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Investigation
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February 19, 2019

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

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

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

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I. Summary

The Department of Commerce (Commerce) finds 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 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is January 1, 2017, through December 31, 2017.

After analyzing the comments submitted by interested parties, and based on our findings at verification, we have made changes to the *Preliminary Determination*.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

General
Comment 1: Cost-Based Particular Market Situation (PMS) Allegation
Comment 2: Petitioners' Proposed Regression Analysis
Comment 3: Whether Subsidy Rates Used to Adjust the PMS are Accurate
Comment 4: PMS Adjustment for Stainless Steel Plate

[1] *See Large Diameter Welded Pipe from the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 83 FR 43651 (August 27, 2018) (*Preliminary Determination)* and accompanying Preliminary Decision Memorandum (PDM).

Comment 5: Differential Pricing
Comment 6: Direct Material/Conversion Costs

Hyundai RB Co., Ltd. (Hyundai RB)
Comment 7: Hyundai RB's G&A Expense Ratio
Comment 8: Hyundai RB and Hyundai Steel Affiliation
Comment 9: Hyundai RB's Indirect Selling Expense Ratio
Comment 10: Hyundai RB's Foreign Exchange Losses
Comment 11: Treatment of Company A's Bad Debt Expenses
Comment 12: Hyundai RB's Scrap Offset

SeAH Steel Corporation (SeAH)
Comment 13: SeAH's Indirect Selling Expenses for Non-Further Manufactured Sales
Comment 14: SeAH's Sale to Puerto Rico
Comment 15: Treatment of Refunds from Customs and Border Protection and Refund for Damaged Goods
Comment 16: SeAH Holdings Corporation's Unrecovered Costs
Comment 17: SeAH's Interest Income Offset
Comment 18: Correction of Ministerial Errors in the *Preliminary Determination*
Comment 19: Correction of Minor Errors Reported at Verification
Comment 20: Freight Revenue Cap

II. Background

On August 27, 2018, Commerce published the *Preliminary Determination* and invited parties to comment.[2] We received a ministerial error allegation from SeAH[3] and issued a memorandum in response on October 2, 2018.[4] On September 21, 2018, Commerce officials met with officials from the Korean Embassy to discuss Commerce's finding of a particular market situation (PMS) in Korea.[5] From September to October 2018, we conducted verification of the sales and cost of production (COP) data reported by Hyundai RB and SeAH, in accordance with section

[2] *Id.*
[3] *See* SeAH's Letter, "Antidumping Duty Investigation of Large Diameter Welded Pipe from Korea — Comments on Ministerial Errors in Preliminary Determination," dated August 28, 2018
[4] Memorandum, "Less-Than-Fair-Value Investigation of Large Diameter Welded Pipe from Korea: Ministerial Error Allegations in the Preliminary Determination," dated October 2, 2018 (Ministerial Error Memorandum).
[5] *See* Memorandum, "Antidumping Duty Investigation on Large Diameter Welded Line Pipe from the Republic of Korea: Meeting with South Korean Embassy Officials," dated September 21, 2018.

782(i) of the Act.[6] In October and November 2018 the petitioners,[7] Hyundai RB, SeAH, and Hyundai Steel Company (Hyundai Steel) submitted case and rebuttal briefs.[8] At the request of the petitioners, Hyundai RB, and SeAH, Commerce held a public hearing limited to issues raised in the case and rebuttal briefs on December 17, 2018.[9]

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[10] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final determination is now February 19, 2019.

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[6] *See* Memoranda: "Verification of the Cost Response of Hyundai RB Co., Ltd. in the Antidumping Duty Investigation of Large Diameter Welded Pipe from Korea," dated October 17, 2018 (Hyundai RB Cost Verification Report); "Verification of the Cost Response of SeAH Steel Corporation and its affiliates in the Antidumping Duty Investigation of Large Diameter Welded Pipe from Korea," dated November 1, 2018 (SeAH Cost Verification Report); "Verification of the Questionnaire Responses of Hyundai RB Co., Ltd. in the Antidumping Investigation of Large Diameter Welded Pipe from the Republic of Korea," dated November 5, 2018 (Hyundai RB Sales Verification Report); "Verification of the Sales Response of SeAH Steel Corporation in the Antidumping Investigation of Large Diameter Welded Pipe from Korea," dated November 5, 2018 (SeAH Sales Verification Report); "Verification of the CEP Sales Questionnaire Responses of SeAH Steel Corporation in the Antidumping Investigation of Large Diameter Welded Pipe from Korea," dated November 6, 2018 (SeAH CEP Verification Report); and "Verification of the Further Manufacturing response of SeAH Steel Corporation's affiliates Pusan Pipe of America and State Pipe in Antidumping Duty Investigation of Large Diameter Welded Pipe form Korea," dated November 1, 2018 (SeAH Further Manufacturing Verification Report).

[7] American Cast Iron Pipe Company, Berg Steel Pipe Corp., Berg Spiral Pipe Corp., Dura-Bond Industries, and Stupp Corporation, individually and as members of American Line Pipe Producers Association; Greens Bayou Pipe Mill, LP; JSW Steel (USA) Inc.; Skyline Steel; Trinity Products LLC, and Welspun Tubular LLC (collectively, petitioners).

[8] *See* Petitioners' Case Brief, "Large Diameter Welded Pipe from the Republic of Korea: Case Brief," (Petitioners' Case Brief); Hyundai RB's Case Brief, "Large Diameter Welded Pipe from the Republic of Korea – Hyundai RB's Case Brief," (Hyundai RB's Case Brief); Hyundai Steel's Case Brief, "Large Diameter Welded Pipe from the Republic of Korea – Hyundai Steel's Case Brief," (Hyundai Steel's Case Brief) all dated November 15, 2018; and SeAH's Case Brief "Antidumping Duty Investigation of Large Diameter Welded Pipe from Korea – Second Redacted Case Brief," dated December 14, 2018 (SeAH's Case Brief). *See also* Petitioners' Rebuttal Brief, "Large Diameter Welded Pipe from the Republic of Korea: Rebuttal Brief" (Petitioners' Rebuttal Brief); Hyundai RB's Rebuttal Brief, "Large Diameter Welded Pipe from the Republic of Korea – Hyundai RB's Rebuttal Brief" (Hyundai RB' Rebuttal Brief); Hyundai Steel's Rebuttal Brief, "Large Diameter Welded Pipe from the Republic of Korea – Hyundai Steel's Rebuttal Brief" (Hyundai Steel' Rebuttal Brief), all dated November 20, 2018; and SeAH's Rebuttal Brief, "Antidumping Duty Investigation of Large Diameter Welded Pipe from Korea – Redacted Rebuttal Brief" (SeAH's Rebuttal Brief), dated December 14, 2018. *See also* Memoranda, "Antidumping Duty Investigation of Large Diameter Welded Pipe from the Republic of Korea: Rejection of Untimely Written Argument in Case Brief," dated November 20, 2018, and "Antidumping Duty Investigation of Large Diameter Welded Pipe from the Republic of Korea: Rejection of Untimely Written Argument in Case Brief," dated December 13, 2018 (rejecting SeAH's originally filed case and rebuttal briefs and allowing SeAH to submit revised versions).

[9] *See* Transcript, "In the Matter of: the Investigation of Large Diameter Welded Pipe from the Republic of Korea," dated December 17, 2018.

[10] *See* Memorandum to the Record from 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, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

Based on our analysis of the comments received, as well as our verification findings, we have made changes from our *Preliminary Determination*.

III. Scope of the Investigation

For the scope language, s*ee* the scope in Appendix I of the accompanying *Federal Register* notice.

IV. Margin Calculations

We calculated export price, normal value, and COP for Hyundai RB and SeAH using the same methodology as stated in the *Preliminary Determination* except as follows:

Hyundai RB[11]

1. We corrected the payment date and credit expenses for two home market sales based on verification findings.[12]

2. We accepted Hyundai RB's originally-reported indirect selling expenses (ISE).[13]

SeAH[14]

1. We corrected errors in our preliminary calculation of SeAH's general and administrative (G&A) expense rate.[15]

2. We revised the PMS adjustment to exclude the adjustment for the purchase costs of stainless steel plate.[16]

3. We revised G&A to reflect unrecovered costs for services from affiliates.[17]

4. We corrected errors in our preliminary calculation of the offset for short-term interest income and exchange gains and losses for the calculation of SeAH s consolidated net financial expenses.[18] In addition, we revised the short-term interest income offset to exclude short-term interest income from affiliates.

[11] *See* Memorandum, "Final Determination Margin Calculation for Hyundai RB Co., Ltd.," dated February 19, 2019 (Hyundai RB Final Margin Calculation Memorandum).
[12] *See* Hyundai RB Sales Verification Report at 2 and verification exhibit (VE) 1.
[13] *See* Comment 6 and Hyundai RB Final Margin Calculation Memorandum.
[14] *See* Memorandum, "Final Determination Margin Calculation for SeAH Steel Corporation" dated February 19, 2019 (SeAH Final Margin Calculation Memorandum)," "Cost of Production and Constructed Value Calculation Adjustment for the Final Determination - SeAH Steel Corporation and its Affiliates" dated February 19, 2019 (SeAH Final Cost Calculation Memorandum). *See also*, Memorandum, "Calculation of the All-Others Rate for the Final Determination," dated February 19, 2019.
[15] *See* Ministerial Error Memorandum.
[16] *See* SeAH Final Cost Calculation Memorandum and Comment 4.
[17] *Id.*
[18] *Id.*

5. We applied SeAH's estimated weighted-average dumping margin as neutral facts available to account for one unreported sale of subject merchandise made to Puerto Rico during the POI.[19]

6. We corrected errors in certain physical product characteristics.[20]

7. We removed sales to third-country customers, sales made after the POI, and a return transaction based on minor corrections accepted at the home-market sales verification.[21]

8. We corrected billing adjustments related to two customers based on a minor correction accepted during the home-market sales verification.[22]

9. We corrected Pusan Pipe America's (PPA) U.S. brokerage and handling expenses, and State Pipe & Supply, Inc.'s (State Pipe) U.S. inland freight to customer expenses based on minor corrections accepted at the U.S. sales verification.[23]

10. We revised PPA's G&A expense to exclude refunds from Customs and Border Protection, and refunds for damaged goods.[24]

11. We revised State Pipe's ISE calculation.[25]

V. Application of Adverse Facts Available

In the *Preliminary Determination*, Commerce determined that the application of adverse facts available (AFA), pursuant to section 776(a) and (b) of the Act, was warranted with respect to respondent Samkang M&T Co., Ltd. (SKMT) because SKMT failed to cooperate in this investigation.[26] We continue to find that application of total AFA to SKMT is warranted for this final determination for the reasons stated in the *Preliminary Determination*. However, we have revised the AFA rate applied to SKMT for the final determination.

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.[27] The AFA rate applied to SKMT in the *Preliminary Determination* was the highest calculated rate of any respondent in the investigation because the calculated rate was higher than the highest

[19] *See* Comment 11.
[20] *See* Ministerial Error Memorandum and SeAH Sales Verification Report at VE-1a.
[21] *See* SeAH Sales Verification Report at VE-1a and VE-1b.
[22] *Id.*
[23] *See* SeAH CEP Verification Report at VE-PPA-1 and VE-SP-1.
[24] *See* Comment 15.
[25] *See* Comment 10; *see also* SeAH CEP Verification Report at VE-SP-1.
[26] *See Preliminary Determination* and accompanying PDM at 6 – 8.
[27] *See*, *e.g.*, *Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), and accompanying Issues and Decision Memorandum at Comment 2; *see also Preliminary Determination* and accompanying PDM at 8.

dumping margin alleged in the petition.[28] In the final determination, the highest dumping margin alleged in the petition is now higher than the highest calculated rate of any respondent in the investigation.[29] Thus, consistent with our practice, we have assigned to SKMT the highest dumping margin alleged in the petition, 20.39 percent, as AFA, for the final determination.[30]

When using facts otherwise available, section 776(c) of the Act provides that in general, where Commerce relies on secondary information (such as a rate from the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination from the LTFV investigation concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[31] The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information to be used has probative value.[32] To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.[33] Further, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.[34] The AFA rate that Commerce is now using for SKMT is from the petition, and, thus, is secondary information subject to the corroboration requirement.

In order to determine the probative value of the dumping margin alleged in the petition for assigning an AFA rate, we examined the information on the record. When we compared the petition dumping margin of 20.39 percent to the transaction-specific dumping margins for the respondents, we found transaction-specific margins at or above the petition rate. Therefore, we found that the rate alleged in the petition was within the range of transaction-specific margins

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[28] *See Preliminary Determination*, and accompanying PDM at 6- 8.
[29] *See* Memorandum, "Final Determination – Corroboration of Petition Margin," dated February 19, 2019 (Corroboration Memo).
[30] *See* 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: 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 at Exhibit AD-KR-Supp2-3; *see also 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, 7159 (February 20, 2018).
[31] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, Vol. 1 (1994) at 870.
[32] *Id.*; *see also* 19 CFR 351.308(d).
[33] *See*, *e.g.*, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).
[34] *See* sections 776(d)(3)(A) and (B) of the Act.

computed for the final determination. Accordingly, we found the 20.39 percent rate to be both reliable and relevant and, thus, that it had probative value.[35]

VI. Adjustment for Countervailed Export Subsidies

In an LTFV investigation where there is a concurrent countervailing duty (CVD) investigation, it is Commerce's normal practice to calculate the cash deposit rate for each respondent by adjusting the respondent's estimated weighted-average dumping margin to account for export subsidies, if any, found for each respective respondent in the concurrent CVD investigation. Doing so is in accordance with section 772(c)(1)(C) of the Act, which states that U.S. price shall be increased by "the amount of any countervailing duty imposed on the subject merchandise . . . to offset an export subsidy."[36]

Commerce determined in the final determination of the concurrent CVD investigation that SeAH benefitted from export subsidies.[37] Accordingly, if a CVD order is issued, we find that an export subsidy adjustment of 2.11 percent to the estimated weighted-average dumping margin is warranted to establish SeAH's cash deposit rate. As the final cash deposit rate for estimated antidumping duties for all other exporters and producers is partially based on SeAH's final rate, we find that an export subsidy adjustment of 2.11 percent to the all-others' estimated weighted-average dumping margin is warranted.[38] We also adjusted SKMT's and Hyundai RB's cash deposit rates by the same amount.

VII. Discussion of the Issues

General Issues

Comment 1: Cost-Based Particular Market Situation Allegation

SeAH's Case Brief[39]

Cost-based PMS Limited to the Calculation of Constructed Value

- Section 773 of the Act does not allow Commerce to make a PMS adjustment for purposes of the sales-below-costs test.
- Section 504 of the TPEA modified the definition of "ordinary course of trade" and the provisions concerning the calculation of "constructed value" to permit Commerce to adjust constructed value (CV) "if a {PMS} exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade;" however, it did not change the statutory provisions regarding the calculation of COP or application of the sales-below-cost test.[40]

[35] *See* Corroboration Memo.
[36] *See, e.g., Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 38076, 38077 (July 1, 2010), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.
[37] *See* "Large Diameter Welded Pipe from the Republic of Korea: Final Affirmative Countervailing Duty Determination," and accompanying IDM.
[38] *See* All Others Calculation Memorandum.
[39] *See* SeAH's Case Brief at 21 – 28.
[40] *Id*. at 21 – 22.

Commerce's Affirmative PMS Finding Unsupported by the Record

- Commerce's finding of alleged "distortions" in the Korean market was insufficient to satisfy the Act's requirement for making an adjustment to account for a PMS.
- Commerce may adjust CV only after finding 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" as a result of the "PMS" that was found to exist. Commerce failed to make such a finding.
- Commerce found that a PMS existed in Korea with respect to steel coil and plate costs because of the cumulative effect of four factors: (1) subsidies to Korean flat steel producers; (2) dumping of hot-rolled steel (HRS) into Korea by Chinese producers; (3) "strategic alliances" between Korean flat steel suppliers and Korean pipe and tube producers; and (4) Korean-government electricity subsidies to steel producers.
- These four factors, however, do not demonstrate that the prices SeAH paid for those materials did not "accurately reflect the cost of production in the ordinary course of trade." SeAH asserts further that two of these factors are irrelevant to SeAH. Accordingly, the cumulative effect of the four factors cannot support the finding of a PMS.
- First, there is no evidence that SeAH has strategic alliances with any Korea producers of HRS. Second, Commerce has previously examined purchases of electricity by Korean steel producers and has consistently determined that Korean electricity prices do not confer a subsidy benefit.[41]
- In addition, there is no evidence that SeAH purchased HRS products from Chinese suppliers at unfairly low prices. Further, while SeAH did purchase hot-rolled coil (HRC) and plate during the POI from POSCO, there is no evidence that the prices that SeAH paid POSCO did not accurately reflect the cost of production in the ordinary course of trade.

Alleged Upstream Subsidies

- Commerce's use of subsidies to HRC and plate producers as the basis for finding a PMS is inconsistent with section 771A of the Act which provides "a separate remedy" for alleged upstream subsidies.[42]

Application of Adverse Facts Available to a Fully-Cooperative Respondent

- Commerce relied on a subsidy finding that was based entirely on AFA, due to POSCO's failure to fully cooperate in the HRS CVD investigation.

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[41] *Id*. at 23 (citing *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) (*Welded Line Pipe from Korea*), and accompanying IDM at VI.B.1 and Comment 1; *Certain Steel Cut-To-Length Plate from Korea: Final Affirmative Countervailing Duty and Negative Critical Circumstances Determinations*, 82 FR 16341 (April 4, 2017), and accompanying IDM at Comment 2 (March 29, 2017); *Certain Cold-Rolled Steel Flat Products from Korea: Final Affirmative Countervailing Duty Determination*, 81 FR 49953 (July 29, 2016), and accompanying IDM at Comment 2; and *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 81 FR 53439 (August 12, 2016), and accompanying IDM at Comment 2.

[42] *Id.* at 25.

- Commerce should not apply AFA to a fully-cooperative respondent. SeAH never failed to cooperate with Commerce to the best of its ability. The Court of International Trade (CIT) has held that Commerce may not penalize a cooperative party for non-cooperation by an unaffiliated entity.[43]
- Commerce cannot apply to SeAH the AFA determination based on POSCO's non-cooperation in a different proceeding.

Hyundai Steel's Case Brief[44]

Cost-based PMS Limited to the Calculation of Constructed Value

- Section 504 of the TPEA permits adjustment to a producer's actual COPs based on a cost-based PMS allegation only for purposes of calculating CV.
- Section 504(a) of the TPEA addresses the ability of Commerce to consider whether "otherwise viable home market sales" are outside the ordinary course of trade in the event of a PMS finding.
- Section 504(b) of the TPEA permits Commerce to adjust the CV "if a PMS exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade." This sub-section specifically addresses the ability of Commerce to adjust the cost of production when the normal value is based on constructed value.
- Congress did not intend to modify the sales-below-cost analysis or COP approach based on PMS findings. The TPEA made no changes to section 773(b) of the Act which defines the calculation of the COPs and the application of the sales-below-cost test for home market sale prices. With full knowledge of section 773(b) of the Act and no modification to this provision, Congress indicated its intent that Commerce not adjust the COPs or the sales-below-costs test when a cost-based PMS exists.

Commerce's Affirmative PMS Finding Unsupported by the Record

- The PDM for this investigation contains no independent analysis on how the four factors described in the allegation apply specifically to the two mandatory respondents in this investigation or to the subject merchandise.
- Commerce undertook no analysis in the *Preliminary Determination* to show that the respondents' purchase prices for the HRS inputs were inconsistent with market prices or were below the suppliers' COPs.
- There is no evidence showing that respondents' production costs were distorted by HRS imports from China or Japan or that the respondents' purchase prices of HRC and plate were inconsistent with world prices. Therefore, Commerce was correct to decline to adjust the production costs based on the alleged distortions caused by imports of Chinese and Japanese HRS.
- The record does not support Commerce's findings of affiliations or strategic alliances existing between the mandatory respondents and their input suppliers,

[43] *Id.* at 26 (citing *SKF USA v. United States*, 675 F. Supp. 2d 1264 (CIT 2009) and *Carpenter Tech. v United States*, 26 C.I.T. 830 (CIT 2002)).
[44] *See* Hyundai Steel's Case Brief at 2 – 13.

and Commerce has not shown how alleged strategic alliances have distorted the Korean HRS market in any meaningful way. Further, the CIT rejected the allegation of strategic alliances in *Korea-OCTG* which is the precedent for Commerce's Korean PMS findings.[45] Commerce has undertaken no independent effort to find that strategic alliances exist between the respondents and their suppliers and has not found that ambiguous alliances contribute to cost distortions when no data exist to evaluate the actual price effects, if any.

- Commerce has found that no countervailable subsidy exists regarding Korean electricity that confers benefits to Korean steel producers[46] and nothing on the record suggests that electricity prices during the POI were aberrant or that any Korean government involvement in the domestic electricity market is different from any other country's regulation of its own energy markets. In fact, electricity prices charged to steel producers in Korea reasonably reflect the COP for electricity.
- Lastly, Commerce should have verified and corroborated the factual information presented in the PMS allegation as required in 19 CFR 351.307(b), and failure to do so renders the PMS conclusions invalid.

Application of Rates from a CVD Determination, Including Results Based on Total Adverse Facts Available

- The Act does not contain a basis for applying CVD rates from a separate proceeding as an upward adjustment in the calculation of a respondent's production costs. There is no record evidence which demonstrates that the alleged subsidies to Korean HRC and plate producers has affected prices charged to Korean producers of welded pipe.
- Further, it is unlawful to penalize respondents in this investigation by the use of a CVD rate which is based on total AFA. The respondents in this investigation have fully cooperated, and this "violates the Department's obligation to treat fairly every participant in an administrative proceeding."[47]
- If Commerce continues to rely on the results of its CVD proceedings as the basis for a PMS adjustment, it must rely on contemporaneous, more accurate and non-AFA findings in order to satisfy its legal obligation to calculate accurate weighted-average dumping margins.
- Lastly, in *POSCO v. United States*, the CIT ruled that selecting the highest CVD rates when applying AFA was improper.[48] Thus, it is compelling to find that the CVD rates assigned in the final determination of HRS cases from Korea are inaccurate and unlawful.

[45] *See* Hyundai Steel's Case Brief at 6 (citing to *Husteel v. United State*s, 98 F. Supp. 3d 1315 (CIT 2015)).
[46] *See* Hyundai Steel's Case Brief at 8 (citing to *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49943 (July 29, 2016), and accompanying IDM at 45)
[47] *See* Hyundai Steel's Case Brief at 8 – 9 (Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination, 81 FR. 53439 (August 12, 2016), and accompanying IDM (August 4, 2016) and *SKF US v. United States*, 675 F. Supp. 2d 1264, 1276 (CIT 2009)).
[48] *See* Hyundai Steel's Case Brief at 11 (citing to *POSCO v. United States*, 337 F. Supp. 3d 1265 (CIT 2018)).

Petitioners' Rebuttal Arguments[49]

In response to SeAH

- Section 504 of the TPEA expanded the concept of a PMS to include situations where "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," and that Commerce is authorized to "to use another calculation methodology under this subtitle or any other calculation methodology" in constructing normal value. Further, section 504 of the TPEA expanded the definition of "ordinary course of trade" to include the concept of PMS where distortive effects "may prevent a proper comparison with the export price or constructed export price."[50] Accordingly, Commerce's upward adjustment to the reported costs for respondents' steel inputs is in accordance with the statute.
- The petitioners reject SeAH's claim that no PMS exists and asserts that "{e}ach of the factors individually contributes to intertwined market conditions that result in production costs of welded pipe in Korea being distorted."[51] Further, the petitioners emphasizes that Commerce's affirmative PMS finding is based on the "totality of the circumstances" and that it did not find that "each of the four factors was required to justify the PMS finding."[52]
- Though SeAH argues that the claims of strategic alliances do not pertain to SeAH, in previous cases, the petitioners have provided evidence of such distortive alliances, and, for example, SeAH concedes that during the POI it purchased steel coils and plates from POSCO, which received subsidies for HRC, and charged atypical prices to certain customers.[53]
- There is extensive evidence of distortive and anti-competitive government control over electricity prices in the Korean industrial sector. That Commerce has not yet found the provision of electricity to industrial users in Korea to constitute a countervailable subsidy does not affect the substantial evidence of market distortion in Korean electricity costs.
- Excess capacity of HRC and plate in China leads to extremely low prices and enables China to export HRC, plate, and other steel products at very low prices. Domestic and third-country producers are forced to reduce prices to compete with Chinese steel products.

In response to Hyundai Steel

- Due to the parallels in production, inputs, suppliers, and mills between, welded pipe, and oil country tubular goods, prior findings of a PMS in Korea pertaining to such products are applicable here.
- The record clearly supports Commerce's affirmative finding of a PMS based on the combined effect of the four factors.

[49] *See* Petitioners' Rebuttal Brief at 3 – 20.
[50] *Id.* at 5.
[51] *Id.* at 8.
[52] *Id.*
[53] *See* Petitioners' Rebuttal Brief at 8 (citing Petitioners' Letter, "Large Diameter Welded Pipe from the Republic of Korea: Particular Market Situation Allegation and Supporting Factual Information," dated July 5, 2018 (PMS Allegation), at 22 and 43).

    - Input subsidies affect the price of downstream goods.
    - There is evidence of a pattern of collusion among Korean pipe producers which distorts costs. The regression analysis in the PMS allegation clearly demonstrates the significant degree to which HRC and plate prices in the Korean market have been distorted due to Chinese excess capacity.
    - As the strategic alliances may have a distortive effect on the market as a whole, it is unnecessary for every company operating in the market to be a member of a strategic alliance.
    - The petitioners provided significant evidence that Korean electricity prices are artificially low and not based on market principles
- As far as the argument that Commerce must verify the information provided in the PMS allegation, Commerce provided interested parties an opportunity to rebut the evidence in the PMS allegation and failed to do so.

Commerce's Position: With respect to the respondents' arguments concerning the legal standard for finding a cost-based PMS, all parties agree that section 504 of the TPEA enables Commerce to address a PMS where the cost of materials, fabrication, or processing fail to accurately reflect the COP in the ordinary course of trade. SeAH and Hyundai Steel contend that section 504(b) of the TPEA modified provisions concerning only the calculation of constructed value, and that there is no additional statutory authority for Commerce to use an alleged cost-based PMS to adjust a producer's production costs to determine whether there were comparison-market sales priced below their COP.[54]

We disagree with this interpretation of the Act. Specifically, the term "ordinary course of trade," defined in section 771(15) of the Act, includes situations in which "the administering authority determines that the {PMS} prevents a proper comparison {of normal value} with the export price or constructed export price." Thus, where a PMS affects the COP for the foreign like product through distortions to the cost of inputs, it is reasonable to conclude that such a situation may prevent a proper comparison of the export price with normal value based on home market prices just as with normal value based on CV. The claim that an examination of a PMS for purposes of the sales-below-cost test goes beyond the plain language of the Act fails to consider that the provision at issue, section 773(e) of the Act, specifically includes the term "ordinary course of trade." Thus, the definition of that term, again, found in section 771(15) of the Act, is integral to that PMS provision. Accordingly, we disagree with the argument that Commerce cannot analyze a PMS claim in determining whether a company's comparison-market sale prices were below cost, and therefore, are outside the "ordinary course of trade." Indeed, we find that this interpretation would defeat the very purpose of an "ordinary course of trade" analysis under the PMS provision, which is to ensure that the distortions caused by a PMS do not prevent fair comparisons of normal value with U.S. price.

Accordingly, we find that SeAH's and Hyundai Steel's arguments are inconsistent with the intent of Congress in adding this provision to the Act, and we agree with the petitioners' argument that Commerce is granted the discretion to use "any other calculation methodology"[55] if costs are distorted by a PMS, including for the purposes of COP under section 773(b)(3) of the Act.

[54] *See* SeAH's Case Brief at 21 – 22 and Hyundai Steel's Case Brief at 3 – 5.
[55] *See* section 773(e) of the Act.

Commerce disagrees with the view that input prices (*i.e.*, production costs) must be found to be outside the ordinary course of trade in order to find the existence of a PMS. To the contrary, a finding that a PMS exists results in a determination that the relevant input prices are outside of the ordinary course of trade.

Hyundai Steel argues that Commerce has made no new factual findings with regard to a PMS in the instant proceeding, relying instead on previous determinations in other cases. We disagree. Record evidence clearly indicates that the PMS found in other proceedings applies here as well, and the factors that led us to determine that a PMS exists in Korea are also relevant in Korea during the instant POI.[56]

In the current investigation, Commerce considered the four PMS allegations as a whole, based on their cumulative effect on the Korean welded pipe market through the COP for welded pipe and its inputs. Based on the totality of the conditions in the Korean market, Commerce continues to find that the allegations represent facets of a single PMS. Record evidence shows subsidization of HRS by the Korean government, as well as purchases of HRC by the mandatory respondents from POSCO, which received such subsidies.[57] Record evidence also shows that the subsidies received by Korean HRS producers totaled almost 60 percent of the cost of HRS, the primary input into welded pipe production.[58] Additionally, Commerce notes that HRS as a primary input of welded pipe constitutes a large percentage of the cost of welded pipe production; thus, distortions in the HRS market have a significant impact on production costs for welded pipe.[59] Further, as a result of significant overcapacity in Chinese steel production, which stems, in part, from the distortions and interventions prevalent in the Chinese economy, the Korean steel market has been impacted by imports of cheaper Chinese steel products, placing downward pressure on Korean domestic steel prices.[60] This, along with the domestic steel production being heavily subsidized by the Korean government, distorts the Korean market prices of HRS, the main input in Korean welded pipe production.[61]

Moreover, record evidence supports that there are strategic alliances between Korean HRC producers and producers of subject merchandise.[62] These alliances are relevant as an element of Commerce's analysis in that they may have created distortions in the prices of HRC in the past and may continue to impact HRC pricing in a distortive manner during the instant POR and in the future. With respect to the allegation of distortion present in the electricity market, consistent with the SAA, a PMS may exist where there is government control over prices to such an extent that home market prices cannot be considered to be competitively set.[63]

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[56] *See* Petitioners' Letter, "Large Diameter Welded Pipe from the Republic of Korea: Particular Market Situation Allegation and Supporting Factual Information," dated July 5, 2018 (PMS Allegation).
[57] *Id.*
[58] *Id.*
[59] *Id. See also* SeAH's July 25, 2018 Supplemental Questionnaire Response.
[60] *See* PMS Allegation.
[61] *Id.*
[62] *Id. See also* Petitioners' Letter, "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 July 9, 2018 (Supplemental PMS Allegation).
[63] *See* SAA, H.R. Doc. 103-316, Vol. 1 (1994) at 822.

These intertwined market conditions signify that the production costs of welded pipe, especially the acquisition prices of HRC in Korea, are distorted and, thus, demonstrate that the costs of HRC to Korean welded pipe producers are not in the ordinary course of trade. Thus, Commerce continues to find that various market forces result in distortions which impact the COPs for welded pipe from Korea. Considered collectively, Commerce continues to find that the record supports finding that a PMS exists during the POI.

With respect to SeAH's contention that there is no evidence that SeAH has strategic alliances with any Korean producers of HRS, we nonetheless find that strategic alliances between certain Korean HRS suppliers and producers of downstream steel products are relevant as an element of our analysis in that they may affect HRS pricing in Korea in a distortive manner.[64] SeAH and Hyundai Steel also argue that Commerce has determined that Korean electricity prices do not confer a subsidy benefit.[65] However, electricity in Korea functions as a tool of the government's industrial policy, and the largest Korean electricity supplier, KEPCO, is a government-controlled entity. We find here that a PMS may exist where there is government control over prices to such an extent that home market prices cannot be considered to be competitively set.[66]

Regarding SeAH's and Hyundai Steel's argument that there is no evidence that their specific purchases of HRS were outside the ordinary course of trade, we believe that no such analysis is necessary. We disagree with the notion that a company-specific analysis is appropriate in a situation where, as here, there is sufficient evidence demonstrating that the market as a whole is distorted, and a PMS exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the COP in the ordinary course of trade. Companies do not operate in a vacuum but, rather, purchase their inputs in a market. If a particular market is distorted as a whole, it would be illogical to conclude that one company operating in that particular market is insulated from the market distortions with respect to cost.

With respect to SeAH's argument that the use of subsidies provided to HRS producers as a basis for finding a PMS is inconsistent with the Act's separate remedy for alleged upstream subsidies, we disagree. Commerce's finding of a PMS does not rely on section 771A of the Act which is not germane to this LTFV investigation, or indeed to any antidumping proceeding. Commerce considers neither the benefit nor the specificity of a government subsidy program in the context of an antidumping proceeding, and section 771A of the Act in no way addresses any aspect of such a proceeding. Accordingly, we do not find any actions in this investigation inconsistent with this section of the statute.

With respect to the argument that Commerce may not rely on a subsidy finding that was based entirely on AFA due to POSCO's failure to respond fully in the relevant investigation, we

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[64] *See* PMS Allegation and Supplemental PMS Allegation.

[65] *See* SeAH Case Brief at 22 – 25 and Hyundai Steel's Case Brief at 7 – 8. With respect to Hyundai Steel's argument that we did not find strategic alliances in the investigation associated with *Husteel*, 98 F. Supp. 3d at 1359, we note that the record of that investigation is different from the record of this investigation.

[66] *See Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 17146 (April 18, 2018) (*Second OCTG Review*).

disagree that this should discredit its use in making a PMS adjustment. The final determination or results in a CVD proceeding which happen to be based on total or partial AFA were imposed because the respondents failed to cooperate to the best of their abilities; however, this does not mean that the rates are inaccurate or unreliable. Indeed, if such a rate was detrimental to a respondent in a CVD proceeding, then such respondent would have fully cooperated to its advantage. We determine that the CVD rates of *HRS from Korea* represent an appropriate measure of the subsidies being received by the producers for the production of HRC.[67] They are not a penalty being applied to SeAH or Hyundai, but rather a reasonable basis for the adjustment being enacted by Commerce to reflect the Government of Korea's (GOK's) subsidization of HRS products in Korea. As for the fact that the rates from the CVD investigation of *HRS from Korea* are under review by the CIT, the CVD rates are still in effect because the final determination has not been amended and no administrative review has been completed to date.

With respect to Hyundai Steel's argument that the Act does not contain a basis for applying CVD rates from a separate proceeding as an upward adjustment in the calculation of respondents' costs, and that Commerce should not apply CVD findings from other proceedings whether calculated or based on AFA, we disagree. As explained above, Commerce is granted the discretion to use "any other calculation methodology" if costs are distorted by a PMS, including for the purposes of COP, under section 773(e) of the Act. Such an adjustment constitutes another methodology under section 773(e), which is applicable to section 773(b)(3) as explained above.

Lastly, we disagree with the argument that Commerce is required to verify the information provided by the petitioners in its PMS allegation. The purpose of verification is to examine the business proprietary information (BPI) specific to a respondent in order to confirm the reliability of the factual information submitted to the record of the proceeding.[68] However, regarding the information submitted to support the petitioners' PMS allegation, Commerce afforded all parties the opportunity to submit additional factual information to rebut, clarify or correct this supporting information. No party responded.

Comment 2: Petitioners' Proposed Regression Analysis

Petitioners' Case Brief[69]

- Commerce's adjustment for the PMS allegation, applying an upward adjustment to Hyundai RB's and SeAH's HRS costs due to alleged subsides, does not address the depth of the distortion and the impact of global excess capacity on Korea and Commerce should therefore adjust the HRS costs based on the regression analysis proposed by the petitioners. Specifically:

[67] *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 from Korea*); *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea*, 81 FR 53439 (August 12, 2016), and accompanying IDM.
[68] *See Hardwood and Decorative Plywood from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013), and accompanying IDM at Comment 18 ("The purpose of verification process is to confirm the accuracy and completeness of submitted factual information.").
[69] *See* Petitioners' Case Brief at 12 – 19.

- The petitioners' analysis captures the root of the PMS distortion, *i.e.*, global steel excess capacity and the implications for Korea;
- The import average unit values (AUVs) used in the analysis best reflect the prevailing trade flows and overall market dynamics at the national level; and
- A fixed effects regression model best measures the impact of global excess capacity at the national level.

- In the event that Commerce continues to develop the concepts and analysis and wishes to revise the petitioners' model, the record contains all the programming and data necessary to revise the petitioners' analysis and calculations.

Hyundai Steel's Case Brief[70]

- The petitioners' regression analysis is vague and unsupported:
  - The petitioners have provided no meaningful evidence that costs are distorted by HRS sourced from Japan or China or that the mandatory respondents' HRS purchase prices are inconsistent with world or regional prices.
  - The petitioners have provided no evidence to show that the Korean or global market would support the "Predicted Korea AUV" from the regression analysis in the PMS allegation. Further, the Predicted Korea AUV is aberrational.
  - The petitioners have not explained whether their regression methodology was prepared by an independent expert or by the petitioners themselves, which raises concerns as to the objectivity and transparency of the regression. Therefore, the regression is unreliable for any PMS adjustments.
  - The regression model fails to consider other variables that influence HRS market prices during the POI, *e.g.*, production levels, raw material costs, international shipping costs, energy costs, global economic growth, and foreign barriers to trade.
  - The petitioners assume that the target global capacity utilization for crude steel is 85%, but they provide no evidence that this is a reasonable target. Further, the global excess capacity values for crude steel are not an accurate reflection of the purported excess capacity for HRS consumed in the manufacture of welded pipe.
  - The petitioners' claim that Korean HRS prices are influenced by global excess capacity suggests that no PMS exists, as there are no factors that are "particular" to a specific "market." Also, the claim that global prices would be higher with less global production is the consequence of normal supply and demand.
  - The petitioners provide no indication of how Commerce should apply their adjustment.
  - The petitioners claim that there is a positive correlation between global overcapacity and Korean steel prices, but there is nothing to indicate that one variable explains the other.

SeAH's Rebuttal Brief[71]

- The petitioners' regression analysis is illogical and fundamentally insufficient as a matter of law due to the following reasons:

[70] *See* Hyundai Steel's Rebuttal Brief at 2 – 12.
[71] *See* SeAH's Rebuttal Brief at 1 – 12.

    - An analysis of the effects of alleged global excess steel capacity does not describe a market situation particular to Korea, and, even if it did, the Act does not permit any PMS adjustment to COP for purposes of the sales-below-cost test but, rather, only permits an adjustment to CV.
    - The petitioners' regression analysis includes a wide range of products within their calculated AUVs and the petitioners have not, for example, explained how "excess" global steel capacity to produce wire rod might affect prices for HRC.
    - The petitioners' regression analysis would require jettisoning nearly all basic economic theory. For example, the petitioners have not explained why annual averages are a meaningful tool when prices and production vary continuously, and the figures for January of each year are highly correlated with figures from the previous December, but not with figures 11 months later at the end of the same year.
- The petitioners' proposed regression analysis, *i.e.*, an "ordinary least squares" regression, identifies correlation, not causation, and therefore cannot be used to project outcomes outside the range of data analyzed in the manner petitioners propose.
- The petitioners' proposed model is contrary to basic economic principles that quantities respond to prices and that prices are set by the interplay of supply and demand.[72]

Hyundai Steel's Rebuttal Brief[73]

- Hyundai Steel reiterates the arguments presented in its case brief.

Commerce's Position: We agree with the petitioners that an upward adjustment to HRS costs due to subsidies does not address the depth of distortion and the impact of global excess capacity on the Korean steel market. However, as described below, the regression analysis proposed by the petitioners to quantify an adjustment that would account for these effects falls short in several key respects. Therefore, we have continued to adjust HRS costs only for subsidies. We will continue to refine our analysis going forward.

We agree with the petitioners that "…the global crude steel capacity overhang is {} related to price changes for HRC and plate…"[74] and that global excess capacity is largely driven by excess capacity in China. We also agree that a PMS adjustment is necessary to account for HRS price distortions in Korea. However, reasonable quantification of the price effect, including specification of the relevant economic variables and the relationships between them, is necessary to calculate an adjustment to account for the PMS.

In their submissions, the petitioners use the terms "excess capacity," "capacity overhang," and "oversupply" interchangeably, when describing the PMS in steel. For example, the petitioners refer to "capacity overhang" on page 18 of their case brief (as noted above) and state on page 47 of the PMS allegation that "…the Department should adjust the price of respondents' hot-rolled inputs to account for the full impact of Chinese oversupply and global excess capacity on the Korean steel market…"[75] It is certainly true that the concepts are related, and it is

[72] *Id.* at 6 – 8.
[73] *See* Hyundai Steel's Rebuttal Brief at 2 – 7.
[74] *See* Petitioners' Case Brief at 18.
[75] *See* PMS Allegation at 47.

understandable and not problematic to conflate the terms when making *qualitative* assessments, even though that obscures differences in the economic relationship between each variable and price. However, for the purpose of quantifying the price effect, the economic relationships underlying the model must be made clear.

In the model, the petitioners use an excess capacity variable to explain price and measure excess capacity as the difference between current capacity and production levels. Thus, excess capacity can increase as a result of capacity increasing faster than production, but where it does so the model tells us nothing about the change in price attributable to the increase in capacity and the change in price attributable to the increase in production. Excess capacity can also increase as a result of an increase in capacity with production (supply) held constant, but the model tells us nothing about *how* changes in capacity can impact price with production (supply) held constant, outside of changes in market expectations that are not modeled. In the petitioners' model, excess capacity can even increase as a result of a *decrease* in capacity if production *decreases* more. However, for *all* the cases of an increase in excess capacity described above, the model predicts exactly the *same price effect* even though production *increases* in the first case, *remains constant* in the second and *decreases* in the third. The supply and demand relationships and price dynamics that might explain this are not specified.

Further, the petitioners' regression model specifies only one predictor variable, global excess capacity, and thereby omits other variables that affect import AUVs, such as gross domestic product growth, demand growth in key downstream sectors and industries, and the currency exchange rate. The petitioners employ a fixed effects model to attempt to control for the variables they have omitted. However, this model only controls for time-*invariant* variables. The important variables listed above that affect import AUVs are all time *variant* and are thus not accounted for in the model.

Therefore, although Commerce agrees with the petitioners' qualitative assessment of the PMS in the Korean steel market, the purpose of a regression analysis in this case is not to confirm correlations that are intuitively true and that can be explained easily in qualitative terms, but to reasonably *quantify* price effects for purposes of a PMS adjustment. It is not clear that the petitioners' regression analysis does that.

Comment 3: Whether Subsidy Rates Used to Adjust the PMS Are Accurate

SeAH's Case Brief[76]

- The subsidy rates used in Commerce's calculations are not accurate.
- Commerce should utilize the net subsidy rates applied to POSCO from the ongoing review of *HRS from Korea Review* instead of the original investigation because the preliminarily determined rate in the ongoing review is lower than the rate determined during the investigation.[77] Further, the period of review is more recent than the period of investigation and, thus, more appropriate.

[76] *See* SeAH's Case Brief at 26 – 30.
[77] *Id*. at 26 (citing *Certain Hot-Rolled Steel Flat Products Korea: Preliminary Results of Countervailing Duty Administrative Review*, 2016, 83 FR 55518 (November 6, 2018) (*HRS from Korea Review*).

- Commerce should rely on other more recent cases concerning Korean government subsidization to POSCO that are not based on the application of AFA if Commerce is unwilling to rely solely on a preliminary determination.[78]
- Commerce previously revised the AFA rate applied to POSCO, in the *HRS from Korea* case covering the same POI, after the CIT issued a decision remanding Commerce's determination.[79] The CIT has recently issued a decision remanding Commerce's determination in the *HRS from Korea* investigation for Commerce's reconsideration.[80] Commerce, therefore, should not rely on rates that are pending redetermination.

Hyundai Steel's Case Brief[81]

- Commerce Should Re-Open the Record for Comments Related to *HRS from Korea*
    - Commerce quantified the PMS adjustments to direct material inputs based on the rates in the CVD order of *HRS from Korea* with a POI of calendar year 2014.[82] However, the recent administrative review of this order covers August 12, 2016, through December 31, 2016, which is more contemporaneous with the POI of this investigation.[83]
    - Commerce should place on the record of this investigation, all proprietary analysis memoranda issued in the preliminary results of the *HRS from Korea Review* and allow interested parties to submit comments on the information and data.

Petitioners' Rebuttal Brief[84]

- Commerce's Reliance on *HRS from Korea* Rates as the Basis of the PMS Adjustment Was Lawful and Appropriate
    - Commerce should base the PMS adjustment on the proposed regression analysis to account for the global overcapacity crisis as the fundamental driver of the PMS in Korea. This approach accounts for the impact of global overcapacity on a national level.
    - In *CW Pipe—Korea* Commerce determined that, because the CVD rates were applied to HRC from Korean producers, the CVD rates for *HRS from Korea* represent an accurate measure of the subsidies being received by HRC producers.[85]
    - In *HRS from Korea*, Commerce further clarified that the AFA rate itself is not inaccurate; rather, Commerce could not calculate an accurate rate for POSCO in that proceeding due to POSCO's failure to submit complete, accurate, and reliable data.
    - As the current administrative review, *HRS from Korea Review*, will not be completed in time for this final determination, the CVD rates from the original

[78] *Id*. at 27 (citing *HRS from Korea* IDM at VII.A (March 29, 2017)).
[79] *Id*. at 28 (citing *POSCO. v. United States*, 296 F. Supp. 3d 1320 (CIT 2018)).
[80] *Id*. at 28 (citing *POSCO. v. United States*, 337 F. Supp. 3d 1265 (CIT 2018)).
[81] *See* Hyundai Steel's Case Brief at 12 – 13.
[82] *Id*. at 8 (citing *HRS from Korea*).
[83] *Id*. at 10.
[84] *See* Petitioner's Rebuttal Brief at 14 – 20.
[85] *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, 83 FR 27541 (June 13,2018) (*CW Pipe—Korea*), and accompanying IDM at Comment 1.

investigation remain in effect and are a lawful and appropriate basis for the PMS adjustment in this proceeding.
    - As for the CIT's remand of *HRS from Korea*, the rates from the original CVD investigation remain in effect until revised upon completion of litigation.
- Commerce Should Reject SeAH's Alleged Errors in the PMS Adjustment Calculations
    - Commerce's application of the PMS adjustment to SeAH's purchases from the non-Korean suppliers was an intentional and methodological step.
    - There is no reason for Commerce to limit its adjustments to HRC costs to purchases from Korean suppliers, because doing so will only address a portion of the PMS in Korea caused by the distortive effects of the Chinese overcapacity crisis.
    - Commerce took an alternative approach to the regression-based adjustment by adjusting the price paid for HRC and plate purchased from both Korean and non-Korean suppliers.
    - Commerce appropriately increased prices of inputs purchased from non-Korean suppliers to account for the fact that Chinese, Japanese, and Korean steel prices all compete, undercut, and distort one another in the Korean domestic steel market.
    - Commerce should also reject SeAH's argument that Commerce applied an incorrect subsidy rate to its purchases of stainless plate.

Commerce's Position: We disagree that we should make our PMS adjustments using subsidy rates from the ongoing review of *HRS from Korea Review* rather than the rates from the original investigation because the investigation rates were based on total AFA and reflect a POI that does not overlap with the instant POR. Furthermore, given that this review remains ongoing, this means the findings of Commerce in the preliminary results may be subject to change in the final results.[86] *HRS from Korea* remains the only completed segment on hot-rolled steel from Korea.[87] With respect to the fact that the CVD rates in *HRS from Korea* were based on total AFA, we disagree that this alone should discredit their use in making a PMS adjustment. We find that the respondents in the CVD investigation of *HRS from Korea* could have chosen to act to the best of their ability in responding to Commerce's requests for information, but presumably did not do so because full cooperation might have resulted in higher CVD rates. As for the fact that the rates from the CVD investigation on *HRS from Korea* precede the instant POR in this proceeding, we note that these rates are still in effect for that proceeding because no administrative review has been completed to date. As for the fact that the rates from the CVD investigation of *HRS from Korea* are under review by the CIT, the CVD rates are still in effect because the final determination has not been amended and no administrative review has been completed to date.

[86] *See, e.g.*, 19 CFR 351.309(c)(2) (discussing that a case brief "must present all arguments that continue in the submitter's view to be relevant to the Secretary's final determination or final results . . ."). *HRS from Korea Review* and accompanying Preliminary Decision Memorandum.

[87] With respect to Hyundai Steel's comment that Commerce should place all proprietary analysis memoranda from *HRS from Korea Review* on the record of this investigation, for the reasons explained above, *i.e.*, because the review is incomplete, the issue is moot.

Comment 4: PMS Adjustment for Stainless Steel Plate

SeAH's Case Brief[88]

- If Commerce makes an adjustment to costs for an alleged PMS, it should revise its calculations to correct its errors and conform to its findings and descriptions of the adjustment.
- Commerce's preliminary calculation of the adjustment to SeAH's costs for the alleged PMS contains two errors:
    - (1) Commerce applied adjustments to the cost of materials purchased from non-Korean suppliers despite the *Preliminary Determination* indicating Commerce did not intend to make adjustments to the aforementioned costs. Therefore, Commerce cannot apply a Korean subsidy rate to HRS purchases from non-Korean suppliers because the non-Korean suppliers did not receive subsidies from the Korean government.
    - (2) Commerce applied an adjustment to stainless plate using the rate from the *CTL Plate—Korea* investigation which is not supported by record evidence.[89]

Commerce's Position: With respect to SeAH's argument that we erred in applying adjustments to the cost of materials purchased from non-Korean suppliers, we disagree. In a market economy, where goods are competitively priced, domestic and imported prices will converge at an equilibrium.[90] This is particularly true with a common and fungible commodity such as HRC or plate. Thus, because domestic subsidies lower the COP and the price of HRC or plate in Korea, it is logical to find that, to remain competitive, imported HRC or plate will sell at prices competitive with the domestically produced and subsidized HRC or plate. In other words, domestic and imported prices of HRC or plate converge to a lower market equilibrium price than if the domestically-produced Korean HRC or plate did not benefit from GOK subsidies. Thus, in accordance with our practice, we have continued to upwardly adjust the respondents' acquisition costs to account for the CVD rates for all HRC and plate purchases as reported by respondents, with the exception of stainless steel plate.

Further, Commerce agrees with SeAH that its adjustment to SeAH's costs for stainless steel plate for a PMS is not supported by the record. Accordingly, for this final determination, Commerce has not adjusted SeAH's reported costs for stainless steel plate.

[88] *See* SeAH's Case Brief at 28 – 30.
[89] *Id.* (citing *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Countervailing Duty Order*, 82 FR 24103 (May 25, 2017) (*CTL Plate—Korea*)).
[90] *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 51927 (October 15, 2018), and accompanying IDM at Comment 3.

Comment 5: Differential Pricing

SeAH's Case Brief[91]

- Commerce is required to justify the numerical thresholds used in the differential pricing analysis based on substantial evidence on the record.
    - Commerce may adopt a rule that establishes numerical cut-offs that follows the notice and comment requirements of the Administrative Procedure Act (APA), but is has not done so in this case.
    - Commerce has not pointed to evidence on the record showing that the differential pricing analysis is appropriate for this particular investigation. If Commerce applies such numerical cut-offs on a case-by-case basis, it must provide evidence and analysis demonstrating why the cut-offs for the Cohen's *d* test and ratio test are suitable in this investigation, in keeping with the CIT's and Court of Appeals for the Federal Circuit's (CAFC) past rulings that Commerce must provide substantial evidence to establish such bright-line thresholds.[92]
- The 0.8 cut-off used in the Cohen's *d* test is not supported by substantial evidence on the record.
    - Commerce cannot rely on an allegedly "widely adopted" statistical test when it is not using that test in the context for which it was proposed and is appropriately applied.
    - Although Commerce claims that the "T-Test for Means" is irrelevant to Commerce's differential pricing analysis, the "T-Test for Means" was very relevant to Professor Cohen's development and presentation of his *d* statistic and the various cut-offs he proposed for establishing whether *d* is small, medium or large.[93]
    - Despite Commerce's acknowledgment that the subject of Professor Cohen's book is "statistical power analysis," Commerce argues that it does not intend to be conducting a "power analysis" in its differential pricing analysis."[94]
    - Commerce's claim that its differential pricing analysis can be distinguished from Professor Cohen's "T-Test for Means" and "power analysis" is not convincing.[95]
    - Commerce has applied a statistical tool in its differential pricing analysis in situations that are inconsistent with the limitations described by Professor Cohen.
    - Commerce is relying on the cut-offs that Professor Cohen used for situations that are statistically different from price distributions in a competitive market.

[91] *See* SeAH Case Brief at 30 – 46.
[92] *Id*. at 31-33 (citing *Carlisle Tire v. United States*, 634 F. Supp. 419, 423 (CIT 1986) and *Washington Red Raspberry Commn. v. United States*, 859 F.2d 898, 903-904 (Fed. Cir. 1988)).
[93] *Id*. at 33-35 (citing *Final Results of the Antidumping Duty Administrative Review: Oil Country Tubular Goods from the Republic of Korea; 2014-2015*, 82 FR 18105 (April 17, 2017) (*First OCTG Review*), and accompanying IDM at 22.
[94] *Id.* at 35 (citing *First OCTG Review*, and accompanying IDM at 28-39).
[95] *Id.* at 35-36, n. 73 (citing *Welded Line Pipe from Korea*, and accompanying IDM at Comment 1, and *Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 46647 (July 18, 2016) (*Stainless Steel Pipe from Korea*).

    - Neither mathematics nor substantial evidence supports Commerce's use of Professor Cohen's cut-offs simply because Commerce is analyzing an entire population of U.S. sales, rather than a sample.
- The 33- and 66- percent cut-offs used in the ratio test are not supported by substantial evidence on the record.
    - Commerce never explained why 33 and 66 percent should be the thresholds for this test, or why a ratio between 33 and 66 percent or over 66 percent calls for consideration of a methodology other than the average-to-average comparison (A-to-A) method.
    - Without justification, these thresholds are arbitrary and improper. Commerce has provided no mathematical justifications for the cut-offs. In previous determinations, Commerce used circular reasoning to explain that the thresholds are reasonable.[96]
- The differential pricing analysis fails to explain why patterns of prices that differ significantly were not, or could not, be taken into account using the A-to-A method.
    - The statute allows Commerce to depart from the A-to-A method for "targeted dumping" only if it "explains why such differences cannot be taken into account using" the A-to-A method or transaction-to-transaction comparison (T-to-T) method.[97]
    - Commerce only showed that the weighted-average dumping margin calculated using an alternate comparison method differed meaningfully from that calculated using a standard comparison method. However, the existence of different results does not satisfy the statutory requirements.
    - The different results are mainly a function of zeroing or not zeroing.
    - Commerce did not provide support demonstrating that the difference in weighted-average dumping margins is meaningful when there is at least a 25 percent change in margin between the A-to-A method and an alternative comparison method. Therefore, Commerce's use of the 25 percent measure is inherently arbitrary and improper.
- Under the relevant provisions of the statute, Commerce is not permitted to utilize the average-to-transaction comparison (A-to-T) method for any of SeAH's U.S. sales.
    - In general, the statute does not allow Commerce to compare an average normal value to U.S. prices for individual transactions. The exception to this applies only when there is a pattern of prices that differ significantly, and Commerce explains why such differences cannot be taken into account using either the A-to-A method or the T-to-T method.
    - Neither the petitioners nor Commerce has shown, based on the record evidence, that the two criteria for application of the exceptional comparison method have been satisfied. Thus, Commerce is required to use the A-to-A method.

Petitioners' Rebuttal Brief[98]

- SeAH has previously raised each of these arguments and Commerce has considered and rejected each of them in prior decisions. As SeAH has provided no new meaningful argument here, Commerce should continue to reject these arguments.

[96] *Id.* at 41-43 (citing *inter alia First OCTG Review*, and accompanying IDM at 25).
[97] *Id.* at 43-44 (citing section 777A(d)(1)(B) of the Act).
[98] *See* Petitioners' Rebuttal Brief at 21 – 27.

Commerce Position: As an initial matter, we note that there is nothing in section 777A(d) of the Act that mandates how Commerce measures whether there is a pattern of prices that differs significantly or explains why the A-to-A method or the T-to-T method cannot account for such differences. On the contrary, carrying out the purpose of the statute[99] here is a gap filling exercise properly conducted by Commerce.[100] As explained in the *Preliminary Determination*, as well as in various other proceedings,[101] Commerce's differential pricing analysis is reasonable, including the use of the Cohen's *d* test as a component in this analysis, and it is in no way contrary to the law.

We note that the CAFC has upheld key aspects of Commerce's differential pricing analysis, including: the application of the "meaningful difference" standard, which compares the calculated weighted-average dumping margins using the A-to-A method without zeroing and an alternative comparison method based on the A-to-T method with zeroing; the reasonableness of Commerce's comparison method in fulfilling the relevant statute's aim; Commerce's use of a "benchmark" to illustrate a meaningful difference; Commerce's justification for applying the A-to-T method to all U.S. sales; Commerce's use of zeroing in applying the A-to-T method; that Congress did not dictate how Commerce should determine if the A-to-A method accounts for "targeted" or masked dumping; that the "meaningful difference" test is reasonable; and that Commerce may consider all sales in its "meaningful difference" analysis and consider all sales when calculating a final rate using the A-to-T method.[102]

A. APA Rulemaking Is Not Required

Commerce disagrees with SeAH that it is obligated to follow the APA in establishing the differential pricing methodology. The notice and comment requirements of the APA do not apply "to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice."[103] Further, Commerce normally makes these types of changes in practice (*e.g.*, the change from the targeted dumping analysis to the current differential pricing

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[99] *See Koyo Seiko Co., Ltd. v. United States*, 20 F. 3d 1156, 1159 (Fed. Cir. 1994) ("The purpose of the antidumping statute is to protect domestic manufacturing against foreign manufacturers who sell at less than fair market value. Averaging U.S. prices defeats this purpose by allowing foreign manufacturers to offset sales made at less-than-fair value with higher priced sales. Commerce refers to this practice as 'masked dumping.' By using individual U.S. prices in calculating dumping margins, Commerce is able to identify a merchant who dumps the product intermittently—sometimes selling below the foreign market value and sometimes selling above it. We cannot say that this is an unfair or unreasonable result." (internal citations omitted)).

[100] *See Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984) (recognizing deference where a statute is ambiguous, and an agency's interpretation is reasonable); *see also Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286, 1302 (CIT 2014) (applying *Chevron* deference in the context of Commerce's interpretation of section 777A(d)(1) of the Act).

[101] *See*, *e.g.*, *Second OCTG Review*, and accompanying IDM at Comment 8; *Welded Line Pipe from Korea*, and accompanying IDM Issues and Decision Memorandum at Comment 1; *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013,* 80 FR 32937 (June 10, 2015) and accompanying IDM at Comments 1 and 2; and *Stainless Steel Pipe from Korea*, and accompanying IDM at Comment 4.

[102] *See Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1322 (Fed. Cir. 2017) (*Apex*); *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1337 (Fed. Cir. 2017) (*Apex I*).

[103] *See* 5 U.S.C. § 553(b)(3)(A).

analysis) in the context of its proceedings, on a case-by-case basis.[104] As the CAFC has recognized, Commerce is entitled to make changes and adopt a new approach in the context of its proceedings, provided it explains the basis for the change, and the change is a reasonable interpretation of the statute.[105] The CAFC has also held that Commerce's meaningful difference analysis was reasonable.[106] Moreover, the CIT in *Apex II* recently held that Commerce's change in practice (from targeted dumping to its differential pricing analysis) was exempt from the APA's rule making requirements, stating:

> Commerce explained that it continues to develop its approach with respect to the use of {A-to-T} "as it gains greater experience with addressing potentially hidden or masked dumping that can occur when the Department determines weighted-average dumping margins using the {A-to-A} comparison method. Commerce additionally explained that the new approach is "a more precise characterization of the purpose and application of {19 U.S.C. § 1677f-1(d)(1)(B)}" and is the product of Commerce's "experience over the last several years . . . further research, analysis and consideration of the numerous comments and suggestions on what guidelines, thresholds, and tests should be used in determining whether to apply an alternative comparison method based on the {A-to-T} method." Commerce developed its approach over time, while gaining experience and obtaining input. Under the standard described above, Commerce's explanation is sufficient. Therefore, Commerce's adoption of the differential pricing analysis was not arbitrary.[107]

Moreover, as we noted previously, the CIT acknowledged in *Apex II* that as Commerce "gains greater experience with addressing potentially hidden or masked dumping that can occur when {Commerce} determines weighted-average dumping margins using the average-to-average comparison method, {Commerce} expects to continue to develop its approach with respect to the use of an alternative comparison method."[108] Further developments and changes, along with further refinements, are expected in the context of our proceedings based upon an examination of the facts and the parties' comments in each case.

B. The Application of the Cohen's *d* Coefficient and the Threshold of 0.8 for the Cohen's *d* Coefficient Is Reasonable

As stated in the *Preliminary Determination*, the purpose of the Cohen's *d* test is to evaluate "the extent to which the prices to a particular purchaser, region, or time period differ significantly

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[104] *See Differential Pricing Analysis; Request for Comments*, 79 FR 26720, 26722 (May 9, 2014) (*Differential Pricing Comment Request*).
[105] *See Saha Thai Steel Pipe Company v. United States*, 635 F.3d 1335, 1341 (Fed. Cir. 2011); and *Washington Raspberry*, 859 F. 2d at 902-03. *See also Carlisle Tire*, 634 F. Supp. at 423 (discussing exceptions to the notice and comment requirements of the APA).
[106] *See Apex I*, 862 F.3d 1337, 1347-1351.
[107] *See Apex Frozen Foods Private Ltd. v. United States*, 144 F. Supp. 3d 1308, 1322 (Ct. Int'l Trade 2016) (*Apex II*).
[108] *Id.*

from the prices of all other sales of comparable merchandise."[109] The Cohen's *d* coefficient is a recognized measure which gauges the extent (or "effect size") of the difference between the means of two groups and provides "a simple way of quantifying the difference between two groups and has many advantages over the use of tests of statistical significance alone."[110] "Effect size quantifies the size of the difference between two groups, and may therefore be said to be a true measure of *the significance of the difference*."[111] As stated in the *Second OCTG Review*, the purpose for which Commerce relies on the Cohen's *d* test is to satisfy the statutory language, is to measure whether a difference is significant.[112]

Further, in describing "effect size" and the distinction between effect size and statistical significance, Commerce stated in *Shrimp from Vietnam*: [113]

> Dr. Paul Ellis, in his publication *The Essential Guide to Effect Sizes*, introduces effect size by asking a question: "So what? Why do this study? What does it mean for the man on the street?" Dr. Ellis continues:
>
> > A statistically significant result is one that is unlikely to be the result of chance. But a practically significant result is meaningful in the real world. It is quite possible, and unfortunately quite common, for a result to be statistically significant and trivial. It is also possible for a result to be statistically nonsignificant and important. Yet scholars, from PhD candidates to old professors, rarely distinguish between the statistical and the practical significance of their results.
>
> In order to evaluate whether such a practically significant result is meaningful, Dr. Ellis states that this "implies an estimation of one or more effect sizes."
>
> > An effect size refers to the magnitude of the result as it occurs, or would be found, in the population. Although effects can be observed in the artificial setting of a laboratory or sample, effect sizes exist in the real world.

Commerce further stated in *Shrimp from Vietnam*: [114]

> As recognized by Dr. Ellis in the quotation above, the results of an analysis may have statistical and/or practical significance, and that these two distinct measures of significance are independent of one another. In its case brief, VASEP {the Vietnamese

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[109] *See Preliminary Determination*, and accompanying PDM at 10.
[110] *See Second OCTG Review*, and accompanying IDM at 68 (quoting Coe, Robert, "It's the Effect Size, Stupid: What effect size is and why it is important," (September 2002) (Coe's Paper)).
[111] *Id.*
[112] *Id.*
[113] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2014-2015*, 81 FR 62717 (September 12, 2016) (*Shrimp from Vietnam*) and the accompanying IDM at 16 – 17 (*quoting* Ellis, Paul D., *The Essential Guide to Effect Sizes*; Cambridge University Press (2010) (*Ellis*) at 3-5). *See also Second OCTG Review*, and accompanying IDM at 67 – 72.
[114] *See Shrimp from Vietnam*, and the accompanying IDM at 16 – 17, and *Second OCTG Review*, and accompanying IDM at 67 – 72.

> respondent} accedes to the distinction and meaning of "effect size" when it states "While application of the t test {a measure of statistical significance} in addition to Cohen's *d* might at least provide the cover of statistical significance, it still would not ensure practical significance." The Department agrees with this statement -- statistical significance is not relevant to the Department's examination of an exporter's U.S. prices when examining whether such prices differ significantly. The Department's differential pricing analysis, including the Cohen's *d* test, includes all U.S. sales which are used to calculate a respondent's weighted-average dumping margin; therefore, statistical significance, as discussed above, is inapposite. The question is whether there is a practical significance in the differences found to exist in the exporter's U.S. prices among purchasers, regions or time periods. Such practical significance is quantified by the measure of "effect size."

Lastly, in *Shrimp from Vietnam*, Commerce again pointed to Dr. Ellis, where he addresses populations of data:

> Dr. Ellis also states in his publication that the "best way to measure an effect is to conduct a census of an entire population but this is seldom feasible in practice."[115]

There are two separate concepts and measurements when analyzing whether the means of two sets of data are different. The first measurement, when these two sets of data are samples of a larger population, is whether this difference is statistically significant, as measured by a t-test. This will determine whether this difference rises above the sampling error (or in other words, noise or randomness) in selecting the sample. This will answer the question of whether picking a second (or third or fourth) set of samples will result in a different outcome than the first set of samples. When the t-test results in determining that the difference is statistically significant (*i.e.*, the null hypothesis is false), then these results rise above the sampling error and are statistically significant.

The second measurement is whether there is a practical significance of the difference between the means of the two sets of data, as measured by an "effect size" such as Cohen's *d* coefficient. As noted above, this quantifies the real-world relevance of this difference "and may therefore be said to be a true measure of the significance of the difference."[116] This is the basis for Commerce's determination whether prices in a test group differ significantly from prices in a comparison group.

SeAH claims that Commerce's use of Cohen's stated thresholds to determine whether Cohen's measurement of effect size is significant is not appropriate. SeAH states that these thresholds, and consequently the Cohen's *d* coefficient,

> could only appropriately be applied in specific circumstances – where 'samples, each of *n* cases, have been randomly and independently drawn from normal populations,' and

[115] *See Shrimp from Vietnam* at 17 (quoting *Ellis*). *Second OCTG Review*, and accompanying Issues and Decision Memorandum at 67 – 72.
[116] *See Second OCTG Review*, and accompanying IDM at 69 (citing Coe's Paper).

> where the two samples do not have 'substantially unequal variances' or 'substantially unequal sample sizes (whether small or large).'[117]

SeAH's claim is misplaced. SeAH's quotation is from section 2.1 of Dr. Cohen's text, "Introduction and Use" of "The T Test for Means."[118] As described above, this concerns the statistical significance of the difference in the means for two sampled sets of data and is not relevant when considering whether this difference has a practical difference. This is not to say that sample size and sample distribution have no impact on the description of "effect size" for sampled data,[119] but that is not the basis for Commerce's analysis of SeAH's U.S. sale price data.

Further, the subject for Dr. Cohen's book and the discussion therein is "statistical power analysis." Power analysis involves the interrelationship between statistical and practical significance to attain a specified confidence or "power" in the results of one's analysis. Indeed, the beginning of the "Introduction and Use" of "The T Test for Means," including SeAH's first quotation, is:

> The arithmetic mean is by far the most frequently used measure of location by behavioral scientists, and hypotheses about means the most frequently tested. The tables have been designed to render very simple the procedure for *power analysis* in the case where two samples, each of *n* cases, have been randomly and independently drawn from normal populations, and the investigator wishes to test the null hypothesis that their respective population means are equal…[120]

Again, Commerce is not conducting a "power analysis" which guides researchers in their construction of a project in order to obtain a prescribed "power" (*i.e.*, confidence level, certainty in the researchers' results and conclusions). This incorporates a balance between sampling technique, including sample size and potential sampling error, with the stipulated effect size. The Cohen's *d* test in this final determination only measures the significance of the observed differences in the mean prices for the test and comparison groups with no need to draw statistical inferences regarding sampled price date or the "power" of Commerce's results and conclusions.

The 0.8 threshold for the Cohen's *d* coefficient, which establishes whether the price difference between the test and comparison groups is significant (*i.e.*, the "large" effect size), is subjective and objectively supported with real-world observations, and thus it is not arbitrary. Further, Dr. Cohen's thresholds are widely accepted, and thus have been found by others to represent reasonable standards to define the magnitude of effect size. Commerce addressed the same argument by the respondent Deosen in *Xanthan Gum*, stating:

> Deosen's claim that the Cohen's *d* test's thresholds of "small," "medium," and "large" are arbitrary is misplaced. In "Difference Between Two Means," the author states that "there is no objective answer" to the question of what

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[117] *See* SeAH Case Brief at 33 – 34 (*citing First OCTG Review*, and accompanying IDM (quoting Cohen, Jacob, *Statistical Power Analysis for the Behavioral Sciences, Second Edition* (1988) (*Cohen*) at 19-20)).
[118] *Id.*
[119] *See Second OCTG Review*, and accompanying IDM at 69 (citing, for example, *Cohen* at 21-23, section 2.2.1).
[120] *Id*. (quoting Cohen at 19 (emphasis in italics, SeAH's quotation underlined)).

> constitutes a large effect. Although Deosen focuses on this excerpt for the proposition that the "guidelines are somewhat arbitrary," the author also notes that the guidelines suggested by Cohen as to what constitutes a small effect size, medium effect size, and large effect size "have been widely adopted." The author further explains that Cohen's *d* is a "commonly used measure{}" to "consider the difference between means in standardized units." At best, the article may indicate that although the Cohen's *d* test is not perfect, it has been widely adopted. And certainly, the article does not support a finding, as Deosen contends, that the Cohen's *d* test is not a reasonable tool for use as part of an analysis to determine whether a pattern of prices differ significantly.[121]

As Commerce explained in the Preliminary Decision Memorandum, the magnitude of the price differences as measured with the Cohen's *d* coefficient:

> … 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.[122]

Commerce has relied on the most conservative of these three thresholds to determine whether the difference in prices is significant. Dr. Cohen further provided examples which demonstrate "real world" understanding of the small, medium and large thresholds where a "large" difference "is represented by the mean IQ difference estimated between holders of the Ph.D. degree and typical college freshmen, or between college graduates and persons with only a 50-50 chance of passing an academic high school curriculum. These seem like grossly perceptible and therefore large differences, as does the mean difference in height between 13- and 18-year-old girls…"[123] In other words, Dr. Cohen was stating that it is obvious on its face that there are differences in intelligence between highly educated individuals and struggling high school students, and between the height of younger and older teenage girls. Likewise, the "large" threshold is a reasonable yardstick to determine whether prices differ significantly.

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[121] *See Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013), and accompanying IDM at Comment 3 (*quoting* Dave Lane et al., Chapter 19 "Effect Size," Section 2 "Difference Between Two Means"); *see also Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013), and accompanying IDM at Comment 4; *Certain Steel Nails from the People's Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014), and accompanying IDM at Comment 7; *Second OCTG Review*, and accompanying IDM at 67-72.

[122] Nonetheless, these thresholds, as with the approach incorporated in the differential pricing analysis itself, may be modified given factual information and argument on the record of a proceeding. *See*, *e.g.*, *Preliminary Determination*, and accompanying Preliminary Decision Memorandum at 10.

[123] *See Second OCTG Review*, and accompanying IDM at 71 (citing Cohen at 27).

Therefore, Commerce disagrees with SeAH's arguments that its application of the Cohen's *d* test in this investigation is improper. As a general matter, Commerce finds that the U.S. sales data which SeAH has reported to Commerce constitutes a complete population. As such, sample size, sample distribution, and the statistical significance of the sample are not relevant to Commerce's analysis.[124] Furthermore, Commerce finds that Dr. Cohen's thresholds are reasonable, and the use of the "large" threshold is reasonable and consistent with the requirements of section 777A(d)(1)(B) of the Act.[125]

Finally, we note that, in the Preliminary Decision Memorandum, we requested that interested parties "present arguments and justifications in relation to the above-described differential pricing approach used in the preliminary determination, including arguments for modifying the group definitions used in this proceeding."[126] SeAH has submitted no factual evidence or argument that these thresholds should be modified or that any other aspects of the differential pricing analysis should be changed for SeAH in this investigation. Accordingly, SeAH's arguments at this late stage of the investigation are unsupported by the record and appear only to convey SeAH's disagreement with the results of Commerce's application of a differential pricing analysis in this investigation, rather than to truly identify some aspect of this approach which is unreasonable or inconsistent with the statute.

C. The 33- and 66-Percent Thresholds for the Ratio Test Are Reasonable

We disagree with SeAH's contention that Commerce has never explained the 33- and 66-percent thresholds used in the ratio test. Specifically, in *OCTG from India*, we addressed the establishment of the 33- and 66-percent thresholds as follows:

> In the differential pricing analysis, the Department reasonably established a 33 percent threshold to establish whether there exists a pattern of prices that differ significantly. The Department finds that when a third or less of a respondent's U.S. sales are not at prices that differ significantly, then these significantly different prices are not extensive enough to satisfy the first requirement of the statute…
>
> Likewise, the Department finds reasonable, given its growing experience of applying section 777A(d)(1)(B) of the Act and the application of the A-to-T method as an alternative to the A-to-A method, that when two thirds or more of a respondent's sales are at prices that differ significantly, then the extent of these sales is so pervasive that it would not permit the Department to separate the effect of the sales where prices differ significantly from those where prices do not differ significantly. Accordingly, the Department considered whether, as an appropriate

[124] *See, e.g., Xi'an Metals & Materials Imp. & Exp. Co. v. United States*, 256 F. Supp. 3d 1346, 1364-65 (CIT 2017) ("'statistical significance' is irrelevant where, as here, the agency has a complete set of data to consider . . . {I}f Congress wanted ITA to measure 'statistical significance,' it would have included the word 'statistical' {when it drafted the statute}"); *Stanley Works Langfang Fastening Sys. Co. v. United States*, 333 F. Supp. 3d 1329, 1346 (CIT 2018) (similar).

[125] *See Stanley Works*, 333 F. Supp. 3d at 1346-46 ("Commerce lawfully used these thresholds to help it determine which sales 'pass' its Cohen's *d* test").

[126] *See Preliminary Determination*, and accompanying PDM at 10.

> alternative comparison method, the A-to-T method should be applied to all U.S. sales. Finally, when the Department finds that between one third and two thirds of U.S. sales are at prices that differ significantly, then there exists a pattern of prices that differ significantly, and that the effect of this pattern can reasonably be separated from the sales whose prices do not differ significantly. Accordingly, in this situation, the Department finds that it is appropriate to address the concern of masked dumping by considering the application of the A-to-T method as an alternative to the A-to-A method for only those sales which constitute the pattern of prices that differ significantly.[127]

Although the selection of these thresholds is subjective, Commerce's stated reasons behind the 33- and 66-percent thresholds does not render them arbitrary. In its case brief, SeAH proffers several pairs of other possible thresholds but without reasoning or support to argue that these values are more appropriate than those used by Commerce in this investigation. Likewise, during the course of this investigation, SeAH has submitted no factual evidence or argument that these thresholds should be modified. Accordingly, SeAH's arguments at this late stage of the investigation are unsupported by the record and appear only to convey SeAH's disagreement with the results of Commerce's application of a differential pricing analysis in this investigation rather than to truly identify some aspect of this approach which is unreasonable or inconsistent with the statute.

D. The Differential Pricing Analysis Appropriately Explains Whether the A-to-A Method Can Account for Significant Price Differences

We disagree, in part, with SeAH that "the mere existence of different results is plainly insufficient, by itself, to satisfy the statutory requirements"[128] of whether the A-to-A method can account for significant price differences which are imbedded in SeAH's pricing behavior in the U.S. market. We do agree with SeAH that this difference is due to zeroing, because weighted-average dumping margins calculated using the A-to-A method without zeroing and the A-to-T method without zeroing will always yield the identical results. This is evidenced above with the calculation results for SeAH in this final determination.[129]

The difference in the calculated results specifically reveals the extent of the masked dumping which is being concealed when applying the A-to-A method.[130] The difference in these two

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[127] *See Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods from India*, 79 FR 41981 (July 18, 2014) (*OCTG from India*), and accompanying IDM at Comment 1.

[128] *See* SeAH Case Brief at 44.

[129] *See* SeAH Final Margin Calculation Memorandum, at Attachment 2 (pages 152-153 of the SAS output), where the calculation results of the A-to-A method, the A-to-T method and the "mixed" method are summarized. The sum of the "Positive Comparison Results" and the "Negative Comparison Results" for each of the three comparison methods are identical, *i.e.*, with offsets for all non-dumped sales (*i.e.*, negative comparison results); the amount of dumping is identical. As such, the difference between the calculated results of these comparison methods is whether negative comparison results are used as offsets or set to zero (*i.e.*, zeroing).

[130] *See Koyo Seiko Co., Ltd. v. United States*, 20 F.3d 1156, 1159 (Fed. Cir. 1994) ("The purpose of the antidumping statute is to protect domestic manufacturing against foreign manufacturers who sell at less than fair market value. Averaging U.S. prices defeats this purpose by allowing foreign manufacturers to offset sales made at less-than-fair

results is caused by higher U.S. prices offsetting lower U.S. prices where the dumping, which may be found on lower-priced U.S. sales, is hidden or masked by higher U.S. prices,[131] such that the A-to-A method would be unable to account for such differences.[132] Such masking or offsetting of lower prices with higher prices may occur implicitly within the averaging groups or explicitly when aggregating the A-to-A comparison results. Therefore, in order to understand the impact of the unmasked dumping, Commerce finds that the comparison of each of the calculated weighted-average dumping margins using the standard and alternative comparison methodologies exactly quantifies the extent of the unmasked dumping.

The simple comparison of the two calculated results belies the complexities in calculating and aggregating individual dumping margins (*i.e.*, individual results from comparing export prices, or constructed export prices, with normal values). It is the interaction of these many comparisons of export prices or constructed export prices with normal values, and the aggregation of these comparison results, which determine whether there is a meaningful difference in these two calculated weighted-average dumping margins. When using the A-to-A method, lower-priced U.S. sales (*i.e.*, sales which may be dumped) are offset by higher-priced U.S. sales. Congress was concerned about offsetting and that concern is reflected in the SAA which states that so-called "targeted dumping" is a situation where "an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions."[133] The comparison of a weighted-average dumping margin based on comparisons of weighted-average U.S. prices that also reflects offsets for non-dumped sales, with a weighted-average dumping margin based on comparisons of individual U.S. prices without such offsets (*i.e.*, with zeroing) precisely examines the impact on the amount of dumping which is hidden or masked by the A-to-A method. Both the weighted-average U.S. price and the individual U.S. prices are compared to a normal value that is independent from the type of U.S. price used for comparison, and the basis for normal value will be constant because the characteristics of the individual U.S. sales[134] remain constant whether weighted-average U.S. prices or individual U.S. prices are used in the analysis.

Consider the simple situation where there is a single, weighted-average U.S. price, and this average is made up of a number of individual U.S. sales which exhibit different prices, and the two comparison methods under consideration are the A-to-A method with offsets (*i.e.*, without zeroing) and the A-to-T method with zeroing.[135] The normal value used to calculate a weighted-

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value with higher priced sales. Commerce refers to this practice as 'masked dumping.' By using individual U.S. prices in calculating dumping margins, Commerce is able to identify a merchant who dumps the product intermittently—sometimes selling below the foreign market value and sometimes selling above it. We cannot say that this is an unfair or unreasonable result." (internal citations omitted)).

[131] *See* SAA at 842.

[132] *See Union Steel v. United States*, 713 F.3d 1101, 1108 (Fed. Cir. 2013) ("{the A-to-A} comparison methodology masks individual transaction prices below normal value with other above normal value prices within the same averaging group.").

[133] *See* SAA at 842.

[134] These characteristics include items such as product, level-of-trade, time period, and whether the product is considered as prime- or second-quality merchandise.

[135] The calculated results using the A-to-A method with offsets (*i.e.*, no zeroing) and the calculated results using the A-to-T method with offsets (*i.e.*, no zeroing) will be identical. Accordingly, this discussion is effectively between the A-to-T method with offsets and the A-to-T method with zeroing. *See* footnote 128, above, which identifies the

average dumping margin for these sales will fall into one of five scenarios with respect to the range of these different, individual U.S. sale prices:

1) the normal value is less than all U.S. prices and there is no dumping;

2) the normal value is greater than all U.S. prices and all sales are dumped;

3) the normal value is nominally greater than the lowest U.S. prices such that there is a minimal amount of dumping and a significant amount of offsets from non-dumped sales;[136]

4) the normal value is nominally less than the highest U.S. prices such that there is a significant amount of dumping and a minimal amount of offsets generated from non-dumped sales;

5) the normal value is in the middle of the range of individual U.S. prices such that there is both a significant amount of dumping and a significant amount of offsets generated from non-dumped sales.

Under scenarios (1) and (2), either there is no dumping, or all U.S. sales are dumped such that there is no difference between the weighted-average dumping margins calculated using offsets or zeroing and there is no meaningful difference in the calculated results and the A-to-A method will be used. Under scenario (3), there is a minimal (*i.e.*, *de minimis*) amount of dumping, such that the application of offsets will result in a zero or *de minimis* amount of dumping (*i.e.*, the A-to-A method with offsets and the A-to-T method with zeroing both result in a weighted-average dumping margin which is either zero or *de minimis*) and which also does not constitute a meaningful difference and the A-to-A method will be used. Under scenario (4), there is a significant (*i.e.*, non-*de minimis*) amount of dumping with only a minimal amount of non-dumped sales, such that the application of the offsets for non-dumped sales does not change the calculated results by more than 25 percent or cause the weighted-average dumping margin to be *de minimis*, and again there is not a meaningful difference in the weighted-average dumping margins calculated using offsets or zeroing and the A-to-A method will be used. Lastly, under scenario (5), there is a significant, non-*de minimis* amount of dumping and a significant amount of offsets generated from non-dumped sales such that there is a meaningful difference in the weighted-average dumping margins calculated using offsets or zeroing. Only under the fifth scenario can Commerce consider the use of an alternative comparison method.

Only under scenarios (3), (4) and (5) are the granting or denial of offsets relevant to whether dumping is being masked, as there are both dumped and non-dumped sales. Under scenario (3), there is only a *de minimis* amount of dumping such that the extent of available offsets will only make this *de minimis* amount of dumping even smaller and have no impact on the outcome. Under scenario (4), there exists an above-*de minimis* amount of dumping, and the

specific calculation results for SeAH in these final results.

[136] As discussed further below, please note that scenarios 3, 4 and 5 imply that there is a wide enough spread between the lowest and highest U.S. prices so that the differences between the U.S. prices and normal value can result in a significant amount of dumping and/or offsets, both of which are measured relative to the U.S. prices.

offsets are not sufficient to meaningfully change the results. Only with scenario (5) is there an above-*de minimis* amount of dumping with a sufficient amount of offsets such that the weighted-average dumping margin will be meaningfully different under the A-to-T method with zeroing as compared to the A-to-A / A-to-T method with offsets. This difference in the calculated results is meaningful in that a non-*de minimis* amount of dumping is now masked or hidden to the extent where the dumping is found to be zero or *de minimis* or to have decreased by 25 percent of the amount of the dumping with the applied offsets.

This example demonstrates that there must be a significant and meaningful difference in U.S. prices in order to resort to an alternative comparison method. These differences in U.S. prices must be large enough, relative to the absolute price level in the U.S. market, where not only is there a non-*de minimis* amount of dumping, but there also is a meaningful amount of offsets to impact the identified amount of dumping under the A-to-A method with offsets. Furthermore, the normal value must fall within an even narrower range of values (*i.e.*, narrower than the price differences exhibited in the U.S. market) such that these limited circumstances are present (*i.e.*, scenario (5) above). This required fact pattern, as represented in this simple situation, must then be repeated across multiple averaging groups in the calculation of a weighted-average dumping margin in order to result in an overall weighted-average dumping margin which changes to a meaningful extent.

Further, for each A-to-A comparison result which does not result in the set of circumstances in scenario (5), the "meaningfulness" of the difference in the weighted-average dumping margins between the two comparison methods will be diminished. This is because for these A-to-A comparisons which do not exhibit a meaningful difference with the A-to-T comparisons, there will be little or no change in the amount of dumping (*i.e.*, the numerator of the weighted-average dumping margin) but the U.S. sales value of these transactions will nonetheless be included in the total U.S. sales value (*i.e.*, the denominator of the weighted-average dumping margin). The aggregation of these intermediate A-to-A comparison results where there is no "meaningful" difference will thus dilute the significance of other A-to-A comparison results where there is a "meaningful" difference, which the A-to-T method avoids.

Therefore, Commerce finds that the meaningful difference test reasonably fills the gap in the statute to consider why, or why not, the A-to-A method (or T-to-T method) cannot account for the significant price differences in SeAH's pricing behavior in the U.S. market. Congress's intent of addressing so-called "targeted dumping," when the requirements of section 777A(d)(1)(B) of the Act are satisfied,[137] would be thwarted if the A-to-T method without zeroing were applied because this will always produce the identical results when the standard A-to-A method without zeroing is applied. Under that scenario, both methods would inherently mask dumping. It is for this reason that Commerce finds that the A-to-A method cannot take into account the pattern of prices that differ significantly for SeAH, *i.e.*, Commerce identified conditions where "targeted" or masked dumping "may be occurring" in satisfying the pattern requirement, and Commerce demonstrated that the A-to-A method could not account for the significant price differences, as exemplified by the pattern of prices that differ significantly. Thus, Commerce continues to find that application of the A-to-T method, with zeroing, is an

[137] *See* SAA at 842-843.

appropriate tool to address masked "targeted dumping,"[138] and has applied an alternative comparison method based on the A-to-A method for sales not passing the Cohen's *d* test and the A-to-T method for sales passing the Cohen's *d* test to calculate the weighted-average dumping margin for SeAH in this final determination.

E. Application of the Average-to-Transaction Method Is Supported by Record Evidence and Commerce's Analysis

Commerce disagrees with SeAH that it has failed to satisfy the statutory requirements of section 777A(d)(1)(B) of the Act and considers the application of an alternative comparison method based on the A-to-T method appropriate. As set forth in the *Preliminary Determination*,[139] Commerce's differential pricing analysis for SeAH in this investigation is both lawful, reasonable, and completely within Commerce's discretion in executing the trade statute.

Comment 6: Direct Material/Conversion Costs

SeAH's Case Brief[140]

- The Act does not permit Commerce to adjust costs for purposes of the sales-below-cost test in order to eliminate cost differences between control numbers (CONNUM) that are unrelated to physical differences in merchandise.
- Commerce's regulations state that the difference-in-merchandise (DIFMER) adjustment may be based on "differences in variable costs associated with the physical differences" in the merchandise.[141] Commerce will not make a DIFMER adjustment for a cost difference that relates only to the timing of production.
- Commerce's adjustment to SeAH's raw material cost is inconsistent with the evidence on the record regarding the causes of variations in raw material costs. Commerce's comparison of raw material costs for different products with the same overall grade ignored the actual differences in chemical characteristics (sub-grades) for steel intended for use in products with the same overall grade, but different applications.
- If Commerce insists on using average raw material costs in the final determination, Commerce should include diameter in defining the averaging groups so as to reflect the variations in material prices resulting from differences in plate or coil width.
- Commerce's adjustment to SeAH's conversion costs is inconsistent with the evidence on the record regarding the causes of variations in those costs. Commerce's assumption that products with the same inner and outer coating, diameter, and wall thickness should be the same ignores that SeAH's normal cost accounting system assigns costs to each job order based on actual line speed for that order.
- If Commerce insists on using average conversion costs in its final determination, it should include steel chemistry in defining the averaging groups in order to reflect the variations in line speed for stainless and non-stainless pipe.

[138] *See Apex II*, 37 F. Supp. 3d at 1296.
[139] *See Preliminary Determination*, and accompanying PDM at 9-11.
[140] *See* SeAH Case Brief at 7 – 14.
[141] *Id*. at 8 (citing 19 CFR 351.411(b)).

Petitioners' Case Brief[142]

- To mitigate the unreasonable raw material cost differences unrelated to product physical characteristics, Commerce should continue to weight-average Hyundai RB's and SeAH's raw material costs for the final determination.

Hyundai RB's Rebuttal Brief[143]

- Commerce did not explain why the observed raw material cost differences between similar CONNUMs were significant and unreasonable. Further, Commerce did not provide a threshold for the cost difference between similar CONNUMs which required adjustment. Commerce reached its conclusion regarding significant raw material cost differences without supporting the reasonableness of that conclusion. Thus, Commerce should not make an adjustment to Hyundai RB's reported raw material costs.
- Commerce verified that Hyundai RB considered not only the chemical composition and thickness of the material, but also diameter (*i.e.,* width) when it purchased the raw material (*i.e.,* plate). Therefore, if Commerce continues to make this adjustment, Commerce should consider the product physical characteristic "diameter" in the final determination.

Petitioners' Rebuttal Brief[144]

- Commerce has applied similar adjustments in various cases and this represents well established practice.[145]
- SeAH's questionnaire responses, in relation to the direct material costs, confirmed that the differences are mostly due to the timing of the material purchases; "{b}ecause the price for steel materials fluctuated during the investigation period, production orders produced using steel materials purchased at different times may have been different per-unit direct material costs."[146]
- An analysis of SeAH Cost Verification Report VE 21 (Differences in Purchase Cost of Raw Materials by Width (Outside Diameter, Thickness, and Grades)) does not support SeAH's claim that the prices for steel coils and plates vary based on the width of the material.
- Differences in conversion costs for SeAH, like the direct material costs, were caused by timing differences.[147]
- The line speed information relied on by SeAH is new information and was not included in supplemental questionnaire responses used to explain large cost differences between similar CONNUMs.

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[142] *See* Petitioners Case Brief at 19 – 20.
[143] *See* Hyundai RB Rebuttal Brief at 3 – 5.
[144] *See* Petitioners Case Brief at 27 – 38.
[145] *Id.* at 28 (citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 35248 (June 12, 2013) (*CWSP from Korea I*), and accompanying IDM at Comment 6 ("We disagree with Husteel and have continued to reallocate the company's raw material and fabrication costs to mitigate cost differences that are unrelated to the reported products' physical characteristics.")).
[146] *Id*. at 32 (citing SeAH June 8, 2018 Supplemental Questionnaire Response (SeAH June 8, 2018 SQR)).
[147] *Id*. at 35-36 (citing SeAH June 8, 2018 SQR).

Commerce's Position: To mitigate the unreasonable material cost differences unrelated to the product physical characteristics, for both Hyundai RB and SeAH, we weight-averaged their reported material costs for CONNUMs that have identical product physical characteristics associated with the raw materials in the *Preliminary Determination* (*i.e.,* steel chemistry, chromium content, nickel content, molybdenum content, product type, and wall thickness). In addition, for the same reasons we weight-averaged material costs for both Hyundai RB and SeAH, we also weight-averaged SeAH's reported conversion costs for CONNUMs that have identical product physical characteristics associated with the inner and outer coating, diameter, and wall thickness for the *Preliminary Determination*.

Pursuant to section 773(f)(1)(A) of the Act, "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise." Accordingly, we are instructed by the Act to rely on the company's normal books and records if two conditions are met: (1) the books are kept in accordance with the home country's generally accepted accounting principles (GAAP); and (2) the books reasonably reflect the cost to produce and sell the merchandise. In the instant case, Hyundai RB's and SeAH's reported CONNUM-specific raw material costs, and SeAH's conversion costs, were based on the companies' normal books and records that were kept in accordance with Korean GAAP. Thus, the question facing Commerce is whether the CONNUM-specific per-unit raw material cost from Hyundai RB's normal books and the CONNUM-specific per-unit raw material and conversion costs from SeAH's normal books reasonably reflect the cost to produce and sell the welded pipe.[148]

During verification, Commerce asked Hyundai RB why there were significant raw material cost differences between CONNUMs with similar product characteristics. Hyundai RB's only explanation was that the raw material purchase prices were determined by the plate specification and size (*i.e.,* thickness and width).[149] As explained in the Hyundai RB Cost Verification Report, Hyundai RB tracks raw material costs based on each specific purchase order in the normal course of business and the purchase price of steel plate actually consumed for a finished product is recorded as the direct material cost in the purchase order of that product.[150] For SeAH, as explained in the SeAH Cost Verification Report, the recorded product costs in SeAH's normal books and records are based on the production order-specific costs, resulting in significantly different per-unit raw material and conversion costs between similar CONNUMs that are not related to the physical characteristics of the products.[151] These large per-unit raw material and conversion cost differences were the result of similar CONNUMs being produced at different times during the POI and by different production plants.[152] Consequently, while Hyundai RB's

[148] Hyundai RB's conversion costs did not reflect the same distortions as SeAH's, and therefore no adjustments were necessary for Hyundai RB.
[149] *See* Hyundai RB Cost Verification Report at 16 – 17.
[150] *Id*. at 5 – 6.
[151] *See* SeAH Preliminary Cost Calculation Memorandum at Attachments 7 and 8.
[152] *See* SeAH June 8, 2018 SQR at page 37 – 38. "The direct material costs for individual production orders reflect the actual costs of the steel coils or plates used in production of the products under the production order, based on SeAH's inventory value at the time the steel materials were introduced into production" and "As indicated in that

and SeAH's normal books and records are kept in accordance with Korean GAAP, the product-specific per-unit raw material costs for Hyundai RB and the product-specific per-unit raw material and conversion costs for SeAH that are recorded in their normal books and records reflect large cost differences between similar products. Because the large cost differences between similar products were unrelated to the products' physical characteristics (*e.g.*, fluctuation of raw material prices, inefficient production runs, limited production of specific CONNUMs, *etc*.), we do not consider such costs to reasonably reflect the actual production costs of the merchandise.[153]

Further, we disagree that Commerce's authority to limit the DIFMER adjustment to cost differences related to physical characteristics does not authorize it to disregard the actual costs as reported in a respondent's normal books and records when calculating the COP for the sales-below-cost test. At the outset of this investigation, Commerce identified the CONNUM physical characteristics that are most significant in identifying price differences between products. These are the physical characteristics that define unique products (*i.e.,* the CONNUMs) for sales comparison purposes and establish the level of detail to capture the important differences when comparing the products in price-to-price comparisons. Thus, under sections 773(f)(1)(A) and 773(a)(6)(C)(ii) and (iii) of the Act, a respondent's costs should reflect meaningful cost differences attributable to these different physical characteristics. This ensures that the product-specific costs Commerce uses for the sales-below-cost test, CV, and the DIFMER adjustment accurately reflect the physical characteristics deemed important in establishing the prices of the products. Thus, Commerce normally does not rely on a respondent's reported costs where cost differentials between CONNUMs are driven by factors other than the CONNUM physical characteristics, such as production timing differences, routing variations, or cost system conventions.[154] The CIT has upheld Commerce's reallocation of costs for the sales-below-cost test, the CV calculations, and the DIFMER adjustment where a respondent's reported costs reflect cost differences due to factors other than Commerce's CONNUM physical characteristics.[155]

We also disagree with Hyundai RB that Commerce reached its conclusion regarding the large difference in raw material costs without supporting the reasonableness of that conclusion. We analyzed Hyundai RB's raw material costs for the reported CONNUMs and clearly disclosed it in our analysis in the *Preliminary Determination*.[156] Specifically, our analysis showed that there

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Appendix, control number {} was produced in July of 2017. By contrast, control number {} was produced in September 2017."

[153] *See, e.g., CWSP from Korea I*, and accompanying IDM at Comment 6; *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2011-2012, 79 FR 37284 (July 1, 2014) (*CWSP from Korea II*), and accompanying IDM at Comment 1; and *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), and accompanying IDM at Comment 1.

[154] *See, e.g., CWSP from Korea I*, and accompanying IDM at Comment 6; *CWSP from Korea II*, and accompanying IDM at Comment 1; *Certain Oil Country Tubular Good 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 23; and *Certain Steel Nails from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2016*, 83 FR 4028 (January 29, 2018) and accompanying IDM at Comment 3.

[155] *See Thai Plastic Bag Indus. Co. Ltd. v. United states*, 752 F. Supp.2d 1316, 1324-25 (CIT 2010).

[156] *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary

were large differences in raw material costs between similar CONNUMs with the same product physical characteristics associated with the raw materials (*i.e.,* steel chemistry, chromium content, nickel content, molybdenum content, product type, and wall thickness).[157] Thus, in the *Preliminary Determination*, we weight-averaged the reported raw material costs for the similar CONNUMs with the identical six product physical characteristics associated with the direct raw material costs.

SeAH also contends that evidence on the record demonstrates that each grade of steel contains multiple sub-grades with differing chemistries and provided a breakdown of steel coil and plate purchases by sub-grade. As noted above, at the outset of this investigation, Commerce identified the physical characteristics that are the most significant in differentiating the costs between products. While grade was considered a significant physical characteristic needed to differentiate products, sub-grades were not identified as a significant differentiating factor. Moreover, even if, *arguendo*, sub-grades were considered significant, the sub-grade for each product is not included in the cost data file, and as a result, Commerce cannot average costs in a manner that reflects the differences in raw material prices based on differences in sub-grade chemistry.

In addition, we disagree with both Hyundai RB and SeAH that Commerce should consider the product physical characteristic "diameter" (*i.e.,* width of raw material) in the raw material cost weight-averaging calculation. Record evidence shows that there is very little price difference associated with the width of raw materials.[158]

Regarding SeAH's contention that steel chemistry should be included in defining the weight-averaging groups for conversion costs in order to reflect the variations in line speed for stainless and non-stainless pipe, we disagree. We examined all the line speed information on the record that was used as the basis to allocate conversion costs to specific products (*i.e.,* line pipe, structural pipe, and stainless pipe). The record information shows an overlap in the piece-per-hour processing times for standard pipe and stainless pipe.[159] In other words, record evidence shows that the pieces per hour for structural pipe and stainless pipe production can run at the same line speed although they have differing steel chemistries. Therefore, because record evidence does not fully support SeAH's argument that line speed varies due to steel chemistry (*i.e.,* stainless versus non-stainless pipe), consistent with the *Preliminary Determination*, we continued to weight average the conversion costs based on the common inner and outer coating, wall thickness, and diameter to mitigate the significant conversion cost differences among products.

In summary, we find that Hyundai RB's and SeAH's reported raw material costs and SeAH's reported conversion costs reflect cost differences that do not relate to Commerce's designated product physical characteristics, and thus do not reasonably reflect the costs associated with the production and sale of the large diameter welded pipes. Therefore, for the reasons stated above, consistent with the *Preliminary Determination,* we continue to weight average Hyundai RB's

Determination – Hyundai RB Co. Ltd.," dated August 20, 2018.

[157] *Id*. at attachment 2.

[158] *See* Hyundai RB Final Cost Calculation Memorandum and SeAH Final Cost Calculation Memorandum.

[159] *See* SeAH Cost Verification Report at VE 5 at 6.

and SeAH's raw material costs based on the same six product physical characteristics for the final determination (*i.e.,* steel chemistry, chromium content, nickel content, molybdenum content, product type, and wall thickness). Likewise, consistent with the *Preliminary Determination,* we continue to weight average SeAH's conversion costs based on the same product physical characteristics for the final determination (*i.e.,* common inner and outer coating, wall thickness, and diameter).

Hyundai RB Issues

Comment 7: Hyundai RB's G&A Expense Ratio

Petitioners' Case Brief[160]

- Hyundai RB's affiliated joint venture with "Company A" incurred net operating losses during the fiscal year 2017; an appropriate share of these losses should be included in Hyundai RB's G&A expenses.

Hyundai RB's Rebuttal Brief[161]

- The affiliated joint venture company was an independent legal entity and was liquidated during the POI. Further, Company A had no involvement in the production of the subject merchandise during the POI.
- Commerce explained in other cases that it will allocate a "parent's or other affiliated party's G&A expenses to a respondent when the parent or affiliated party incurs G&A expenses on the respondent's behalf" and that its practice "applies to those instances where transactions do not occur between the respondent and the affiliated party (*i.e.,* the affiliated party absorbs the cost of the services provided).[162]
- The record evidence confirms that Company A did not incur any G&A expenses on behalf of Hyundai RB and did not provide any services to Hyundai RB during the POI. Accordingly, Commerce should reject the petitioners' argument.

Commerce's Position: We agree with Hyundai RB. At verification, Commerce discussed with Hyundai RB the specific details of Company A and noted that this company never actualized its production because it was not able to obtain production machinery.[163] Thus, this company was liquidated during the POI.[164] The record shows that Company A was not involved in the production, sale, or distribution of the subject merchandise or foreign like product during the POI and an examination of this company's fiscal year 2017 financial statements also shows that the company reported no revenues.[165] Hyundai RB simply had an equity investment interest in

[160] *See* Petitioners Case Brief at 20 – 21.
[161] *See* Hyundai RB Case Brief at 5 – 7.
[162] *Id.* at 6 (citing *Sugar from Mexico: Final Determination of Sales at Less than Fair Value*, 80 FR 57341 (September 23, 2015), and accompanying IDM at Comment 13, and *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Germany: Final Results of Antidumping Duty Administrative Review,* 66 FR 11557 (February 26, 2001), and accompanying IDM Issues and Decision Memorandum at comment 8.
[163] *See* Hyundai RB Cost Verification Report at 25 – 26.
[164] *Id.*
[165] *See* Hyundai RB's April 16, 2018 Section A Questionnaire Response at A-8 and Hyundai RB Cost Verification

Company A and did not receive any benefit from this company during the POI. Accordingly, because this company was not involved in the production, sale or distribution of subject merchandise, and the losses are associated with an equity investment, we do not consider it appropriate to allocate the former joint venture company's financial statement net losses to Hyundai RB's reported G&A expenses for the final determination.

Comment 8: Hyundai RB and Hyundai Steel Affiliation

Petitioners' Case Brief[166]

- For the final determination, Commerce should find that Hyundai RB is affiliated with Hyundai Steel.[167] Hyundai RB reported that, for a portion of the POI, Hyundai Steel owned 4.99965 percent of Hyundai RB's shares and argued that, because this equity stake was less than five percent, the companies were not affiliated under 771(33)(E) of the Act.
- Hyundai RB's reported equity stake percentage is extended to the fifth decimal place, *i.e.,* rounded to the nearest one hundred thousandth of a percent, which defies arithmetic and rounding logic. Hyundai Steel's percentage of ownership is five percent when extended to three decimals, *i.e.,* rounded to the nearest thousandth of a percent.
- Hyundai RB reported equity stakes in its other affiliated entities by rounding the percentages to two decimal places.
- In their pre-preliminary comments, the petitioners provided a shares value-based methodology for calculating Hyundai Steel's ownership that results in an ownership percentage exceeding the five percent threshold.[168]
- Because Hyundai RB and Hyundai Steel are affiliated, for the final determination, Commerce should adjust all purchases of the major input, steel plate, to reflect the market price in the market under consideration pursuant to section 773(e)(4) of the Act.

Hyundai RB's Rebuttal Brief[169]

- Commerce should continue to find that Hyundai RB and Hyundai Steel are not affiliated because: 1) Commerce has already considered this argument, with the same fact pattern, and has determined that the companies are not affiliated; 2) Commerce undertook an extensive analysis of the question of affiliation for the *Preliminary Determination*; and 3) Commerce's sales verification report confirms that Hyundai Steel owned less than five percent of Hyundai RB's outstanding shares.[170]

Report at VE 10.

[166] *See* Petitioners' Case Brief at 22 – 27.

[167] *See* Petitioners' Case Brief at 23 (citing Memorandum, "Affiliated Party Issues in the Less-Than-Fair-Value Investigation of Large Diameter Welded Pipe from the Republic of Korea," dated August 20, 2018 (Affiliation Memorandum) (where Commerce did not find Hyundai RB to be affiliated with Hyundai Steel)). In a letter to Commerce, Hyundai RB agreed to withdraw its previous request for business proprietary treatment for Hyundai Steel's identity. *See* Hyundai RB's Letter, "Large Diameter Welded Pipe from the Republic of Korea: Clarification of Treatment of Certain Information," dated October 12, 2018.

[168] *Id.* at 25 – 26 (citing Petitioners' Letter, "Large Diameter Welded Pipe from Korea: Pre-Preliminary Comments," dated August 2, 2018).

[169] *See* Hyundai RB Rebuttal Brief at 7 – 10.

[170] *Id.* at 7 – 8 (citing *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty*

- The petitioners are attempting to manipulate the calculation of Hyundai Steel's equity ownership percentage through an inaccurate value-based calculation method. Using the number of shares is the more objective and reasonable measure for evaluating equity ownership under 771(33)(E) of the Act.

- In addition, the Act centers on the percentage of "the outstanding voting stock or shares" owned or controlled and does not speak to the value of shares.

Commerce's Position: For the final determination, we continue to find that Hyundai RB is not affiliated with Hyundai Steel. As noted by Hyundai RB, in *WLP—Korea*, Commerce examined the relationship between Hyundai Steel (the mandatory respondent in *WLP—Korea*) and Hyundai RB. There, we stated that, "Section 771(33)(E) of the Act provides a bright line of five percent. There is neither statutory nor regulatory guidance to apply a rounding principle to this figure. At the end of the POR, Hyundai Steel owned less than five percent of Hyundai RB {*i.e.*, "4.99" percent}. Further, there is no other basis on the record to find affiliation."[171] We find that our statutory interpretation of section 771(33)(E) of the Act applies equally here. Simply put, we find there is no basis to apply a rounding principle in this investigation to find that Hyundai Steel owns five percent or more of Hyundai RB's shares during the POI.

Section 771(33)(E) of the Act lists affiliated persons as "{a}ny person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the *outstanding voting stock* or *shares* of any organization and such organization" (emphasis added). Accordingly, we agree with Hyundai RB that the use of number of shares is the more objective and reasonable method to determine affiliation rather than the petitioners' suggested shares-value-based method. In fact, the petitioners have not cited to an instance where Commerce has departed from its use of number of shares in determining affiliation and, much less, where Commerce has utilized a shares-value-based method.[172] We add that petitioners do not allege another category of affiliation under section 771(33) of the Act besides section 771(33)(E) of the Act.

Finally, we note that we examined this issue extensively in the *Preliminary Determination* and during our verification of Hyundai RB and noted no discrepancies with the reported information to warrant a departure from our preliminary finding that that Hyundai RB and Hyundai Steel are not affiliated.[173]

Comment 9: Hyundai RB's Indirect Selling Expense Ratio

In the *Preliminary Determination* Commerce revised Hyundai RB's reported ISEs, reported in the INDIRSH and DINDIRSU data fields, to include certain bad debt expenses related to third-country export sales of non-in-scope merchandise in the numerator of the ISE ratio.

Administrative Review; 2015-2016, 83 FR 33919 (July 18, 2018) (*WLP—Korea*), and accompanying IDM at Comment 6, Affiliation Memorandum, and Hyundai RB Sales Verification Report).

[171] *See WLP—Korea*, and accompanying IDM at Comment 6.

[172] *Id.* (where Commerce also relied on the number of shares to determine affiliation).

[173] *See* Affiliation Memorandum and Hyundai RB Sales Verification Report at 3 and VE 7.

Petitioner's Case Brief[174]

- For the final determination, Commerce should also add certain commission expenses and other fees, which Hyundai RB classified as direct selling expenses attributed to third-country sales, in the numerator of the ISE ratio.[175]
- Because Hyundai RB used company-wide sales revenue as the denominator of the ISE ratio, it must include these additional expenses in the numerator, regardless of the market in which the sales were made.

Hyundai RB's Rebuttal Brief[176]

- Record evidence, including the Hyundai RB Sales Verification Report, demonstrates that the bad debt expenses, sales commissions, and other expenses cited by the petitioners, should be excluded from the calculation of ISEs because they relate to third-country sales or, in the case of bad debt, pertain to sales of non-subject merchandise, or sales made prior to the POI.
- In accordance with 19 CFR 351.401(g)(2), Commerce has established a practice that allows respondents to exclude those expenses that are attributable to sales of out-of-scope merchandise as well as merchandise sold to markets not under consideration (*i.e.*, other than the comparison market and U.S. market).[177] This practice has been affirmed by the CIT.[178]
- It is immaterial that Hyundai RB used, as its denominator, company-wide sales revenue in calculating its ISE ratio, as Commerce's practice allows respondents to exclude from the numerator expenses traced to non-subject merchandise or to third-country sales.
- Further, the expenses are direct selling expenses and must therefore be excluded from the ISE ratio regardless of the market to which they pertain.
- Should Commerce include any of the cited expenses, it should do so only for the domestic ISEs incurred for U.S. sales (DINDIRSU), as the expenses in question had nothing to do with Hyundai RB's domestic sales activities.

Commerce's Position: For the final determination, we are relying on the ISE ratio calculated by Hyundai RB.[179] First, with respect to the bad debt in question, Hyundai RB reported that this expense resulted from sales of non-subject merchandise (to third countries prior to the POI).[180] During our verification of Hyundai RB, we examined this claim extensively and noted no

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[174] *See* Petitioners Case Brief at 27 – 28.
[175] The identity of these "other fees" is BPI subject to administrative protective order (APO).
[176] *See* Hyundai RB Rebuttal Brief at 10 – 16.
[177] *See* Hyundai RB Rebuttal Brief at 13 (citing *Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 75 FR 70901 (November 19, 2010) (*PET Film—Korea*), and accompanying IDM at Comment 5, *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil*, 71 FR 2183 (January 13, 2006) (*Orange Juice—Brazil*), and accompanying IDM at Comment 17, and *Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 19153 (April 12, 2004) (*Wire Rod—Korea*), and accompanying IDM at Comment 6.
[178] *Id.* at 14 (citing *U.S. Steel Corp. v. United States*, 712 F. Supp. 2d. 1330 (CIT 2010) (*U.S. Steel Corp.*), and *NSK Ltd. v. United States*, 358 F. Supp. 2d 1276, 1291 (CIT 2005) (*NSK*)).
[179] *See* Hyundai RB June 26, 2018 Supplemental Questionnaire Response at S3-3 and Exhibit S-35.
[180] *Id*. at S3-3.

discrepancy with the reported information.[181] As noted by the CIT, "{ISEs} are those expenses incurred by a respondent… which are related to the sale of subject merchandise but which cannot be directly tied to any particular sale…"[182] Accordingly, we agree with Hyundai RB that it is appropriate to exclude these expenses from the ISE ratio calculation as they are attributable to sales of out-of-scope merchandise. Further, we note that it is immaterial that, as the petitioners point out, Hyundai RB used, as its denominator, its POI company-wide sales revenue in calculating its ISE ratio. Here, the ISE ratio as calculated by Hyundai RB is not distorted by the omission of the bad debt expenses from the ratio's numerator because the corresponding revenue which would be expressed in the denominator is attributed to pre-POI sales. This determination is consistent with *Pet Film—Korea*, where we allowed the respondent to exclude expenses related to non-subject merchandise from the numerator of the ISE ratio and where the denominator used in that ratio consisted of the corresponding sales revenue for home market sales of subject merchandise, *i.e.*, rather than total home market sales revenue (or company-wide revenue).[183] We addressed this issue in a similar manner in *Orange Juice—Brazil* and *Wire Rod—Korea*.[184]

Next, we find that the commission expenses and other fees in question are direct selling expenses. Therefore, it is inappropriate to include these expenses in the calculation of Hyundai RB's ISE ratio. As the petitioners acknowledge, Hyundai RB explained that these selling expenses were direct in nature. During verification, we noted that in the normal course of business, Hyundai RB in fact accounted for these expenses as direct selling expenses pertaining to non-subject merchandise.[185] Accordingly, we determine that Hyundai RB appropriately excluded these expenses from its ISE ratio.

In sum, for the final determination, we accepted Hyundai RB's ISE ratio as originally reported, *i.e.*, exclusive of the bad debt and commission expenses at issue.

Comment 10: Hyundai RB's Foreign Exchange Losses

Hyundai RB's Case Brief[186]

- Commerce instructed Hyundai RB to include the total net foreign exchange losses in the financial expense ratio calculation (*i.e.,* net losses on foreign currency transactions and foreign currency translations) and exclude them from the reported U.S. direct selling expenses.

[181] *See* Hyundai RB Sales Verification Report at VE 32.
[182] *See U.S. Steel Corp.* 712 F. Supp. 2d. 1330 (CIT 2010).
[183] *See Pet Film—Korea* and accompanying IDM at Comment 5 ("Expenses allocated to the business division of non-subject merchandise were excluded from the numerator of the indirect selling expense calculation, *while sales revenue from the same division was also excluded from the denominator*") (emphasis added).
[184] *See Orange Juice—Brazil* and accompanying IDM at Comment 17 ("We recalculated the indirect selling expenses for this affiliate by taking its G&A expenses and deducting the expenses related to selling activities in a third country because we determined that such activities related to neither home market nor U.S. sales. We then divided these expenses by *the affiliate's net sales* to calculate a revised indirect selling expense ratio") (emphasis added), and *Wire Rod—Korea* and accompanying IDM at Comment 6 (where we excluded expenses related to third-country sales wherein home-market sales revenue was used as a denominator).
[185] *See* Hyundai RB Sales Verification Report at VE 32.
[186] *See* Hyundai RB Case Brief at 2 – 6.

- Hyundai RB demonstrated that a certain portion of the net foreign exchange losses can be directly traceable to specific U.S. or third-country-market sales. As such, Commerce should treat this portion as circumstances of sales in the net price calculation in accordance with section 773(a)(6)(C)(iii) of the Act (*i.e.*, direct selling expenses) and should exclude it from the financial expense ratio calculation for the final determination.
- Nothing in the Act or the regulations prevents Commerce from treating these losses as direct selling expenses. Previously, Commerce followed the practice of segregating foreign exchange gains and losses arising from sales transactions from foreign exchange gains and losses arising from purchase transactions.[187]
- The accuracy of the antidumping duty (AD) calculation will be enhanced by excluding the net foreign exchange losses on the sales activities from the COP and treating them as direct selling expenses.

Petitioners' Rebuttal Brief[188]

- Before 2003, Commerce's practice was to analyze and segregate foreign exchange gains and losses based on the nature of their source, and to treat each portion accordingly. However, in 2003, Commerce changed its practice and since then, Commerce has consistently included the net amount of all foreign exchange gains and losses in the financial expense ratio calculation.[189]
- Therefore, Commerce should continue to calculate Hyundai RB's financial expense ratio inclusive of the net amount of all foreign exchange gains and losses.

Commerce's Position: We agree with the petitioners that the total net foreign exchange losses should be included in the financial expense ratio calculation. As explained in *Mushrooms—India*, Commerce instituted a change in practice regarding the treatment of foreign exchange gains and losses effective with the publication of that notice. As a result, our current practice is to include the entire amount of the net foreign exchange gains or losses in the financial expense ratio.[190] Specifically, under the current practice, instead of identifying foreign exchange gains and losses separately by source and level of corporate structure, we include in the financial expense ratio all foreign exchange gains and losses from the consolidated financial statements of the respondent's highest-level parent company.[191] This approach recognizes that the critical factor in analyzing the appropriate amount to include in the fully loaded COP is not the source of

[187] *Id.* at 4 – 5 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago*, 63 FR 9177, 9181-9182 (February 24, 1998) and accompanying IDM at Comment 4, and *Final Determination of sales Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea*, 56 FR 16305, 16313 (April 22, 1991) and accompanying IDM at Comment 16).
[188] *See* Petitioners' Case Brief at 48 – 51.
[189] *Id.* at 50 (citing *Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 11045 (March 7, 2003) (*Mushrooms—India*), and *Certain Welded Stainless Steel Pipes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 74 FR 31242 (June 30, 2009) and accompanying IDM at Comment 3).
[190] *See Mushrooms from India*. *See also Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review*, 69 FR 13813 (March 24, 2004), and accompanying IDM at Comment 14; and *Certain Carbon and Alloy Steel Cut-to-Length Plate from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 82 FR 16345 (April 4, 2017), and accompanying IDM at Comment 15.
[191] *Id.*

the foreign exchange gains or losses, but rather how the entity as a whole manages its foreign currency exposure.[192] Accordingly, consistent with our normal practice, we continue to calculate Hyundai RB's financial expense ratio inclusive of the net amount of all foreign exchange gains and losses.

Comment 11: Treatment of Company A's Bad Debt Expenses

In the *Preliminary Determination*, Commerce included a certain bad debt expense in the financial expense ratio calculation for Hyundai RB. The bad debt expense in question was related to written-off short-term loans (including accrued interest income) Hyundai RB made to a former affiliated joint venture company, "Company A," which was liquidated during the POI.

Hyundai RB's Case Brief[193]

- Commerce should exclude the bad debt expense related to the written off loans to Company A from the financial expense ratio calculation because the amount pertained to investment activities and it was irrelevant to Hyundai RB's working capital or internal cash management activities.
- Hyundai RB illustrated that this bad debt expense was recorded in a separate account from bad debt expenses related to sales activities.
- Investments can take two forms: (1) equity investment in which funds are provided in return for stock, dividends, and interest income; and (2) debt financing investment in which funds are provided through loans. Under the joint venture agreement, Hyundai RB could only increase its additional investment in the former affiliated joint venture company through debt financing.
- As the underlying short-term loans had an investment focus, the corresponding bad debt expense should be excluded from the financial expense ratio calculation.

Petitioners' Rebuttal Brief[194]

- The bad debt expense in question was originally recorded as short-term loan receivables in Hyundai RB's balance sheet and, when the debtor failed its obligation, Hyundai RB had to record a loss. Commerce appropriately included the loss in the financial expense ratio calculation.
- Commerce properly concluded that this bad debt expense was related to Hyundai RB's working capital and a part of its overall cash management. Therefore, Commerce should continue to include this amount in the financial expense ratio calculation for the final determination.

Commerce's Position: We disagree with Hyundai RB. Hyundai RB stated that the former affiliated joint venture company was established by several partners, including Hyundai RB, for the purpose of producing specific types of pipe.[195] Hyundai RB's affiliation with this company was through its joint venture equity ownership. Hyundai RB had an equity interest in this former affiliated joint venture company, as well as loans receivable from the company. Upon the

[192] *Id.*
[193] *See* Hyundai RB Case Brief at 6 – 9.
[194] *See* Petitioners' Rebuttal Brief at 51 – 52.
[195] *See* Hyundai RB Cost Verification Report at 25 – 26.

discontinuation and liquidation of the joint venture company in September 2017, Hyundai RB recognized both a loss from investment in the company (based on its equity ownership in the joint venture), and a bad debt expense associated with writing-off the short-term loans (including accrued interest income) given to this company.[196] It is the loss associated with writing off the short-term loans receivable, including accrued interest income, that is at issue here.

In accordance with section 773(f)(1)(A) of the Act, Commerce will normally calculate costs based on the records of the producer of the merchandise, if such records are kept in accordance with the GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise.[197] Record evidence shows that the multiple short-term loan agreements between Hyundai RB and its former affiliated joint venture company were recorded and treated as short-term loans receivable in Hyundai RB's audited financial statements (*i.e.*, prior to the loans being written-off) in accordance with Korean GAAP.[198] As such, Hyundai RB did not treat these short-term loans as an investment in its normal books and records, but treated the loans and accrued interest income as loans receivable.[199] Because these transactions were treated as loans receivable on the face of the financial statements, we consider it reasonable to rely on Hyundai RB's normal books and records and treat the written-off amount as a part of Hyundai RB's overall cash management. Therefore, we continue to include the bad debt expense at issue in the financial expense ratio calculation for the final determination.

Comment 12: Hyundai RB's Scrap Offset

Hyundai RB claimed a scrap offset based on the quantity and value of the scrap that the company sold during the POI. However, in the *Preliminary Determination*, Commerce disallowed the scrap offset because the result of a comparison between the reported quantity of cut-to-length plate consumed and the quantity of finished products produced did not support Hyundai RB's reported sales quantity associated with the scrap offset calculation.

Hyundai RB's Case Brief[200]

- Hyundai RB sold the entire quantity of scrap that it generated during the POI and the scrap sales revenue was recorded as miscellaneous income in its financial accounting system (*i.e.,* non-operating income account).
- Hyundai RB explained during verification that the quantity difference between the reported scrap offset and Commerce's estimated scrap was likely related to differences in the theoretical weight formulas used in the calculation of quantities.[201]

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[196] *See* Hyundai RB's April 16, 2018 Section A Questionnaire Response at Exhibit A-17, and Hyundai RB Cost Verification Report at 25 – 26 and CVE 10.
[197] *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Light-Weight Rectangular Pipe and Tube from Mexico*, 73 FR 35649 (June 24, 2008), and accompanying IDM at Comment 10; and *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Determination of Sales at Less Than Fair Value*, 75 FR 59223 (September 27, 2010), and accompanying IDM at Comment 2.
[198] *See* Hyundai RB Cost Verification Report at 25 – 26 and VE 10.
[199] *Id.*
[200] *See* Hyundai RB Case Brief at 9 – 11.
[201] *Id.* at 11 (citing Hyundai RB Cost Verification Report at 19).

- Commerce verified Hyundai RB's scrap revenues from the sales of generated scrap during the POI. Thus, Commerce should grant Hyundai RB's reported scrap offset.
- If Commerce continues to disallow the scrap offset in the reported cost of manufacturing COM, then Commerce should treat the full value of the scrap revenue as an offset to the G&A expense. Otherwise, Commerce would exclude from the reported costs the value of scrap revenue that Hyundai RB earned during the POI.

Petitioners' Case Brief[202]

- Hyundai RB failed to provide adequate support for the claimed scrap offset. As such, Commerce should deny Hyundai RB's scrap offset in the calculation of the COP (*i.e.,* as an offset to the COM or as an offset to the G&A expense).
- Commerce has an established practice that the interested party that is in possession of the relevant information has the burden of establishing the amount and nature of a particular adjustment. This practice has been affirmed by CIT.[203]
- Scrap was generated from direct materials. Thus, the scrap offset belongs in the COM and not as an offset to the G&A expense. Therefore, Commerce should continue to deny the claimed scrap offset for the final determination.

Commerce Position: We agree with petitioners. In the *Preliminary Determination*, we disallowed Hyundai RB's scrap offset because the POI quantity of scrap sold and used in the scrap offset calculation was significantly higher than the POI yield loss quantity (*i.e.,* based on the POI plate consumption quantities compared to the finished goods production quantities).[204]

Hyundai RB stated that it does not track scrap inventory in the normal course of business.[205] The company normally gathers and sells generated scrap once a month and it tracks the quantity and value of scrap sales at the time scrap is sold to its customers.[206] Hyundai RB also stated that the reported scrap offset was based on the POI scrap sales quantity and revenue because the total POI quantity of sold scrap was all generated during the POI.[207] However, during Hyundai RB's cost verification, Commerce asked Hyundai RB to explain and provide support for the quantity of scrap generated and, more specifically, explain and support why the POI scrap sales quantity was much higher than the scrap quantity that could have been generated based on the calculated POI yield loss (*i.e.,* input consumption quantity less the finished production quantity). Although Hyundai RB attempted to explain the possible cause (*i.e.,* standard formula used in the calculation of the theoretical weight of finished products) of the quantity differences between the total POI scrap sales quantity versus the total POI yield loss quantity, it was not able to identify, support, or reconcile the difference.[208] Consequently, while Hyundai RB claimed that the total

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[202] *See* Petitioners' Rebuttal Brief at 52 – 55.
[203] *Id*. at 54 – 55 (citing *Certain Forged Stainless Steel Flanges from India: Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 45221 (August 13, 2007) and accompanying IDM at Comment 2, and *Certain Steel Nails from the Sultanate of Oman: Final Results of Antidumping Duty Administrative Review; 2014-2016*, 83 FR 4030 (January 29, 2018) (*Steel Nails—Oman*) and accompanying IDM at Comment 11).
[204] *See Preliminary Determination* and PDM at 21 – 22.
[205] *See* Hyundai RB Cost Verification Report at 18 – 19.
[206] *Id.*
[207] *Id.*
[208] *Id.*

POI quantity of sold scrap was all generated during the POI, the record shows it sold far more scrap than it could have generated during the POI (*i.e.,* based on the consumption of raw material and production of finished goods).[209] Commerce's regulations state that "{t}he interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment."[210] Commerce also has acknowledged in other cases with respect to the scrap offset, that it is the burden of the respondent to demonstrate its eligibility for such an adjustment, specifically with regard to a scrap offset.[211] Consequently, based on the reasons stated above, we find that Hyundai RB did not demonstrate the reasonableness of its scrap offset in the reported COM.

Further, we disagree with Hyundai RB that Commerce should treat the full value of the scrap revenue as an offset to the G&A expenses. Hyundai RB argues that scrap revenue was recorded in the non-operating section of the income statement, and thus, Commerce should treat the full value of the scrap revenue as an offset to the G&A expenses if we continue to disallow the offset in the reported COM.[212] In calculating the G&A expense ratio, Commerce includes period costs that relate to the general operations of the company as a whole, as opposed to including expenses and revenues that directly relate to the manufacturing costs of the products produced during the POI.[213] Further, the CIT has agreed with Commerce that G&A expenses are those expenses which relate to the general operations of the company as a whole rather than to the production process.[214] The scrap at issue was generated during the production process of products produced by Hyundai RB, and thus, we find that it is inappropriate to offset the G&A expense by the scrap sales revenues associated with the production of all products. As the different products produced by Hyundai RB generate scrap at different rates, the scrap offset should be product-specific. Therefore, for the final determination, we continue to deny Hyundai RB's scrap offset in the reported COP.

SeAH Steel Corporation Issues

Comment 13: SeAH's Indirect Selling Expenses for Non-Further Manufactured Sales

Petitioners' Case Brief[215]

- SeAH calculated separate ISE rates for its U.S. affiliates, PPA and State Pipe. In doing so, SeAH improperly omitted G&A and other expenses applicable to the non-further manufactured U.S. sales made by PPA and State Pipe.
- It is Commerce's practice to include administrative expenses (as well as interest expenses) in calculating the U.S. ISE rate. For the final determination, Commerce should

[209] *Id.* at VE 5.
[210] *See* 19 CFR 351.401(b)(1).
[211] *See Steel Nails from Oman*, and accompanying IDM at Comment 11, and *American Tubular Products LLC v. United States*, No. 13-00029, slip op. 14-116 at 17-19 (CIT Sept. 26, 2014).
[212] *See* Hyundai RB's Case Brief at 9 – 11.
[213] *See, e.g., Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 37284 (July 1, 2014), and accompanying IDM at Comment 4.
[214] *See, e.g.,U.S. Steel Group, et al. v. United States,* 998 F. Supp 1151, 1154 (CIT 1998) (citing *Rautaruukki Oy v. United States*, 19 CIT 438, 444 (CIT 1995)).
[215] *See* Petitioners' Case Brief at 29 – 35.

do so for PPA and State Pipe.[216]

- Commerce instructs respondents in its questionnaire, to report and include in the ISE ratio calculation selling expenses as well as "administrative overhead," *i.e.,* G&A expenses, incurred for sales in the United States by the affiliated reseller. Commerce has reiterated this practice in previous cases.[217]
- SeAH allocated an amount for "Expense for Non-Subject Divisions" in State Pipe's ISE calculation, yet it failed to provide a description of what "non-subject divisions" constitutes and failed to provide a calculation methodology or supporting documentation of how it determined each amount.
- Commerce should, therefore, include ISEs attributable to "non-subject divisions" in the calculation of State Pipe's revised ISE rate.
- Although SeAH accounted for the G&A expenses for PPA and State Pipe in its further manufacturing costs for sales that were further processed, Commerce should ensure that the full G&A expenses are accounted for in the calculation of the ISE rates for sales which incurred no further processing costs. The petitioners provide recalculated ISE ratios for PPA and State Pipe's non-further manufactured sales.[218]

SeAH's Case Brief and Rebuttal Brief[219]

- The petitioners' proposed recalculation of the PPA and State Pipe ISE rates is flawed; however, SeAH agrees that its reported ISE calculation is incorrect. As the West Coast Pipe and West Coast Spiral Pipe divisions are not involved in the manufacturing or sale of subject merchandise, Commerce should deduct those companies' sales values from the denominator of the ISE ratio because those expenses were not included in the numerator.
- Section 772(d) of the Act allows Commerce to deduct only selling expenses and further manufacturing costs included in CEP sales. Under Commerce's longstanding practice, G&A expenses of a U.S. affiliate could be considered sales administration expenses—and thus selling expenses of a sort--if the affiliate only engaged in selling activities.[220]
- However, Commerce has long recognized that the G&A expenses of a company that performs selling and manufacturing activities are true G&A, not sales administration, and therefore cannot be classified as selling expenses.[221] PPA and State Pipe engaged in

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[216] *Id.* at 29 – 32 (citing *Citric Acid and Certain Citrate Salts from Canada: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 37286 (July 1, 2014) (*Citric Acid—Canada*), and accompanying IDM at Comment 3; *Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 81 FR 75042 (October 28, 2016) (*Circular Welded Pipe—Vietnam*), and accompanying IDM at Comment 13; and *Emulsion Styrene-Butadiene Rubber From Brazil: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 82 FR 33048 (July 19, 2017) (*ESB Rubber—Brazil*), and accompanying IDM at Comment 2).

[217] *Id.* at 29-32; *see* SeAH's May 9, 2018, Section B-E Questionnaire Response at Section C, p.60-61 (SeAH's Section B-E Response); *see also Citric Acid—Canada*, and accompanying IDM at Comment 3; *Circular Welded Pipe—Vietnam*, and accompanying IDM at Comment 13; and *ESB Rubber—Brazil* and accompanying IDM at Comment 2).

[218] *See* Petitioners Case Brief at 33 – 34.

[219] *See* SeAH's Case Brief at 17 – 21 and SeAH's Rebuttal Brief at 8 – 11.

[220] *Id*. at 9 (citing *Calcium Aluminate Cement, Cement Clinker, and Flux from France*, 59 FR 14136 (March 25, 1994); and *Certain Activated Carbon from the People's Republic of China*, 74 FR 57995 (November 10, 2009), and accompanying IDM at Comment 5(b)).

[221] *See* SeAH's Case Brief at 17 – 21.

manufacturing operations during the POI and, therefore, their G&A expenses must be classified as true G&A, and not as selling expenses. Therefore, these expenses cannot be deducted from U.S. price.

- The petitioners' revised ISE calculation for State Pipe includes State Pipe's West Coast Pipe and West Coast Spiral Pipe divisions and is based on the assertion that SeAH failed to identify what those divisions were or how their expenses were determined. SeAH identified these expenses and reported that none of them are related in any way to the sales of subject merchandise to the United States; therefore, they should not be included in the ISE calculation.

Petitioners' Rebuttal Brief[222]

- SeAH argues that its U.S. affiliates State Pipe and PPA are engaged in both sales and manufacturing activities; however, State Pipe uses its own personnel to perform further processing activities, and PPA does not maintain any production facilities; thus, it subcontracts all further processing activities from unaffiliated processors.
- For the final determination, Commerce should revise PPA's and State Pipe's U.S. ISE rates and apply the revised U.S. ISE rate only to the U.S. sales with no further manufacturing.

Commerce Position: Pursuant to section 772(d)(1)(D) of the Act, Commerce is required to reduce CEP by the amount of "any selling expenses not deducted under subparagraph (A), (B), or (C)." Consistent with the Act, Commerce's practice is to include U.S. G&A expenses related to selling operations in the calculation of the ISE ratio for the U.S. affiliate, and to deduct these expenses from U.S. price.[223] Where a U.S. affiliate is both a manufacturer and a seller, our practice is to require respondents to allocate these expenses between manufacturing and selling operations by calculating a G&A expense ratio for each type of operations.[224]

The record of this investigation demonstrates that SeAH's U.S. affiliates, State Pipe and PPA, purchase, sell, and further manufacture subject merchandise.[225] Therefore, as Commerce explained in *Welded Line Pipe from Korea*, because the G&A activities of SeAH's U.S. affiliates support the general operations of the company as a whole, including its sales and further manufacturing functions, we apply the applicable G&A expense ratio to the total cost of further manufactured products (including the cost of producing the pipe),[226] as well as including the G&A expenses associated with SeAH's U.S. affiliates' selling operations in the reported U.S. indirect selling expenses. As a result, consistent with the *Preliminary Determination,* for the final determination we continue to apply the G&A expense ratio to both the total cost of the further manufactured products, and to the cost of all non-further manufactured products.

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[222] *See* Petitioners' Rebuttal Brief at 44 – 48.
[223] See *Citric Acid from Canada*, and accompanying IDM at Comment 3 (stating that it is our normal practice to include administrative expenses in the ISE total because these expenses support the selling functions of the respondent).
[224] *See Welded Line Pipe from Korea*, and accompanying IDM at Comment 20.
[225] *See* SeAH's Section B-E Response at Section E, Volume IV p.1 for PPA and Volume V p.1 for State Pipe.
[226] *See Welded Line Pipe from Korea*, and accompanying IDM at Comment 20.

Further, a respondent is required to calculate its allocated expenses "on as specific a basis as is feasible" in accordance with 19 CFR 351.401(g)(2).[227] We find that SeAH appropriately identified State Pipe's ISEs related to selling activities according to business divisions that handle either subject or non-subject merchandise, exclusively. Because State Pipe is able to segregate its indirect selling expenses incurred on selling subject merchandise from expenses incurred selling non-subject merchandise, we determine it appropriate to exclude the expenses incurred for selling non-subject merchandise. To avoid distortions in the calculation, however, the sales values associated with the sales must also be eliminated from the denominator of the ISE ratio. As such, we have deducted the reported sales values for the West Coast Pipe and West Coast Spiral Pipe divisions from the denominator of State Pipe's ISE ratio for the final determination.

Comment 14: SeAH's Sale to Puerto Rico

SeAH' Case Brief[228]

- During the CEP verification of PPA, Commerce noted that PPA did not report, in its U.S. sales database, a sale of subject merchandise to Puerto Rico.[229]
- In the SeAH CEP Verification Report, Commerce misstated the quantity and value of the sales of subject merchandise affected by this error by erroneously counting the sales of non-subject merchandise on the invoice at issue in its characterization of the unreported sales quantity and value.[230]
- If Commerce were to make an adjustment for the unreported sale to Puerto Rico, the adjustment should be based only on the one invoice line item relating to a sale of subject merchandise.
- Commerce has previously determined that not reporting sales of subject merchandise to Puerto Rico in the respondent's U.S. sales database is an understandable inadvertent error that does not warrant the application of AFA.[231]
- In *Coated Paper—Indonesia,* where Commerce found that the omission of sales to Puerto Rico was inadvertent and the omitted sales constituted less than one percent of the reported total quantity of subject merchandise, Commerce applied to the unreported sales the weighted-average margin calculated for the respondent's reported transactions.

Petitioners' Case Brief[232]

- For the final determination, Commerce should apply AFA to the unreported sale of subject merchandise to Puerto Rico as SeAH: 1) withheld information that was requested by Commerce; 2) failed to submit requested information by the deadline; 3) significantly

[227] *See Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 75 FR 70901 (Nov. 19, 2010) (*PET Film—Korea*), and accompanying IDM at Comment 5 citing 19 CFR 351.401(g)(2).
[228] *See* SeAH Case Brief at 4 – 7.
[229] *Id*. at 5 (citing SeAH CEP Verification Report at 11).
[230] *Id*. (citing SeAH CEP Verification Report at VE-7H).
[231] *Id.* at 6 (citing *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Determination of Sales at Less Than Fair Value*, 75 FR 59223 (September 27, 2010) (*Coated Paper—Indonesia*), and accompanying IDM at Comment 9).
[232] *See* Petitioners' Case Brief at 35 – 36.

impeded the investigation and; 4) failed to cooperate to the best of its ability.

SeAH Rebuttal Brief[233]

- The petitioners' argument is based on an error in the SeAH CEP Verification Report which overstated the quantity and value of the omitted sale, while the error was, in fact, insignificant.
- The petitioners' request for the application of AFA is contrary to Commerce's established practice, as Commerce's previous decisions have indicated that confusion about the status of sales to Puerto Rico is an understandable, inadvertent error that does not call for the application of adverse inferences. Instead, Commerce has consistently applied the average dumping margin for all other reported sales to the inadvertently omitted quantity of sales to Puerto Rico.[234]

Commerce's Position: We agree with SeAH that the unreported sale of subject merchandise to Puerto Rico was an inadvertent error and that, therefore, the application of AFA for this sale is unwarranted. First, SeAH is correct that, in the SeAH CEP Verification Report, we erroneously stated that the unreported sale constituted 0.47 percent of the total reported quantity of U.S. sales of subject merchandise.[235] That is, the narrative discussion in the SeAH CEP Verification Report was inconsistent with the information contained in the verification exhibits. Specifically, the relevant invoice and the print-out of the third country sales sub-ledger demonstrates that the single sale of subject merchandise was included with the sales of seven other products which were not subject merchandise.[236] Thus, this single sale of subject merchandise constitutes significantly less than 0.47 percent of the total quantity of SeAH's reported U.S. sales.[237]

Second, we agree with SeAH that the sale was an inadvertent error. Specifically, as noted in the SeAH CEP Verification Report, Commerce's verifiers discovered the unreported sale to Puerto Rico while examining PPA's sales to a "third countries."[238] That is, we noted that, in the normal course of business, PPA classified sales to Puerto Rico as sales to a third country rather than as sales to a customs territory of the United States. Further, as noted by SeAH, Commerce has in the past encountered the same situation with respect to unreported sales to Puerto Rico and has noted that the error was inadvertent for the same reason. Specifically, under the same circumstances, we have stated,

> {w}e agree with the petitioners that the Puerto Rico sales should have been reported by PD/TK/IK because Puerto Rico is part of the customs territory of the United States. However, we disagree that it is appropriate to apply AFA to these sales. Based on our findings at verification, we conclude that the omission of these sales was inadvertent, as

[233] *See* SeAH Rebuttal Brief at 11 – 12.
[234] *Id.* at 12 (citing to *Coated Paper—Indonesia*).
[235] *See* SeAH CEP Verification Report at 11.
[236] *Id*. at VE 7H.
[237] The precise percentage of this singular sale is subject to the administrative protective order of this investigation and we have therefore addressed it in SeAH's Final Sales Calculation Memorandum.
[238] *See* SeAH CEP Verification Report at 11.

PD and TK were not aware that these sales should have been reported based on their sales accounting system.[239]

For this reason, and because the unreported sale represents an insignificant quantity, for the final determination, we are relying on neutral facts otherwise available under section 776(a)(1) of the Act and applying the weighted-average dumping margin calculated for all of SeAH's reported transactions to the unreported sale, which is consistent with our approach in *Coated Paper—Indonesia*.[240] In addition, we note that if this investigation results in an antidumping duty order, the respondents will be required to report all of their U.S. sales of subject merchandise, including sales to Puerto Rico, in any subsequent administrative review of the order.

Comment 15: Treatment of Refunds from Customs and Border Protection, and Refund for Damaged Goods

Petitioners' Case Brief[241]

- At verification, Commerce noted that PPA applied certain income offsets related to refunds for AD duties from prior investigations and a prior period adjustment for the sale of damaged goods in the G&A expense rate calculation.
- Accordingly, for the final determination, Commerce should revise PPA's G&A expense rate to exclude these income offsets.

Commerce Position: We agree with the petitioners and for the final determination we disallowed the offset related to the AD duty refunds and the prior period adjustment relating to the sales of damaged goods. With respect to the refund for AD duties, it is Commerce's practice to exclude AD duties paid in the dumping margin. Otherwise to include the dumping duties paid in calculating the dumping margin essentially would be including the dumping margin itself – a circular calculation.[242] Likewise, the refunds on AD duties should not be included in the dumping margin calculation. The fundamental reason for not including AD duty legal fees, AD duty consulting fees, AD duty interest income, AD duties paid, and AD duties refunded in AD proceedings is that these items should not become an element in the decision of those AD proceedings.[243]

Regarding the prior period adjustment for damaged goods, SeAH reversed a sales allowance for damaged goods that was originally recorded in 2014.[244] While Commerce may include income offsets that are related to the general operations of the company in the calculation of the G&A expense ratio, it would not be reasonable to offset current costs with an income item that relates

[239] *See Coated Paper—Indonesia*, and accompanying IDM at Comment 9.
[240] *Id*.
[241] *See* SeAH Case Brief at 36 – 37.
[242] *See, e.g., Second OCTG Review*, and accompanying IDM at Comment 5.
[243] *See Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73437 (December 12, 2005), and accompanying IDM at Comment 11. *See also Certain Lined Paper Products from India: Notice of Final Results of the First Antidumping Duty Administrative Review*, 74 FR 17149 (April 14, 2009), and accompanying IDM at Comment 5 (regarding consulting fees).
[244] *See* SeAH's Further Manufacturing Verification Report at page 10.

to costs incurred in a prior period.[245] In this instance, at verification, we confirmed that the expense associated with the income item in question was incurred in a prior period. Therefore, for the final determination, we have excluded the income from sales on damaged goods from the G&A expense ratio.

Comment 16: SeAH Holdings Corporation's Unrecovered Costs

SeAH obtains G&A services from an affiliated party, SeAH Holdings. For the *Preliminary Determination*, we analyzed these affiliated transactions, in accordance with 773(f)(2) of the Act. Because SeAH did not obtain these services from unaffiliated parties, nor did the affiliate provide such services to unaffiliated parties, we examined the affiliate's profit and loss statement to determine the fair value for the services. We found that the affiliate had fully recovered its costs because the results on the profit and loss statement was a net profit. Therefore, we determined that no adjustment was warranted for the *Preliminary Determination.*

Petitioners' Case Brief[246]

- SeAH Holdings failed to recover all of its costs on those transactions it incurred on behalf of SeAH.
- SeAH Holdings' unconsolidated financial statements show that the company earned a profit in fiscal year (FY) 2017 before taxes, but the profit was due in large part to its dividend income. Commerce's practice is to exclude investment-related activity, such as dividend income, from the calculation of financial expenses.
- Further, SeAH Holdings is not part of SeAH Steel's consolidated financial statements, and, therefore, its full costs for charges to SeAH should include financial costs.
- After adjusting SeAH Holdings' income statement by removing investment-related accounts, the result is a net loss (*i.e.,* unrecovered costs) that should be allocated and included in SeAH's G&A expenses.

[245] *See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not to Revoke in Part*, 69 FR 64731 (November 8, 2004), and accompanying Issues and Decision Memorandum at Comment 20. The Department's established practice in calculating the G&A expense rate is to include only expense and income items that relate to the current period. *See Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Butt-Weld Pipe Fittings from Malaysia*, 65 FR 81825 (December 27, 2000), and accompanying Issues and Decision Memorandum at Comment 19, and *Notice of* Final *Determination of Sales at Less than Fair Value; Certain Cold-Rolled Carbon* Steel *Flat Products from Turkey*, 67 FR 62126 (October 3, 2002), and accompanying Issues and Decision Memorandum at Comment 6. Because the reversal of prior period provisions for income and expense items do not relate to costs incurred in the current period, we have excluded from the G&A calculation the reversal of both the income and expense items in question. *See also Phosphor Copper from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 82 FR 12433 (March 3, 2017), and accompanying Issues and Decision Memorandum at Comment 1. ("{Commerce's} established practice in calculating the G&A expense rate is to not include income items as an offset to G&A that are associated with non-recurring provisions from prior years but include only income items that relate to the current period.")

[246] *See* Petitioners Case Brief at 37 – 39.

SeAH's Rebuttal Brief[247]

- The interest expense amount included in the petitioners' calculation is flawed because the amount used was from SeAH Holdings' unconsolidated financial statements, not the interest expenses from SeAH Holdings' consolidated financial statements, as Commerce's standard practice requires.
- The petitioners have not shown that SeAH Holdings incurred a net loss, when SeAH Holdings' net interest expense is properly calculated on a consolidated basis.
- The petitioners' proposed calculation of excluding SeAH Holdings' investment income from its calculations is contrary to Commerce's practice when analyzing companies with substantial investment activities. It is Commerce's practice to allocate the net financial expense between production and investment activities based on the relative income generated by each activity.[248]

Commerce Position: We agree with the petitioners and for the final determination we recalculated SeAH Holdings' net profit or loss by excluding investment-related activities (dividend income, depreciation on investment properties, and loss on disposal of investment properties). This recalculation resulted in a net loss on the profit and loss statement for SeAH Holdings. It is Commerce's practice to exclude investment-related gains and losses from the calculation of the COP.[249] Investment activities are a separate profit-making activity not related to the company's normal operations.[250] Therefore, for the final determination, we have excluded these investment gains and losses from the calculation and find that the affiliate had not fully recovered its costs. For the final determination we increased SeAH's reported G&A expenses to include its proportionate share of SeAH Holdings' unrecovered costs.

With respect to SeAH's point that it is inappropriate to use SeAH Holdings' unconsolidated financial statements for purposes of calculating financial income and expenses,[251] we agree. However, SeAH Holdings' consolidated financial statements and a financial expense ratio calculation based on such financial statements, are not on the record of this investigation. Therefore, SeAH Holdings' unconsolidated income statement is being used, as neutral facts available under section 776(a)(1) of the Act, as a surrogate for determining the financial expenses. Further, SeAH argues that in *Sweaters—Korea* and *Cooking Ware—Mexico*, Commerce allocated the net financial expense between production and investment activities based on the relative income generated by each activity. However, Commerce's normal practice is to use the cost of goods sold (COGS) from the income statement as the denominator in

[247] *See* SeAH Rebuttal Brief at 12 – 14.
[248] *Id*. at 13 (citing *Sweaters Wholly or in Chief Weights from Korea*, 55 FR 32659, 32667 (August 10, 1990) (*Sweaters—Korea*), and *Porcelain-on-Steel Cooking Ware from Mexico*, 58 FR 32095, 32103 (June 8, 1993) (*Cooking Ware—Mexico*)).
[249] *See, e.g.*, *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany: Final Determination of Sales at less Than Fair Value*, 82 FR 16360 (April 4, 2017), and accompanying IDM at Comment 33 (*CTL—Germany).*
[250] *See*, *e.g.*, *Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 49950 (July 29, 2016), and accompanying IDM at Comments 6 and 10.
[251] *See* SeAH Case Brief at 12.

allocating financial expenses and investment activities are excluded.[252] It is only when Commerce is presented with unusual facts in limited cases where the purpose of the allocation ratio is thwarted because of the issues with the structure of the company.[253] In the instant case, the facts presented are not unusual as SeAH Holdings and its operations are not unlike a typical holding company, and therefore, we continue to calculate the financial expenses in accordance with our normal practice.

In summary, for the final determination we revised SeAH's G&A expenses to include its proportionate share of the resulting net loss incurred by SeAH Holdings after excluding its investment activity.

Comment 17: SeAH's Interest Income Offset

Petitioner's Case Brief[254]

- At SeAH's cost verification, company officials acknowledged that SeAH's consolidated financial statements do not provide the details regarding short- and long-term interest income. However, SeAH suggested that it is reasonable to rely on the experience of the unconsolidated company to segregate the short- and long-term interest income for purposes of calculating the financial expense ratio.
- Commerce should disallow any offset for short-term interest income because SeAH failed to provide support that its interest income arose from short-term assets.[255]

SeAH's Rebuttal Briefs[256]

- SeAH's consolidated financial statements do not provide a breakdown of interest income by the nature (short-term or long-term) of the underlying asset. However, SeAH's unconsolidated financial statements do provide such a breakdown. Those unconsolidated statements show that, during the 2017 fiscal year, virtually all of SeAH's unconsolidated interest income arose from short-term assets.
- In questionnaire responses dating back more than a decade, SeAH's consistent practice has been to allocate the interest income shown on its consolidated financial statements into short-term and long-term portions based on the ratio of short-term and long-term interest income in SeAH's unconsolidated financial statement.

Commerce Position: In calculating a respondent's COP and CV, it is Commerce's well-established practice to allow a respondent to offset financial expenses from the consolidated financial statements with short-term interest income generated from the consolidated company's

[252] *See e.g., Ripe Olives from Spain: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 28193 (June 18, 2018) and accompanying IDM at Comment 26.
[253] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006), and accompanying IDM at Comment 2.
[254] *See* SeAH Rebuttal Brief at 39 – 42.
[255] *Id.* at 40 (citing *Silicomanganese from Australia: Final Determination of Sales at Less Than Fair Value*, 81 FR 8682 (February 22, 2016), and accompanying IDM at Comment 7)).
[256] *See* SeAH Rebuttal Brief at 14 – 16.

current assets and working-capital accounts.[257] However, when the record evidence does not demonstrate that the financial income received is related to a company's current assets and working capital, Commerce routinely excludes the income item as an offset to financial expenses.[258]

Commerce has in certain cases considered the nature of the underlying interest-bearing assets in deciding whether to include or exclude interest income.[259] Likewise, Commerce has allowed respondents to apply a ratio of the short- to long-term interest income from the unconsolidated company's financial statements to the interest income of the consolidated company to determine the short-term interest income offset to the financial expenses. Using the ratio of the short- to long-term interest income from the unconsolidated statements is a reasonable proxy where a majority of the interest income on the consolidated financial statements comes directly from the unconsolidated financial statements. However, in the instant case, a majority of SeAH's interest income on its unconsolidated financial statements is from affiliated parties, and the interest income from affiliated parties is eliminated in the consolidated financial statements.[260] Consequently, in this case, allowing SeAH to determine its short-term interest income offset by applying a ratio, where a majority of the income is from affiliated parties, is unreasonable. The only record evidence supporting what portion of the consolidated interest income is short-term in nature, is the short-term interest income on the unconsolidated financial statements that was generated from unaffiliated parties and is included as part of the interest income on the consolidated financial statement. In light of the lack of any other record evidence to support SeAH's claim that the majority of the interest income on the consolidated financial statements was generated from short-term sources, we have determined it is appropriate to allow only the unconsolidated short-term interest income from unaffiliated parties as the offset to the financial expenses.

Comment 18: Correction of Ministerial Errors in the *Preliminary Determination*

SeAH's Case Brief[261]

- Commerce's calculations for the *Preliminary Determination* contained ministerial errors relating to (1) a misstatement of the G&A expense rate applied to the COM, and (2) the exclusion of the foreign exchange gains in the calculation of SeAH's consolidated net interest expense ratio.

[257] *See*, *e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47551 (September 16, 2009), and accompanying IDM at Comment 7. *See also Stainless Sleet Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 73 FR 7710 (February 11, 2008), and accompanying IDM at Comment 11; *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 74 FR 65751 (December 11, 2009) (*PRCBs from Thailand*), and accompanying IDM at Comment 4.
[258] *See, e.g., PRCBs from Thailand* at Comment 4.
[259] *Id.*; *see also Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less than Fair Value*, 73 FR 33985 (June 16, 2008), and accompanying IDM at Comment 14.
[260] *See* SeAH Cost Verification Report at VE 20.
[261] *See* SeAH Case Brief at 1 – 2.

- Commerce acknowledged in its ministerial error memorandum that SeAH's claims regarding the G&A and interest expense calculations were correct.[262]

Commerce Position: We agree with SeAH that in the calculation of the COP, Commerce misstated the reported G&A expense ratio that was applied to the revised COM. We also agree with SeAH that foreign exchange gains were inadvertently excluded in calculating the financial expense ratio. Therefore, we corrected these errors for the final determination.

Comment 19: Correction of Minor Errors Reported at Verification

SeAH' Case Brief[263]

- At the beginning of SeAH's cost and sales verifications, SeAH presented certain minor corrections which Commerce verified and accepted as timely. For the final determination, Commerce should make the corresponding corrections.

Commerce Position: We agree with SeAH that we accepted and verified certain minor corrections presented at the cost and sales verifications.[264] Therefore, for the final determination, we have made the corresponding corrections.[265]

Comment 20: Freight Revenue Cap

SeAH' Case Brief[266]

- In the *Preliminary Determination*, Commerce unreasonably "capped" the adjustment for freight revenue by the actual amount of the associated freight expenses.
- In previous cases, Commerce has justified this "capping" methodology due to its categorization of freight as a service, and not a part of the sale of the merchandise under consideration.[267] SeAH and its U.S. affiliates, however, do not offer freight as a service to its customers, but, instead, charge customers an additional amount for freight, which is just a disaggregation of the delivered price into arbitrary amounts for the merchandise and for freight.
- The CIT has held that Commerce could interpret the relevant statutory provisions as excluding separately charged amounts for freight revenue from the starting point for the calculation of U.S. price.[268]

Petitioners' Rebuttal Brief[269]

- For the relevant U.S. transactions, the freight charged to the customer is shown separately

[262] *Id*. at 5 (citing Ministerial Error Memorandum at 3 – 4).
[263] *See* SeAH Case Brief at 2 – 4.
[264] *See* SeAH Cost Verification Report and SeAH Sales Verification Report.
[265] *See* SeAH Final Cost Calculation Memorandum and SeAH Final Sales Calculation Memorandum.
[266] *See* SeAH Case Brief at 14 – 17.
[267] *Id*. at 14 (citing *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 64170 (October 28, 2014), and accompanying IDM at Comments 4 and 12).
[268] *Id*. at 14 (citing *Dongguan Sunrise Furniture v. United States*, 865 F. Supp. 2d 1216, 1249-50 (CIT 2012)).
[269] *See* Petitioners' Rebuttal Brief at 41 – 43.

on the invoice and, thus, it is not part of the price, *i.e.,* the charge is a "service." The fact that arrangements were made for transport of subject merchandise to the customer's location indicates that an additional service was provided to the customer.

- Commerce has consistently stated that the Act and Commerce's regulations do not permit the raising of U.S. prices for revenues in excess of the expense borne, as reflected in the purchaser's net outlay for the subject product.[270]

Commerce Position: We agree with the petitioners that 1) the freight charges in question constitute charges for a service and are distinct from the sale price of merchandise because the freight charged is shown separately on the invoice, and 2) that it is Commerce's well-established practice to cap these additional services, *i.e.,* not to increase the U.S. price by any excess expenses.[271] As noted by the petitioners, Commerce has articulated its rationale for capping freight revenue on numerous occasions, stating,

> Based on the plain language of the law and the Department's regulations, it has been the Department's stated practice to decline to treat freight-related revenue as an addition to U.S. price under section 772(c)(1) of the Act or as a price adjustment under 19 CFR 351.102(b)(38). The term "price adjustment" is defined at 19 CFR 351.102(b)(38) as "any change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser's net outlay." The Department has stated that, although we will offset freight expenses with freight revenue, where freight revenue earned by a respondent exceeds the freight charge incurred for the same type of activity, the Department will cap freight revenue at the corresponding amount of freight charges incurred because it is inappropriate to increase gross unit selling price for subject merchandise as a result of profit earned on the sale of services (*i.e.*, freight). [272]

Accordingly, for the final determination, we continued to cap SeAH's reported freight revenue in accordance with our practice.

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[270] *Id.* at 42 – 43 (citing *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 77 FR 61738 (October 11, 2012) and accompanying IDM at Comments 3 and 7; *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 63291 (October 16, 2012), and accompanying IDM at Comment 6; *Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 66110 (October 30, 2002); *Purified Carboxymethylcellulose from the Netherlands: Final Results of Antidumping Duty Administrative Review,* 75 FR 77829 (December 14, 2010); and *Large Power Transformers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 14087 (March 16, 2016)).

[271] *Id.*

[272] *Id.*

VIII. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination of the investigation and the final, estimated weight-average dumping margins in the *Federal Register*.

☒	☐
Agree	Disagree

2/19/2019

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