the subsidy rates found in *HRS from Korea CVD*. Consistent with our methodology in the preliminary results of *OCTG AR16-17*,⁵¹ we quantified this adjustment as the net domestic subsidization rate, *i.e.*, the CVD rate net of the export subsidies.⁵² Specifically, for HRC purchased from POSCO, we have preliminarily based this adjustment on the subsidy rate found for POSCO in *HRS from Korea CVD*, while for HRC sourced from all other producers during the POR, we based the adjustment on the Hyundai Steel/All Others rate. We continue to quantify this adjustment as the net domestic subsidization rate, namely the countervailing duty rate excluding all export subsidies. In Commerce's view, these rates appropriately quantify the impact of the government of Korea's assistance in the production of hot rolled steel products, which is integral to the particular market situation that Commerce has preliminarily found to exist for these preliminary results.

While we have preliminarily determined that a particular market situation exists in Korea based on the collective impact of Korean HRC subsidies, strategic alliances, government involvement in the Korean electricity market, and Korean imports for HRC from China, the record does not contain sufficient evidence to make adjustments specifically relating to the strategic alliances, the electricity allegations, or to address further Korean imports for HRC from China. We preliminarily find we are unable to quantify the impact of strategic alliances on the cost of HRC based on the limited data on the record of this review, although such alliances tend to have an impact on the way that customer-supplier relationships are structured and contribute to the existence of a PMS. Similarly, we preliminarily find that we are unable to quantify the effect of the electricity market on the cost of producing CWP because the information on the record is insufficient for determining the impact of government intervention with respect to the prices CWP producers pay for electricity. Finally, with respect to HRC purchased from Chinese

⁵¹ See *OCTG AR16-17* at 21-22.

⁵² See memoranda to the file, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Analysis Memorandum for Husteel Co., Ltd." (Husteel Preliminary Analysis Memorandum); and "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Analysis Memorandum for Hyundai Steel Company" (Hyundai Steel Preliminary Analysis Memorandum), dated concurrently with this memorandum.

suppliers, we have not made an adjustment for these preliminary results. At this time, we find that the information on the record of this review does not permit us to quantify the effect of imports of Chinese HRC on the prices paid by the CWP producer for Korean HRC inputs.

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

B. Comparison Market Viability

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

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

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

During the POR, Husteel reported that it neither made sales of the foreign like product to affiliated customers in the comparison market, as defined in section 771(33) of the Act, nor purchased raw material inputs from affiliated parties.⁵³ Therefore, we have not conducted the arm's-length test with respect to Husteel.⁵⁴

Hyundai Steel reported sales to affiliated customers in the comparison market during the POR. Hyundai Steel also obtained domestic inland freight from factory to warehouse (INLFTWH), domestic inland freight from factory/warehouse to customer (INLFTCH), domestic inland freight for U.S. sales from factory to port (DINLFTPU), international freight (INTNFRU), other freight services, and material inputs into production from affiliated companies.⁵⁵ Based on the information Hyundai Steel provided, we preliminarily determine that these expenses were all at arm's-length with the exception of a certain inputs.⁵⁶ We asked Hyundai to revalue certain of

⁵³ See Husteel's AQR at 2 (sales to unaffiliated customers in the home market) and 10 (unaffiliated purchases of raw material inputs).

⁵⁴ *Id.*; see also *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*; 2011-2012, 78 FR 78336 (December 26, 2013) and accompanying Preliminary Decision Memorandum at 10.

⁵⁵ See Hyundai Steel BCDQR at B-36, B-38, C-30, and C-32 and Exhibit D-4; see also Hyundai Steel SQR2 at Exhibit S2-5A1.

⁵⁶ See Hyundai Steel SQR2 at S2-5 to S2-18 and Exhibits S2-5-B1 through S2-5-Y.

these expenses pursuant to section 773(f)(2) of the Act. Hyundai Steel reported adjustments to effectuate our request.⁵⁷

Commerce may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.⁵⁸

Commerce excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because Commerce considered them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, "the Department may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."⁵⁹

To test whether Hyundai's home market sales to affiliated customers were made at arm's-length prices, Commerce compared these prices to the prices of sales of comparable merchandise to unaffiliated customers, net of all discounts and rebates, movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated customer were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated customer, Commerce determined that the sales to that affiliated customer were at arm's-length prices.⁶⁰ In this review, Commerce excluded sales to affiliated customers in the home market that were not made at arm's-length prices from our analysis because we considered these sales to be outside the ordinary course of trade.⁶¹

D. Level of Trade/CEP Offset

To the extent practicable, we determine NV based on sales of the foreign like product at the same level of trade (LOT) as the EP or CEP sales.⁶² Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁶³ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁶⁴ In order to determine whether the home market sales were at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.* the chain of distribution), including selling functions, class of consumer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOT for EP or comparison market sales (*i.e.*, NV based on either home market or third country prices), we consider the starting

⁵⁷ See Hyundai Steel SQR2 at S2-3 to S2-5 and Exhibits S2-4 and S2-5A.

⁵⁸ See 19 CFR 351.403(c).

⁵⁹ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003), *aff'd*, 306 F. Supp. 2d 1291 (CIT 2004) (citing *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55355 (September 7, 2011) (*Mexican Pipe*)).

⁶⁰ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002).

⁶¹ See 19 CFR 351.102(b).

⁶² See section 773(a)(1)(B)(i) of the Act and 19 CFR 351.412.

⁶³ See 19 CFR 351.412(c)(2).

⁶⁴ *Id.*

prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

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

Husteel

We examined the information obtained from Husteel regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed by Husteel for each channel of distribution.⁶⁵ Husteel reported two types of customers in the home market: distributors and end-users.⁶⁶ The selling activities associated with the two types of customers did not differ; therefore, we consider all home-market sales to constitute one LOT.⁶⁷ Similarly, Husteel reported all of its CEP sales were made at one level of trade. In the U.S. market, Husteel reported CEP sales primarily to distributors.⁶⁸ Husteel reported that, after adjusting for functions performed in the United States, the CEP LOT would be less advanced than the home market LOT.⁶⁹

We compared the selling activities at the CEP LOT with the selling activities at the home market LOT and found, after deducting selling functions corresponding to economic activities in the United States, *i.e.*, those performed by Husteel's U.S. affiliates, that these levels were dissimilar. Husteel's CEP sales involve no or lower levels of certain selling functions, *e.g.*, negotiating price, meeting with customers, personnel management and trading.⁷⁰ Therefore, we preliminarily determine that the home-market sales are at a different LOT and at a more advanced stage of distribution than the CEP LOT.

We found that there were significant differences between the selling activities associated with the CEP LOT and those associated with the home market LOT. Specifically, Husteel provides inventory maintenance, among other services, in the home market, but it does not provide this service in the U.S. market.⁷¹ However, because Husteel did not make any home market sales of subject or non-subject merchandise during the POR at a LOT similar to the CEP level of trade, pursuant to section 773(a)(1)(B)(i) of the Act, we are unable to make a LOT adjustment. Accordingly, for Husteel's CEP sales, we made a CEP-offset adjustment in accordance with

⁶⁵ See Husteel AQR at 11-13, and Exhibit A-10 (Selling Functions Chart).

⁶⁶ *Id.* at 13.

⁶⁷ *Id.* at Exhibit A-10.

⁶⁸ *Id.* at 13.

⁶⁹ *Id.* at 15.

⁷⁰ See Husteel AQR at Exhibit A-10.

⁷¹ See Husteel AQR at A-15, and Exhibit A-10.

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.

Hyundai Steel

We examined the differences in selling functions reported in Hyundai Steel's responses to our requests for information. Hyundai Steel reported two types of customers in the home market: end-users and distributors.⁷² The selling activities associated with the two types of customers did not differ; therefore, we consider all home-market sales to constitute one LOT. In the U.S. market, Hyundai Steel reported CEP sales to unaffiliated distributors and unaffiliated trading companies.⁷³ The selling activities associated with the two types of customers did not differ; therefore, we preliminarily consider all U.S. sales to constitute one LOT. We compared the selling activities at the CEP LOT with the selling activities at the home market LOT and found, after deducting selling functions corresponding to economic activities in the United States, *i.e.*, those performed by Hyundai Steel's U.S. affiliates, that these levels were substantially dissimilar. Hyundai Steel reported that sales at the CEP level involve no or lower levels of (1) sales forecasting and strategic/economic planning/market research, (2) personnel training/exchange, (3) advertising/sales promotion/sales marketing support, (4) inventory maintenance, (5) providing cash discounts relative to sales at the home market level.⁷⁴ Additionally, Hyundai provided support for its claims that its home market selling activities were more advanced in the home market in the four core selling functions evaluated by Commerce: (1) sales and marketing support; (2) freight and delivery; (3) inventory maintenance and warehousing; and (4) warranty and technical support.⁷⁵ Therefore, we preliminarily determine the home-market sales are 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 Hyundai Steel's home market sales of the domestic like product, and we have no other information that provides an appropriate basis for determining a LOT adjustment. Moreover, because the CEP LOT did not exist in the home market, there is no basis for a LOT adjustment. Accordingly, for the Hyundai Steel's CEP sales, we made a CEP-offset adjustment in accordance with section 773(a)(7)(B) of the Act. The CEP offset adjustment to NV is subject to the offset cap, which is calculated as the sum of home market indirect selling expenses up to the amount of U.S. indirect selling expenses deducted from CEP.

E. Overrun Sales

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

⁷² See Hyundai Steel AQR at A-18.

⁷³ *Id.*

⁷⁴ See Hyundai Steel AQR at Exhibit A-8.

⁷⁵ See Hyundai Steel SQR3.

Hyundai Steel reported home market sales of “overrun” merchandise, *i.e.*, sales of products that failed to meet the original customer’s order specifications because of differences in size, chemical components, and/or strength. In the past, we examined various factors to determine whether “overrun” sales are in the ordinary course of trade.⁷⁶ We have the discretion to choose how best to analyze the many factors involved in determining whether sales are made within the ordinary course of trade.⁷⁷ These factors include, but are not limited to, the following: (1) whether the merchandise is “off-quality” or produced according to unusual specifications; (2) the comparative volume of sales and the number of buyers in the home market; (3) the average quantity of an overrun sale compared to the average quantity of a commercial sale; and (4) price and profit differentials in the home market.⁷⁸

Based on our analysis of these factors and the terms of sale, we preliminarily determine that Hyundai Steel’s overrun sales are outside of the ordinary course of trade. Because our analysis includes business proprietary information, the analysis is available in the Hyundai Steel Overruns Memorandum.⁷⁹

F. Cost of Production Analysis

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), Public Law No. 114-27, which made numerous amendments to the AD and countervailing duty law, including amendments to section 773(b)(2)(A) of the Act.⁸⁰ The 2015 law does not specify dates of application for those amendments. On August 6, 2015, Commerce published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments to section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission.⁸¹ Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires Commerce to request cost information from respondent companies in all antidumping proceedings.⁸² Because these amendments apply to this review, Commerce requested cost information from Husteel and Hyundai Steel and they submitted timely responses.⁸³ We examined the respondents’ cost data and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

⁷⁶ See *China Steel Corp. v. United States*, 264 F. Supp. 2d. 1339, 1364-65 (CIT 2003); see also, *e.g.*, 2014-15 Prelim and accompanying Preliminary Decision Memorandum at 10, unchanged in 2014-15 Final.

⁷⁷ See *Laclede Steel Co. v. United States*, 19 CIT 1076, 1078 (1995).

⁷⁸ See, *e.g.*, *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews and Rescission of Administrative Review, in Part; 2014-2015*, 81 FR 12870 (March 11, 2016), and accompanying Preliminary Decision Memorandum at 10, unchanged in final, 81 FR 62712 (September 12, 2016).

⁷⁹ See Memorandum, “Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Hyundai Steel’s Home Market Overruns,” dated concurrently with this memorandum.

⁸⁰ See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015).

⁸¹ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015).

⁸² *Id.* at 46794-95.

⁸³ See Husteel BCDQR and Hyundai Steel BCDQR.

1. Calculation of Cost of Production

We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative and financial expenses, in accordance with section 773(b)(3) of the Act. We relied on the COP data submitted by Husteel and Hyundai Steel in their questionnaire responses for the COP calculation.

2. Test of Comparison Market Sales Prices

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

3. Results of the COP Test

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

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

G. Calculation of Normal Value Based on Comparison Market Prices

For those comparison products for which there were sales at prices above the COP for the respondents, we based NV on home market prices. We calculated NV based on prices to unaffiliated customers in Korea and prices to affiliated customers which were determined to be at arm's length.⁸⁴ We adjusted the starting price for foreign inland freight pursuant to section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in circumstances of sale (for imputed credit expenses, warranty expenses, and other selling expenses) in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

⁸⁴ See the "Affiliated Party Transactions and Arm's-Length Test" section above.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and the subject merchandise.⁸⁵

X. CURRENCY CONVERSION

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

XI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒

Agree

☐

Disagree

12/3/2018

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

⁸⁵ See 19 CFR 351.411(b).