



A-580-878  
Administrative Review  
01/04/2016 – 06/30/2017  
**Public Document**  
Office VII: Team

March 18, 2019

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

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

**SUBJECT:** Issues and Decision Memorandum for the Final Results of  
Antidumping Duty Administrative Review of Corrosion-Resistant  
Steel Products from the Republic of Korea; 2016-2017

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## I. Summary

The Department of Commerce (Commerce) analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the antidumping duty order on corrosion-resistant steel products (CORE) from the Republic of Korea (Korea) covering the period of review (POR) January 4, 2016, through June 30, 2017.

As a result of this analysis, we have made changes to the *Preliminary Results*.<sup>1</sup> We recommend that you approve the positions described in the “Discussion of Comments” section of this memorandum. Below is the complete list of issues for which we received comments and rebuttal comments from interested parties.

## II. List of Comments

### *General Issue*

Comment 1: Whether a Cost-Based Particular Market Situation (PMS) Exists in Korea

### *Dongkuk Steel Mill Co., Ltd. (Dongkuk) Comments*

Comment 2: Whether Dongkuk is Affiliated with POSCO

Comment 3: Whether Commerce Should Apply Adverse Facts Available (AFA) to Dongkuk

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<sup>1</sup> See *Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016 - 2017*, 83 FR 39666 (August 10, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).



Because it Failed to Report Certain Information Related to POSCO

Comment 4: Whether to Adjust the Price of Dongkuk's Purchases from JFE Steel Corporation

Comment 5: Whether to Apply AFA to Freight Provided by Dongkuk's Affiliated Provider

Comment 6: Whether to Grant a Constructed Export Price (CEP) Offset to Dongkuk

***Hyundai Steel Company (Hyundai) Comments***

Comment 7: Whether Commerce Should Apply Total Adverse Facts Available to Hyundai

Comment 8: Whether Hyundai Overallocated U.S. Price to the CORE Input of its U.S. Sales of After-Service (AS) Auto Parts

Comment 9: Whether Hyundai Withheld CONNUM-Specific Costs and Submitted Aberrational Cost Data

Comment 10: Whether Hyundai Withheld Other Information Requested by Commerce

Comment 11: Whether a Close Supplier Relationship Exists Between Hyundai's Captive, Intermediate Processors and the Hyundai Group, Thereby Creating Artificial U.S. Prices

Comment 12: Whether Commerce Should Continue to Apply Partial AFA to Hyundai

Comment 13: Whether Commerce Should Use Hyundai's Manufacturer Variable

Comment 14: Whether Commerce Should Grant a CEP Offset to Hyundai

Comment 15: Whether Commerce Should Use Hyundai's Customer-Specific Warranty Expenses

**III. Background**

On August 10, 2018, Commerce published the *Preliminary Results* of this review. On November 27 and December 6, 2018, the petitioners,<sup>2</sup> Hyundai, and Dongkuk each submitted case and rebuttal briefs.<sup>3</sup>

On February 7, 2019, Commerce determined that a PMS existed with respect to the cost of producing CORE in Korea during the POR.<sup>4</sup> On February 15 and 25, 2019, the petitioners, Hyundai, POSCO, and Dongkuk each submitted case and rebuttal briefs regarding the PMS finding and Hyundai's alleged close supplier relationships with certain intermediate processors.<sup>5</sup>

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<sup>2</sup> The petitioners are AK Steel Corporation, California Steel Industries, Inc., Steel Dynamics Inc., ArcelorMittal USA LLC, Nucor Corporation, and United States Steel Corporation (collectively, the petitioners).

<sup>3</sup> See Petitioners' November 27, 2018 Case Brief Regarding Hyundai Steel Company (Petitioners' First Hyundai Case Brief); Petitioners' November 27, 2018 Case Brief Regarding Dongkuk Steel Mill (Petitioners' Dongkuk Case Brief); Dongkuk's November 27, 2018 Case Brief (Dongkuk's First Case Brief); Hyundai's November 27, 2018 Case Brief (Hyundai's First Case Brief); Petitioners' December 6, 2018 Rebuttal Brief Regarding Hyundai Steel Company (Petitioners' First Hyundai Rebuttal Brief); Petitioners' December 6, 2018 Rebuttal Brief Regarding Dongkuk Steel Mill (Petitioners' First Dongkuk Rebuttal Brief); Dongkuk's December 6, 2018 Rebuttal Brief (Dongkuk's First Rebuttal Brief); and Hyundai's December 6, 2018 Rebuttal Brief (Hyundai's First Rebuttal Brief).

<sup>4</sup> See Commerce February 7, 2019 Memorandum re: Post-Preliminary Decision Memorandum on Particular Market Situation Allegation (PMS Memorandum).

<sup>5</sup> See Petitioners' February 15, 2019 Case Brief Regarding Hyundai Steel Company (Petitioners' Second Hyundai Case Brief); Dongkuk's February 15, 2019 Case Brief Regarding Commerce's Particular Market Situation Determination (Dongkuk's Second Case Brief); Hyundai's February 15, 2019 Particular Market Situation Case Brief (Hyundai's Second Case Brief); POSCO's February 15, 2019 Comments on Particular Market Situation in Lieu of Brief (POSCO's Case Brief); Petitioners' February 25, 2019 Rebuttal Brief Regarding Hyundai Steel Company

On August 24, 2018, Hyundai filed a hearing request.<sup>6</sup> On March 8, 2019, Commerce held a public hearing.<sup>7</sup>

On January 28, 2019, 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.<sup>8</sup> The revised deadline for the final results is now March 18, 2019.

#### **IV. Scope of the Order**

For a full description of the scope of this order, *see* Attachment.

#### **V. Changes Since the Preliminary Results**

Based on our review and analysis of the comments received from parties, we made certain changes to the margin calculations for Hyundai margin calculations. Specifically:

1. We no longer applied AFA to the sales of certain CONNUMs;
2. We refined our smoothing methodology for direct materials and are now also smoothing other direct materials, and conversion costs (Labor, VOH and FOH);
3. We continued to make the PMS adjustment to the substrate (direct materials) from the post-prelim;
4. We made adjustments to the total cost of manufacturing for minor inputs reported by Hyundai, as facts available, based on scrap adjustment;
5. We applied the weighted-average margin calculated on tailor welded blanks to Hyundai's sales of AS auto parts;
6. We recalculated G&A expenses and interest based on the re-calculated total cost of manufacture.

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(Petitioners' Second Hyundai Rebuttal Brief); Petitioners' February 25, 2019 Rebuttal Brief Regarding Dongkuk (Petitioners' Second Dongkuk Rebuttal Brief); Dongkuk's February 25, 2019 Rebuttal Brief Regarding Commerce's Particular Market Situation Determination (Dongkuk's Second Rebuttal Brief); and Hyundai's February 25, 2019 Rebuttal Brief (Hyundai's Second Rebuttal Brief).

<sup>6</sup> *See* Hyundai's August 24, 2018 Letter re: Hyundai Steel Company Hearing Request.

<sup>7</sup> *See* Commerce February 27, 2019 Memorandum re: Revised Hearing Schedule.

<sup>8</sup> All deadlines in this segment of the proceeding affected by the partial federal government closure have been extended by 40 days. *See* Memorandum, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day.

## VI. Discussion of Comments

### *General Comment*

#### **Comment 1: Whether a Cost-Based Particular Market Situation Exists in Korea**

##### *Dongkuk's Second Case Brief*

- By only making changes to section 771(15)(C) and section 773(e), but not to section 773(b) of the Tariff Act of 1930, as amended (the Act), Congress unambiguously indicated that it did not intend Commerce to modify its sales-below-cost analysis or cost of production approach based on any PMS finding.
- Commerce has recently departed from its prior reasoned analysis and has opened the door to unfounded PMS allegations and findings that cannot withstand judicial review. Historically, Commerce has recognized that affirmative PMS findings should be reserved for extreme circumstances.<sup>9</sup> There is nothing particularly abnormal, unusual, or distorted about Dongkuk's hot-rolled coil (HRC) cost.
- Commerce's PMS analysis contains no independent analysis regarding how five factors – (1) Korean government subsidies on hot-rolled steel, including the HRC used by Dongkuk to produce CORE; (2) the distortive pricing of Chinese HRC imports; (3) so-called “strategic alliances” between Korean CORE producers and Korean HRC suppliers; (4) government involvement in the Korean electricity market; and (5) imports of Japanese HRC sold at less than fair value - apply specifically to Dongkuk in this review.<sup>10</sup>
- Commerce failed to make a 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

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<sup>9</sup> See Dongkuk's Second Case Brief at 6-8 (citing Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 (1994) (SAA), at 822, reprinted in 1994 U.S.C.C.A.N. 4040, 4162; *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27357 (May 19, 1997) (*Preamble*)); *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 68 FR 52741 (September 5, 2003), and accompanying Issues and Decision Memorandum (IDM) at Comment 1; *Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404 (April 15, 1997) at Comment 1; and *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 76 FR 40881 (July 12, 2011) at Comment 3).

<sup>10</sup> *Id.* at 9-18 (citing *Husteel v. United States*, 98 F. Supp. 3d 1315, 1359 (CIT 2015); *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49946 (July 29, 2016), IDM (July 20, 2016) at 45; *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016), IDM (August 4, 2016) at 44, 45; *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015); *SKF USA v. United States*, 675 F. Supp. 2d 1264, 1276 (2009); *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 63168 (September 14, 2016); *Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 82 FR 16341 (April 4, 2017); *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review*, 2016, 83 FR 24252 (November 6, 2018) (*Hot-Rolled Steel Korea CVD AR Prelim*)).

course of trade” is a result of the PMS. Simply finding a PMS is insufficient to satisfy the statutory requirement for making an adjustment to Dongkuk’s cost.<sup>11</sup>

- As is its practice, Commerce must conduct a detailed data-driven quantitative analysis for benchmarking cost of production,<sup>12</sup> rather than applying market principles to PMS adjustments when it finds that an adjustment is necessary even though there was a concurrent countervailing duty (CVD) case examining the same input.<sup>13</sup>
- Commerce’s reliance on alleged subsidies to HRC producers as the basis for finding a PMS is inconsistent with section 771A of the Act, had the effect of applying AFA to a fully cooperative respondent, and runs counter to practice.<sup>14</sup>
- Commerce relied on inaccurate subsidy rates for its PMS adjustments. Commerce should have used other more recently calculated rates for the same subsidy programs.<sup>15</sup>
- Non-Korean HRC producers did not receive any subsidies from the Korean government. Therefore, Dongkuk’s purchases of non-Korean HRC should not receive a PMS adjustment. Commerce failed to justify its rationale with record evidence that “domestic and imported prices of HRC converge to a lower market equilibrium price” or to defend its speculation that to remain competitive, imported HRC would sell at prices competitive with the domestically produced and subsidized HRC. Nor has Commerce provided any support for what that equilibrium point should be.
- The petitioners’ correlation analysis is flawed and cannot provide a basis for making an adjustment for the alleged PMS.
- Dongkuk’s correlation analysis, corroborated by regression analysis and confirmed by causality test, shows that its prices follow those other than the ones distorted by Korean subsidies and/or by Chinese overcapacities.
- Commerce has determined that the conditions and practices of a PMS in Korea have existed for 36 months,<sup>16</sup> a reasonable time to represent the normal commercial state of affairs in Korea and to be within the “ordinary course of trade.”

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<sup>11</sup> *Id.* at 19-22 (citing section 773(e) of the Act; *Nexteel v. United States*, Consol. Court No. 17-00091, Slip Op. 19-1, F. Supp. 3d, 2019 WL 183820 (CIT 2019) at 18).

<sup>12</sup> *Id.* at 22-23 (citing *Steel Concrete Reinforcing Bar from Taiwan: Final Determination of Sales at Less Than Fair Value*, 82 FR 34925 (July 27, 2017), IDM at Comment 1).

<sup>13</sup> *Id.* at 23-24 (citing *Biodiesel from Argentina: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part*, 82 FR 50391 (October 31, 2017), IDM at 23; *Biodiesel from Argentina: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 8837 (March 1, 2018), IDM at Comment 3; *Biodiesel from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 50379 (October 31, 2017), and IDM at 23; *Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018), IDM at Comment 3).

<sup>14</sup> *Id.* at 23-27 (citing *SKF USA v. United States*, 675 F. Supp. 2d 1264, 1276 (CIT 2009); *Carpenter Tech. v. United States*, 26 Ct. Int’l Trade 830, 843 (CIT 2002); *China Steel Corp. v. United States*, 306 F. Supp. 2d 1291; SAA at 869-70).

<sup>15</sup> *Id.* at 28-34 (citing *Anshan Iron & Steel Company, Ltd., et al., v. United States*, 27 CIT 1234, 1243 (CIT 2003) (citing *Borlem S.A. – Empreendimentos Industriais v. United States*, 913 F.2d 933, 937 (Fed. Cir. 1990) and *Union Camp Corp. v. United States*, 23 CIT 264, 53 F. Supp. 2d 1310, 1325 (CIT 1999))).

<sup>16</sup> *Id.* at 41-42 (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 18105 (April 17, 2017) (*OCTG Korea AR 14-15*) and accompanying Issues and Decision Memorandum (IDM) at Comment 3, unchanged in *Certain Oil Country Tubular Goods From the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 31750 (July 10, 2017); *Certain Oil Country Tubular Goods From the Republic of Korea: Final Results of*

### *POSCO's Case Brief*

- POSCO fundamentally disagrees with Commerce's PMS finding and supports the arguments advanced by the mandatory respondents. Commerce should revise its decision in the final results.<sup>17</sup>

### *Hyundai's Second Case Brief*

- In not incorporating any modifications to section 773(b)(3) of the Act at the same time making changes to section 773(e) of the Act, Congress plainly intended to only introduce PMS concepts in one section of the statute - the calculation of constructed value.
- Commerce cannot conclude that a PMS exists with respect to Hyundai because: (1) the PMS allegation was expressly limited to Dongkuk;<sup>18</sup> (2) although Commerce initially intended to examine the issue with respect to "all producers," the subsequent memorandum limited interested parties to submit factual information to rebut the allegation against Dongkuk, denying Hyundai the procedural opportunity to defend itself against the PMS;<sup>19</sup>
- The alleged five PMS factors do not apply to Hyundai, and four of five factors are virtually identical to those in *NEXTEEL* which the Court of International Trade (CIT) determined do not support a PMS finding.<sup>20</sup>
- If Commerce continues to find that a PMS exists, it should rely on the contemporaneous rates from the final results of *CORE Korea CVD AR 2017* instead of POSCO's AFA rate from the underlying investigation, as it is punitive, contradicted by recent CVD reviews, and will be revised pursuant to CIT remand.<sup>21</sup>
- HRC imported from China and Japan, which comprise only a small portion of Hyundai's inputs, do not evidence a PMS.<sup>22</sup>
- The petitioners did not allege that Hyundai has "strategic alliances" with its HRC supplier and Commerce rightly concluded that there is insufficient evidence to analyze the presence of potential strategic partnership with respect to Hyundai.

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*Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 17146 (April 18, 2018) (*OCTG Korea AR 15-16*) and accompanying Issues and Decision Memorandum (IDM) at Comment 1; *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 27541 (June 13, 2018) (*CWP Korea AR 15-16*) and accompanying Issues and Decision Memorandum (IDM) at Comment 1; *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 33919 (July 18, 2018) (*WLP Korea AR 15-16*) and accompanying Issues and Decision Memorandum (IDM) at Comment 1-3.

<sup>17</sup> See POSCO's Case Brief, in its entirety.

<sup>18</sup> See Hyundai's Second Case Brief at 3-7 (citing *Certain Tapered Roller Bearings from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 83 FR 29029 (June 22, 2018) (*TRB Korea Inv. Final*), IDM at Comment 1; *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27925, 27357 (May 19, 1997); *Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018), IDM at Comment 3).

<sup>19</sup> *Id.* at 5-7.

<sup>20</sup> *Id.* at 7-8 (citing *NEXTEEL Co., Ltd. v. United States*, Slip Op. 19-1 (CIT 2019) at 18).

<sup>21</sup> *Id.* at 8-14.

<sup>22</sup> *Id.* at 14-15.

- While the alleged distortion in Korean electricity market is limited to Dongkuk, Hyundai notes that Commerce has repeatedly found that the electricity in Korea is not subsidized, and those determinations were upheld by the CIT.<sup>23</sup>
- Even the “totality of the circumstances” approach cannot support an affirmative conclusion that a PMS exists with respect to Hyundai. Commerce must look to the specific allegations and the specific facts of this case, and in particular look to the specific facts and circumstances of each respondent.<sup>24</sup>
- Commerce has already imposed CVD duties against Hyundai with respect to both hot-rolled steel (HRS) and CORE. In further adjusting Hyundai’s production costs, Commerce has essentially remedied the same alleged behavior twice.<sup>25</sup>

#### *Petitioners’ Second Dongkuk Rebuttal Brief*

- Contrary to Dongkuk’s argument, the statute grants Commerce the authority to find that a PMS exists. The statute does not contemplate, as Dongkuk’s analysis would suggest, that Commerce would calculate a different cost of production for purposes of the below-cost sales analysis and difference in merchandise adjustments than it would for the constructed value calculation. The statute expressly permits it to make appropriate adjustments in establishing normal value.<sup>26</sup>
- The Trade Preferences Extension Act of 2015 (TPEA) modified the definition of “ordinary course of trade” to include any situation in which Commerce finds a PMS prevents a proper comparison between the markets. Thus, Commerce’s practice – to find that a PMS exists where there is sufficient evidence that the whole market is distorted – is the correct standard.
- The petitioners submitted compelling evidence that supports Commerce’s finding that: (1) global overcapacity affects Dongkuk’s direct material costs; (2) Dongkuk maintained a strategic alliance with HRC producers; (3) Korean electricity prices, controlled by the government of Korea (GOK) can distort Dongkuk’s costs;<sup>27</sup> (4) low-cost HRCs from Japan as the result of a race to the bottom of Korea, Chinese, and Japanese HRC producers contributed to the PMS; and (5) subsidies found on HRC in Korea are the best available information and support an adjustment to Dongkuk’s cost of production.<sup>28</sup>

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<sup>23</sup> *Id.* at 16-21 (citing *POSCO v. United States*, Slip Op. 18-117 (CIT 2018); *POSCO v. United States*, Slip Op. 18-169 (CIT 2018) (concerning certain carbon and alloy steel cut-to-length plate from Korea); *POSCO v. United States*, 42 CIT, 296 F. Supp. 3d 1320 (2018) (concerning cold-rolled steel flat products from Korea); *Nucor Corp. v. United States*, 42 CIT, 286 F. Supp. 3d 1364 (2018) (concerning corrosion resistant steel); *Maverick Tube Corp. v. United States*, 41 CIT, 273 F. Supp. 3d 1293 (2017) (concerning welded line pipe)).

<sup>24</sup> *Id.* at 17 (citing *Certain Tapered Roller Bearings from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 83 FR 29029 (June 22, 2018) IDM at Comment 1).

<sup>25</sup> *Id.* at 24-25 (citing *Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France*, 69 FR 46501 (August 3, 2004); *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404, 18422 (April 15, 1997); *Certain Cut-To-Length Carbon Steel Plate from Germany: Final Results of Antidumping Duty Administrative Review*, 62 FR 18390, 18394 (April 15, 1997)).

<sup>26</sup> See Petitioners’ Second Dongkuk Rebuttal Brief at 11-14.

<sup>27</sup> *Id.* at 23-27 (citing *OCTG Korea AR 15-16*, IDM at 17, *WLP Korea AR 15-16*, IDM at 13; *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016) (*Hot-Rolled Korea CVD Inv. Final*) IDM at 52).

<sup>28</sup> See Petitioners’ Second Dongkuk Rebuttal Brief at 31-35 (citing *WLP Korea AR 15-16 Final*, IDM at 15).

- The collective distortions in the Korean HRC market satisfy the statutory criteria to adjust Dongkuk's costs for a PMS. Ample evidence exists on the record to prove the existence of each of the five conditions whether or not those conditions are easily interpreted in economic value. Dongkuk mistakenly relies on *NEXTEEL* in which the CIT found that Commerce's approach in considering the cumulative effect of factors was reasonable but found that Commerce lacked sufficient evidence to substantiate its finding of a PMS.
- Commerce should continue to utilize the rates from *Hot-Rolled Steel Korea CVD Order*<sup>29</sup> to adjust Dongkuk's cost of production because they were the CVD rates in effect during the POR.
- Commerce did not err in its calculation and should continue to adjust Dongkuk's cost of production with respect to its purchases of Chinese and Japanese HRC. Dongkuk's interpretation of "convergence" is that the HRC prices should be identical despite Commerce's clear explanation that an equilibrium will exist in the Korea HRC market, rather than identical pricing.
- Dongkuk incorrectly based its correlation on monthly price levels, not price changes. This overstates the degree of correlation between the factors that Dongkuk claims are responsible for its acquisition costs. Dongkuk's analysis also ignores the global impact of Chinese overcapacity on steel markets around the global. Finally, Dongkuk's analysis fails to control for distorted Japanese pricing.<sup>30</sup>
- Its Granger-causes analysis is predicated both on ignoring (1) the external factor of price depression caused by Chinese overcapacity and state intervention, and (2) the internal effects from Japanese imports that contribute to the PMS. The proper analysis should focus on the factors contributing to the PMS in Korea.
- The petitioners' regression analysis indicates that changes in Dongkuk's pricing are explained by changes caused by the combined effects of all major distortive forces at work in the PMS, and the petitioners' Granger-causes analysis shows the distortions that contribute to the PMS as combined forces result in Dongkuk's HRC acquisition costs.
- A PMS finding evaluates the impact of factors on the prices and costs, not the length of time that the distortive conditions impacted the prices and costs of Korean producers.

#### *Petitioners' Second Hyundai Rebuttal Brief*

- The statute permits Commerce to adjust Hyundai's costs for purposes of the sales below cost test. Hyundai's claim fails to consider the provision at issue, section 773(b)(3) of the Act, which specifically includes the term "ordinary course of trade," which is integral to the new PMS provision, as defined in section 771(15) of the Act. Hyundai's interpretation of the statute would defeat the very purpose of an "ordinary course of trade" analysis under the PMS provision, as Commerce stated in its post-preliminary results.
- Because the allegation and prior affirmative PMS findings involving HRC as an input concerned macro-level factors, Commerce's request for PMS-related factual information and subsequent PMS finding for all producers was warranted.

<sup>29</sup> 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) (*Hot-Rolled Steel Korea CVD Order*).

<sup>30</sup> See Petitioners' Second Dongkuk Rebuttal Brief at 48 (citing *OCTG Korea AR 14-15*, IDM at 43, *OCTG Korea AR 15-16*, IDM at 17, *CWP Korea PDM* at 11-12, *WLP Korea AR 15-16*, IDM at 13).



- Hyundai was afforded at least two opportunities to comment on three out of five alleged factors that were not specific to Dongkuk.
- The circumstances that led to the CIT's reversal in *NEXTEEL* are not present in this case. As each proceeding stands on its own, Commerce's preliminary PMS decision was based on a reasoned analysis of the facts and the law and is supported by substantial evidence.
- The GOK's subsidization of hot-rolled steel supports a PMS finding because the CVD rates from *Hot-Rolled Steel Korea CVD Order* continue to be a relevant and reliable basis. Neither the first review nor the remand of the CVD order has published final rates. Using Hyundai's non-AFA rate would arbitrarily reverse the partial AFA determination in the CVD order.<sup>31</sup>
- Imported steel from China and Japan further support a finding that a PMS exists in Korea for all CORE producers. Even if Hyundai had no imports from Japan and China, it would have still been impacted by the influx of such imports that occurred during the POR, because the spill-over effects from specific importers, such as Dongkuk, would provide a price-suppressing effect throughout the Korean marketplace, to which Hyundai cannot remain immune.
- To the extent that strategic alliances may have a distortive effect on the market as a whole, it is not necessary for every company operating in the market to be a member of strategic alliance.
- An affirmative subsidy finding on electricity is not required for Commerce to find that distortions in the Korean electricity market may nevertheless contribute to a PMS affecting costs of production of CORE in Korea. Commerce has explicitly and repeatedly found that a PMS exists in Korea based on factors that include the impact of the government's involvement in the Korean electricity market.
- Commerce's PMS adjustment does not amount to double counting of remedies because Commerce determined that the most accurate quantifiable adjustment to Hyundai's artificially low costs of production is to increase its HRC cost by applying the CVD rate net of export subsidies. Contrary to Hyundai's claim that Commerce applied CVD law in the antidumping duty proceeding, the PMS allegation is not an upstream subsidy allegation, rather, it is a separate claim brought under the new PMS language in the TPEA for the antidumping portion of the statute.

#### *Dongkuk's Second Rebuttal Brief*

- Dongkuk agrees with Hyundai that Commerce must limit its inquiry to Dongkuk, and thus should not have made a PMS finding with respect to Hyundai and other producers.
- Consistent with Commerce's position that company do not operate in a vacuum,<sup>32</sup> Commerce should not make a PMS determination with respect to all producers.

<sup>31</sup> See Petitioners' Second Hyundai Rebuttal Brief at 11-16 (citing *Hot-Rolled Steel Korea CVD Order*).

<sup>32</sup> See Dongkuk's Second Rebuttal Brief (citing *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 33919 (July 18, 2018) (*WLP Korea AR 15-16*), IDM at Comment 1).

**Commerce’s Position:** Section 504 of the TPEA added the concept of a “particular market situation” in the definition of the term “ordinary course of trade” for purposes of constructed value under section 773(e) of the Act, and through these provisions for purposes of the cost of production under section 773(b)(3) of the Act. Section 773(e) of the Act states that “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, {Commerce} may use another calculation methodology under this subtitle or any other calculation methodology.”

The TPEA amended the Act expressly to permit Commerce to use an alternative calculation methodology where a “particular market situation” distorts costs such that they do not “accurately reflect the cost of production in the ordinary course of trade.” The statute does not expressly define “particular market situation,” but the SAA explains that such a situation may exist for sales “where there is government control over pricing to such an extent that home market prices cannot be considered competitively set.”<sup>33</sup>

Prior to the TPEA, in a limited number of cases, Commerce found that a PMS existed and, as a result, declined to use an entire market for purposes of calculating normal value, as provided for in section 773(a)(1) of the Act and section 351.404(c)(2) of Commerce’s regulations.<sup>34</sup> More recently, Commerce determined that a PMS existed which distorted the cost of production.<sup>35</sup>

In this review, petitioners alleged that a PMS exists in Korea that distorts the cost of HRC. The PMS allegation is based on the cumulative effect of five factors: (1) the subsidization of Korean HRC by the GOK; (2) the distortive pricing of Chinese HRC imports; (3) strategic alliances between Korean HRC suppliers (*e.g.*, POSCO) and Korean CORE producers; (4) distortive GOK control over electricity prices in Korea; and (5) imports of Japanese HRC sold in Korea at less

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<sup>33</sup> See SAA at 822.

<sup>34</sup> Examples of investigations or reviews where we have found a sales-based particular market situation include: *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile*, 63 FR 31411 (June 9, 1998); *Mechanical Transfer Presses from Japan*; *Final Results of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Administrative Order in Part*, 63 FR 37331 (July 10, 1998); and *Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 72 FR 7011 (February 14, 2007).

<sup>35</sup> See, *e.g.*, *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 18105 (April 17, 2017) (OCTG Korea AR 14-15) and accompanying Issues and Decision Memorandum (IDM) at Comment 3, unchanged in *Certain Oil Country Tubular Goods From the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 31750 (July 10, 2017); *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 17146 (April 18, 2018) (OCTG Korea AR 15-16) and accompanying Issues and Decision Memorandum (IDM) at Comment 1; *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 27541 (June 13, 2018) (CWP Korea AR 15-16) and accompanying Issues and Decision Memorandum (IDM) at Comment 1; *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 33919 (July 18, 2018) (WLP Korea AR 15-16) and accompanying Issues and Decision Memorandum (IDM) at Comment 1-3.

than fair value.<sup>36</sup> For the reasons discussed in our post-preliminary decision memorandum,<sup>37</sup> we continue to find that, as a result of the evidence on the record and the collective impact of the above factors, a PMS exists and distorted CORE production costs in Korea during the POR.

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 cost of production (COP) in the ordinary course of trade. Dongkuk and Hyundai 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.<sup>38</sup>

We disagree with this interpretation of the Act. Specifically, the definition of the term "ordinary course of trade" in section 771(15) of the Act states that the following shall be considered outside the ordinary course of trade: "situations in which {Commerce} 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(b) 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 the sales-below-cost test 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 Dongkuk's and Hyundai'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"<sup>39</sup> if costs are distorted by a PMS, including for the purposes of COP under section 773(b)(3) 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.

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<sup>36</sup> See Petitioners July 3, 2018 Letter re: Particular Market Situation Allegation Regarding Dongkuk (PMS Allegation); Petitioners July 25, 2018 Letter re: Petitioner's Amendment to its Particular Market Situation Allegation (PMS Amendment).

<sup>37</sup> See PMS Memorandum at 8-12.

<sup>38</sup> See Dongkuk's Second Case Brief at 2-6 and Hyundai's Second Case Brief at 18-24.

<sup>39</sup> See section 773(e) of the Act.

Dongkuk argues that PMS adjustments should be reserved for only the most unusual of circumstances. Section 773(e) of the Act states that “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, {Commerce} may use another calculation methodology under this subtitle or any other calculation methodology.” As discussed in our PMS Memorandum and below, our analysis of the evidence on the record of this review indicates that a PMS exists. Where a “particular market situation” exists, costs are distorted such that they do not “accurately reflect the cost of production in the ordinary course of trade,” which, by definition, is unusual. Having found that a PMS exists based on the totality of the evidence on the record, Commerce is authorized by statute to use any other calculation methodology to calculate the cost of production of CORE in Korea. There is no additional requirement under the statute for Commerce to determine whether the circumstances are “most unusual” prior to making a PMS adjustment.

With respect to Hyundai’s argument that the allegation does not pertain to it, we disagree with the notion that a company-specific allegation is necessary in a situation where, as here, there is sufficient evidence demonstrating that the market as a whole is distorted, and a PMS exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade. Companies do not operate in a vacuum but, rather, purchase their inputs in a market. If a particular market is distorted as a whole, it would be illogical to conclude that one company operating in that particular market is insulated from the market distortions with respect to cost.<sup>40</sup> Hyundai’s reliance on *Tapered Roller Bearings Korea Inv.* is misplaced.<sup>41</sup> In that proceeding, we declined to investigate a PMS because the allegation was not sufficiently substantiated with a demonstrated connection between the alleged market conditions and cost of production for the respondents or the Korean tapered roller bearings industry.<sup>42</sup> There is sufficient evidence on the record of this review demonstrating that the Korean HRC market as a whole is distorted.

Hyundai’s claim that it was not afforded a meaningful opportunity to respond the PMS allegation is unsupported by the record. On September 19, 2018, we set the deadlines for all interested parties to submit comments and factual information pertaining to the possible existence of a PMS with respect to the production costs of all producers of CORE in Korea.<sup>43</sup> On September 26, 2019, we extended those deadlines.<sup>44</sup> There is no evidence on the record to support Hyundai’s apparent argument that our PMS Comment Deadline Memorandum and PMS Comment

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<sup>40</sup> See *WLP Korea AR 15-16* IDM at 16; *CWP Korea AR 15-16 AR* IDM at 16.

<sup>41</sup> See *Certain Tapered Roller Bearings from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 83 FR 29092 (June 22, 2018) (*Tapered Roller Bearings Korea Inv.*).

<sup>42</sup> *Id.*, IDM at Comment 1.

<sup>43</sup> The original deadlines for parties to submit affirmative and rebuttal factual information in response to the PMS allegation were, September 27 and October 2, 2018, respectively. See Commerce September 19, 2018 Memorandum re: Deadlines for Submission of Factual Information Pertaining to Particular Market Situation (PMS Comment Deadline Memorandum).

<sup>44</sup> The clarified deadline for parties to submit rebuttal factual information in response to PMS allegation, October 4, 2018. See Commerce September 26, 2018 Memorandum re: Extension for Submission of Factual Information Pertaining to Particular Market Situation (PMS Comment Deadline Extension Memorandum).

Deadline Extension Memorandum denied Hyundai a meaningful opportunity to submit comments and factual information pertaining to the possible existence of a PMS with respect to the production costs of all producers of CORE in Korea.<sup>45</sup> Hyundai had the same opportunity to submit comments and factual information as all other interested parties.

Dongkuk argues that Commerce conducted no independent analysis and 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. As discussed below, our analysis of information on this record clearly indicates that a PMS exists with respect to the cost of production of CORE in Korea.<sup>46</sup>

In the current review, Commerce considered the five PMS factors as a whole and their cumulative effect on the Korean CORE market through the COP for CORE and its inputs. Based on the totality of the conditions in the Korean market, Commerce continues to find that the allegations and the record evidence support a finding of a PMS.

Record evidence shows that the GOK provided subsidies for the production of hot-rolled steel, which includes the HRC input used to produce CORE.<sup>47</sup> The record shows the mandatory respondents sourced HRC from Korean HRC producers that have been determined to have received subsidies from the GOK.<sup>48</sup> Record evidence also shows that the subsidies received by Korean hot-rolled steel producers totaled almost 60 percent of the cost of HRC, the primary input into CORE production.<sup>49</sup> Additionally, Commerce notes that HRC is the primary input of CORE, constituting a large percentage of the cost of CORE production.<sup>50</sup> Thus, distortions in the HRC market have a significant impact on production costs for CORE.<sup>51</sup> 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.<sup>52</sup> This, along with the heavy subsidization of domestic steel production by the GOK, distorts the Korean market prices of HRC, the main input in Korean CORE production.<sup>53</sup>

These intertwined market conditions signify that the production costs of CORE, especially the acquisition prices of HRC in Korea, are distorted and, thus, demonstrate that the costs of HRC to Korean CORE 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 CORE from Korea. Considered collectively, Commerce continues to find that the record supports finding that a PMS exists during the POR.

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<sup>45</sup> See PMS Comment Deadline Extension Memorandum.

<sup>46</sup> See PMS Memorandum.

<sup>47</sup> *Id.* at 9.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> See PMS Allegation at 9.

<sup>51</sup> See PMS Memorandum.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

Moreover, record evidence supports that there are strategic alliances between Korean HRC producers and producers of subject merchandise.<sup>54</sup> 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.<sup>55</sup> We continue to find that a strategic alliance between Dongkuk and POSCO existed during the POR which contributed to the PMS in Korea. With respect to Hyundai's contention that there is no evidence that it has strategic alliances with any Korean producers of HRC, as Commerce is evaluating the existence of a PMS based on the totality of circumstances in the market, to the extent that strategic alliances have a distortive effect on the market as a whole, it is not necessary for every company operating in the market to be a member of a strategic alliance.<sup>56</sup> Accordingly, Commerce's consideration of the presence of strategic alliances in the Korean HRC and CORE industries that have contributed to the distortive costs in the market as a whole is not based solely on whether or not Hyundai maintained a strategic alliance partnership with a HRC supplier during the POR. We find that strategic alliances between certain Korean HRC suppliers and producers of downstream steel products are relevant as an element of our analysis in that they may affect HRC pricing in Korea in a distortive manner.<sup>57</sup>

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.<sup>58</sup> Dongkuk and Hyundai also argue that Commerce has determined that Korean electricity prices do not confer a subsidy benefit. 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.<sup>59</sup>

Regarding Dongkuk's and Hyundai'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.

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<sup>54</sup> *Id.*

<sup>55</sup> See *Large Diameter Welded Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 84 FR 6374 (February 27, 2019) (*LDWP Korea AD Inv.*), IDM at Comment 1.

<sup>56</sup> 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) (*OCTG Korea AR 15-16*), IDM at 22; and *WLP Korea 15-16 AR* IDM at 17-18.

<sup>57</sup> See PMS Memorandum.

<sup>58</sup> See SAA at 822.

<sup>59</sup> See *OCTG Korea AR 15-16* IDM at 22.

We disagree that we should make our PMS adjustments using subsidy rates from the ongoing review of *Hot-Rolled Steel Korea CVD AR Prelim* 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. Given that the *Hot-Rolled Steel Korea CVD AR Prelim* remains ongoing, Commerce's findings in the relevant preliminary results may be subject to change in the final results.<sup>60</sup> *Hot-Rolled Steel Korea CVD Inv.* remains the only completed segment on hot-rolled steel from Korea, and no administrative review has been completed to date. With respect to the fact that the CVD rates in *Hot-Rolled Steel Korea CVD Order* were based on total AFA, we disagree that this alone should discredit their use in making a PMS adjustment. CVD rates which happen to be based on total or partial AFA because the respondents failed to cooperate to the best of their abilities are not considered inaccurate or unreliable. We find that the respondents in the *Hot-Rolled Steel Korea CVD Inv.* 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. We determine that the CVD rates of *Hot-Rolled Steel Korea CVD Order* represent an appropriate measure of the subsidies being received by the producers with respect to the production of HRC.<sup>61</sup> They are not a penalty being applied to Dongkuk or Hyundai, but rather a reasonable basis for the adjustment being enacted by Commerce to account for the GOK's subsidization of HRS products in Korea. As for the fact that the rates from the *Hot-Rolled Steel Korea CVD Order* 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 *Hot-Rolled Steel Korea CVD Order* are under review by the CIT, the CVD rates are still in effect because the *Hot-Rolled Steel Korea CVD Order* has not been amended pursuant to a final court decision not in harmony with the final determination.

With respect to Dongkuk'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.<sup>62</sup> 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 in Korea, it is logical to find that, to remain competitive, imported HRC will sell at prices competitive with the domestically produced and subsidized HRC. 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.

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<sup>60</sup> 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 {Commerce}'s final determination or final results . . ."); *Hot-Rolled Steel Korea CVD AR Prelim* and accompanying Preliminary Decision Memorandum.

<sup>61</sup> 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) (*Hot-Rolled Steel Korea CVD Order*); *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea*, 81 FR 53439 (August 12, 2016) IDM.

<sup>62</sup> 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 Issues and Decision Memorandum at Comment 3.

With respect to Hyundai'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 a reasonable methodology because the CVD rates of *Hot-Rolled Steel Korea CVD Order*, as stated above, represent an appropriate measure of the subsidies being received by the producers with respect to the production of HRC.

With respect to Hyundai'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 review, 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 review inconsistent with this section of the statute.

Hyundai alleges that the PMS adjustment to its costs using its own subsidy rates from *Hot-Rolled Steel Korea CVD Order* amounts to double counting. As an initial matter, Hyundai does not point to a statutory directive in the Act that curtails Commerce's authority to adjust costs based on a PMS that, by means of certain government interventions, renders production costs outside the ordinary course of trade merely because it was determined in a separate administrative proceeding that a government has provided a countervailable subsidy. Furthermore, there is no indication that Congress intended to curtail Commerce's authority under section 773(e) of the Act by virtue of the existence of countervailable subsidies. We note that the Act contains provisions directing Commerce to address potential double remedies in certain limited situations. For example, the Act provides that Commerce shall offset export subsidies by adjusting EP or CEP in the amount of any CVD imposed on the subject merchandise. The Act also provides that Commerce shall, in certain circumstances, adjust antidumping duties by domestic countervailable subsidies in non-market economy proceedings.<sup>63</sup> Regarding the latter example, in particular, we note that, in 2012, Congress responded to the U.S. Court of Appeals for the Federal Circuit's (Federal Circuit) opinion in *GPX Int'l Tire Corp. v. United States* by creating the possibility of an offset in non-market economy antidumping duty proceedings to avoid possible double remedies arising from companion CVD cases.<sup>64</sup> Only three years later, however, Congress did not even mention the possibility of a double remedy or a correction for a double remedy when it passed the TPEA and explicitly granted Commerce authority to address a PMS, with the understanding that a PMS may exist in situations "where there is government control over pricing to such an extent that home market prices cannot be considered competitively set."<sup>65</sup> Consistent with prior rulings by the Federal Circuit, the TPEA's silence on this matter suggests that Congress intended that Commerce use any other calculation methodology it determines

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<sup>63</sup> See section 777A(f) of the Act.

<sup>64</sup> See H.R. 4105 (signed 2012); see also *GPX Int'l Tire Corp. v. United States*, 666 F.3d 732 (Fed. Cir. 2011).

<sup>65</sup> See SAA at 822.



appropriate to ensure a proper comparison with the normal value and the export price or constructed export price when a PMS exists, without regard to potential remedies.<sup>66</sup> Moreover, despite allegations of a double remedy, we note that the Federal Circuit has explained that “the extent to which the statute may prohibit double counting is unclear.”<sup>67</sup> We decline to accept an interpretation of the statute that broadly precludes a PMS adjustment to correct distorted costs that result in part from subsidies that were countervailed in another proceeding. Such an interpretation would result in an unreasonable limitation on Commerce’s authority to address the distortions caused by a PMS.

### ***Dongkuk Comments***

#### **Comment 2: Whether Dongkuk is Affiliated With POSCO**

##### ***Petitioners’ Dongkuk Case Brief***

- While Dongkuk disclosed that POSCO is one of its largest shareholders, it failed to discuss the complete nature of its relationship with POSCO, including Commerce’s determination in the original investigation that the two companies were affiliated.<sup>68</sup>
- Dongkuk and Dongkuk Industries Co., Ltd. (DKI) are affiliated through common familial members. The record shows that the largest shareholders (*i.e.*, the chairman and vice chairman) of Dongkuk and DKI are relatives (*i.e.*, uncle, nephews, cousins). That said, Dongkuk failed to report that its affiliation with DKI establishes that it is also affiliated with POSCO.<sup>69</sup>
- The record of this review shows that the sum of POSCO’s direct shareholding in Dongkuk and DKI reaches the five percent threshold set forth in section 771(33)(E) of the Act. As such, POSCO is affiliated with Dongkuk and DKI on the basis of shareholding.<sup>70</sup>
- There are other indicia of affiliation between Dongkuk and POSCO.<sup>71</sup>
  - Dongkuk and POSCO maintained a strategic partnership agreement during the period of investigation. Although Dongkuk claimed that it terminated the agreement in 2015 it has submitted no definitive evidence to demonstrate that the agreement was terminated. In addition, Dongkuk’s acquisition quantities of HRC from POSCO suggests that the strategic partnership agreement was not terminated as claimed.<sup>72</sup> The level of Dongkuk’s

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<sup>66</sup> See *Turtle Island Restoration Network v. Evans*, 284 F.3d 1282, 1296 (Fed. Cir. 2002) (stating “when Congress omits from a statute a provision found in similar statutes, the omission is typically thought deliberate); see also *Int’l Trading Co. v. United States*, 110 F. Supp. 2d 977, 988 (Ct. Int’l Trade 2000) (citing *Floral Trade Council v. United States*, 41 F. Supp. 2d 319, 329 (Ct. Int’l Trade 1999)).

<sup>67</sup> See *GPX Int’l Tire Corp.*, 666 F.3d at 737. The CIT cited the risk of “double counting” in its ruling against the imposition of countervailing duties in non-market economy proceedings. The Federal Circuit expressly noted its doubts about a statutory requirement to avoid “double counting” and, instead, upheld the CIT’s decision on the alternative principle of “legislative ratification” (*i.e.*, Congress had never overruled prior determinations by Commerce not to apply countervailing duties in non-market economy proceedings, despite having the opportunity to do so).

<sup>68</sup> See Petitioners’ Dongkuk Case Brief at 5.

<sup>69</sup> *Id.* at 4.

<sup>70</sup> *Id.* at 5.

<sup>71</sup> *Id.* at 5.

<sup>72</sup> *Id.* at 7.

purchases HRC from POSCO is evidence that a close supplier relationship exists between the two companies.

- Dongkuk, POSCO and a third company had plans to create a joint venture in Brazil to produce and sell slab.<sup>73</sup>
- In determining whether companies are affiliated, Commerce analyzes whether one entity has control over another. In this instance, the level of POSCO's direct shareholding in Dongkuk and POSCO's direct shareholding in DKI results in POSCO controlling more than five percent of the Dongkuk. On this basis, Dongkuk and POSCO are affiliated pursuant to section 771(33)(E) of the Act.<sup>74</sup> In addition, Dongkuk and POSCO are affiliated pursuant to 19 CFR 351.102(b)(3) through: (1) their continued strategic alliance; (2) Dongkuk's purchases of HRC from POSCO; and (3) their proposed joint venture in Brazil within the meaning of section 771(33) of the Act.<sup>75</sup>

#### *Dongkuk's First Rebuttal Brief*

- Although POSCO is one of Dongkuk's ten largest shareholders, POSCO owns less than five percent of Dongkuk's shares. Therefore, Dongkuk is not affiliated with POSCO *via* direct shareholding pursuant to section 771(33)(E) of the Act. POSCO's level of shareholding in DKI also does not meet the affiliation threshold. Therefore, even if Dongkuk and DKI were affiliated, the summation of POSCO's direct shareholding in Dongkuk with its theoretical indirect shareholding in Dongkuk through DKI would still fall short of the five percent threshold stipulated in section 771(33)(E) of the Act.<sup>76</sup>
- Dongkuk was not affiliated with POSCO through a strategic partnership agreement. The record of this review shows that Dongkuk terminated the agreement in 2015. Specifically, Dongkuk's external auditor confirmed the termination of the agreement in 2015 by removing reference to it in the 2015 audit report. The 2015 report referenced agreements with other companies still in effect as of December 31, 2015. In addition, Dongkuk provided an internal document which show its decision to terminate the agreement. Finally, there is no provision in the section 771(33) of the Act that would establish affiliation between two companies through the existence of an agreement similar to the terminated agreement.<sup>77</sup>

**Commerce's Position:** We have determined that Dongkuk was not affiliated with POSCO under section 771(33) of the Act during the POR.<sup>78</sup>

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<sup>73</sup> *Id.* at 9-10.

<sup>74</sup> *Id.* at 5.

<sup>75</sup> *Id.* at 9-10.

<sup>76</sup> See Dongkuk's First Rebuttal Brief at 3.

<sup>77</sup> *Id.* at 4-5.

<sup>78</sup> In the underlying investigation, we found Dongkuk to be the successor-in-interest of Union Steel Manufacturing Co., Ltd. (Union Steel) as a result of their January 2015 merger. See *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 35303 (June 2, 2016) (*CORE Korea Inv. Final*), IDM at 6. Prior to this merger, POSCO was affiliated with Union Steel through its direct ownership of Union Steel. As discussed below, the record of this review shows that POSCO's ownership in Dongkuk (Union Steel's successor) fell well below the five percent threshold stipulated in section 771(33)(E) of the Act during the instant POR.

Section 771(33) of the Act states, in part, that the following persons shall be considered “affiliated” or “affiliated persons”: (A) Members of a family, including brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants; (B) Any officer or director of an organization and such organization; (C) Partners; (D) Employer and employee; (E) Any 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; (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) Any person who controls any other person and such other person. The Act defines affiliates as, among other things, those that are in a “control” relationship with each other. Section 771(33) of the Act further states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

In addition, 19 CFR 351.102(b)(3) states, “{i}n determining whether control over another person exists, within the meaning of section 771(33) of the Act, {Commerce} will consider the following factors, among others: Corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. {Commerce} will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. {Commerce} will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.”

The record of this review shows that POSCO held less than five percent of Dongkuk’s shares during the POR.<sup>79</sup> Accordingly, there is no basis to find the two companies to be affiliated pursuant to section 771(33)(E) of the Act.

The record also indicates that Dongkuk and POSCO maintained a strategic partnership agreement during the POR. Although Dongkuk claimed that it terminated the agreement in 2015, citing to its 2015 financial statement, there is no information on the record showing that it took the steps necessary to terminate the agreement with POSCO.<sup>80</sup> That said, the general terms of the agreement do not appear to describe the type of relationship between Dongkuk and POSCO which reaches the level of control envisioned in section 771(33)(G) of the Act.

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<sup>79</sup> See Dongkuk January 3, 2018 Section A Questionnaire Responses (Dongkuk AQR) at Appendix A-12. We note that in the underlying investigation, Commerce found Dongkuk to be the successor-in-interest of Union Steel Manufacturing Co., Ltd. (Union Steel) as a result of their January 2015 merger. See *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 35303 (June 2, 2016), IDM at 6. Prior to this merger, POSCO was affiliated with Union Steel through its direct ownership of Union Steel. As noted, the record of this review shows that POSCO’s ownership in Dongkuk (Union Steel’s successor) falls well below the five percent threshold stipulated in section 771(33)(E) of the Act during the instant POR.

<sup>80</sup> The agreement laid out the steps of how parties may terminate the agreement, and Dongkuk has not provided any of the evidence that the steps required to terminate the agreement were undertaken. See Petitioners October 10, 2018 (filed on October 16, 2018) Letter re: Comments Regarding Dongkuk’s Oct. 4 Rebuttal at 14-18.

With respect to possible close supplier relationships, we typically analyze, as a threshold matter, whether the buyer or seller has in fact become reliant on the other.<sup>81</sup> We also analyze whether one of the parties is in a position to exercise restraint or direction over the other only after that threshold is met.<sup>82</sup> Even if a supplier sells 100 percent of its merchandise to a customer, if it is free to sell to other customers and there is no record evidence of restraint or direction, a close supplier relationship does not exist.<sup>83</sup> Our analysis of Dongkuk's purchases of HRC indicates that Dongkuk purchased HRC from multiple sources, including POSCO.<sup>84</sup> As such, the record fails to establish that Dongkuk and POSCO are reliant on the other.<sup>85</sup> Thus, we do not reach the issue of whether one of the parties is in a position to exercise restraint or direction over the other.

Finally, the fact that Dongkuk, POSCO, and a third company had plans to open a venture named CSP Steel Works in Brazil, which would manufacture slab after the POR,<sup>86</sup> is not a basis for finding Dongkuk and POSCO to be affiliated pursuant to section 771(33)(F) of the Act.

The record of this review shows that a family grouping – specifically, the Chang family grouping – owns the largest shares in Dongkuk and DKI.<sup>87</sup> The petitioners therefore argue that Dongkuk and DKI should be treated as a single group (the “Dongkuk Group”) and that POSCO's small ownership percentage in this supposed group indicates that POSCO is affiliated with the group.<sup>88</sup> However, even assuming *arguendo* that Dongkuk and DKI are affiliated within the meaning of section 771(33)(F) of the Act because they are under the common control of the Chang family, this does not mean that Dongkuk and DKI are a single entity for antidumping purposes. Dongkuk and DKI do not own shares in one another.<sup>89</sup> Further, the record does not support “collapsing” the companies into a single entity.

19 CFR 351.401(f) outlines the criteria for treating affiliated producers as a single entity for purposes of antidumping proceedings:

- (1) In general. In an antidumping proceeding under this part, {Commerce} will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and {Commerce} concludes that there is a significant potential for the manipulation of price or production.

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<sup>81</sup> See SAA at 838.

<sup>82</sup> See *Grain-Oriented Electrical Steel from the Czech Republic: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 58324 (September 29, 2014) (*GOES from the Czech Republic*) IDM at 7-8.

<sup>83</sup> See *GOES from the Czech Republic*, IDM at 8 (citing *TIJID, Inc. v. United States*, 29 C.I.T. 307, 320 (2005)).

<sup>84</sup> See Dongkuk's October 4, 2018 Letter re: Rebuttal Factual Information Relating to Alleged Particular Market Situation at Attachment Q; and Final Calculation Memorandum.

<sup>85</sup> See Final Calculation Memorandum.

<sup>86</sup> See Dongkuk AQR at Attachment A-10.

<sup>87</sup> *Id.* at A-3.

<sup>88</sup> See Petitioner's Dongkuk Case Brief at 5.

<sup>89</sup> See Dongkuk AQR at A-3.

(2) Significant potential for manipulation. In identifying a significant potential for the manipulation of price or production, the factors {Commerce} may consider include:

- (i) The level of common ownership;
- (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
- (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.<sup>90</sup>

Even assuming that Dongkuk and DKI are affiliated, we find that there is not a significant potential for the manipulation of price or production on this record. Dongkuk is the producer of the CORE under review. It also sells CORE in the home market and the United States.<sup>91</sup> DKI is a group of 19 companies. Dongkuk and DKI did not share managers or board members.<sup>92</sup> They have no share ownership in each other. Two DKI companies purchased small amounts of Dongkuk's CORE in the home market during the POR.<sup>93</sup> The record shows that DKI is not otherwise involved in the production or sales of CORE.<sup>94</sup> Thus, we determine that there is no significant potential for the manipulation of price or production among Dongkuk and DKI. Therefore, in accordance with 19 CFR 351.401(f), we are not treating Dongkuk and DKI as a single entity for the purposes of these final results.

Because we have decided that Dongkuk and DKI are not a single entity (*i.e.*, the "Dongkuk Group," as petitioners call it), there is no basis on the record to combine POSCO's ownership shares in Dongkuk and DKI into a combined ownership share of the supposed single entity. Accordingly, we continue to find that POSCO's ownership in Dongkuk does not rise to the level of affiliation within the meaning of section 771(33)(E) of the Act.

### **Comment 3: Whether Commerce Should Apply AFA to Dongkuk Because it Failed to Report Certain Information Related to POSCO**

#### *Petitioners' Dongkuk Case Brief*

- Dongkuk has repeatedly denied that it is affiliated with POSCO.<sup>95</sup> As a result of its claims, there are two significant flaws in the record of this review.
  - POSCO and POSCO's affiliates who supplied Dongkuk with HRC were reported as unaffiliated suppliers. This distorted its unaffiliated purchase prices which are necessary to perform the major input analysis.<sup>96</sup>
  - POSCO's cost of production for HRC supplied to Dongkuk is not on the record of this review. As such, Commerce is unable to determine whether Dongkuk purchased

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<sup>90</sup> See 19 CFR 351.401(f).

<sup>91</sup> See Dongkuk AQR at A-2.

<sup>92</sup> *Id.* at A-3.

<sup>93</sup> *Id.* at A-2 and A-11.

<sup>94</sup> *Id.* at A-11.

<sup>95</sup> See Petitioners' Dongkuk Case Brief at 10.

<sup>96</sup> *Id.* at 12.

POSCO-produced HRC at a price above POSCO's cost of production. Without of this information, Commerce is unable to determine if an adjustment to Dongkuk's input purchase price is necessary.<sup>97</sup>

- Commerce should decline to use any information submitted by Dongkuk in this review and apply AFA because Dongkuk has failed to cooperate to the best of its ability by refusing to provide critical information with respect to its affiliated supplier of HRC.<sup>98</sup>
- Commerce should apply the highest rate in the petition, *i.e.*, 86.34 percent, as total AFA to Dongkuk. In the alternative, Commerce should apply partial AFA by adjusting Dongkuk's HRC acquisition cost using subsidy rate from *Hot-Rolled Steel Korea CVD Order*.<sup>99</sup>

#### *Dongkuk's First Rebuttal Brief*

- Dongkuk was not affiliated with POSCO during the POR. Therefore, it was not obligated to report POSCO as an affiliate for the major input test or POSCO's cost of production for HRC. There is no information missing from the record of this review. As such, the use of facts otherwise available, much less AFA is not warranted.<sup>100</sup>
- Even if Commerce determines that Dongkuk and POSCO were affiliated in these final results, Commerce cannot apply total or partial AFA. Commerce never instructed Dongkuk to report POSCO as an affiliated party. Thus, the record shows that Dongkuk fully responded to Commerce's questionnaires throughout this review.<sup>101</sup>

**Commerce's Position:** As noted in Comment 2, we have found that Dongkuk was not affiliated with POSCO during the POR. As such, Dongkuk was not required to report POSCO's COP for the HRC it supplied to Dongkuk and the application of AFA is unwarranted.

#### **Comment 4: Whether to Adjust the Price of Dongkuk's Purchases from JFE Steel Corporation**

##### *Petitioners' Dongkuk Case Brief*

- Dongkuk's reported market price for HRC is unusable because it is distorted by the inclusion of purchase prices from POSCO and other potentially affiliated HRC suppliers. Commerce should increase JFE Steel Corporation's (JFE Steel) transfer price to reflect the average MEPS Japan price, a market price that is greater than both JFE Steel's transfer price and cost of production.<sup>102</sup>

##### *Dongkuk's First Rebuttal Brief*

- The petitioners fallaciously asserted Dongkuk, through its alleged affiliation with POSCO, may be potentially affiliated with another Japanese HRC supplier. The petitioners have not pointed to any basis under section 771(33) of the Act to find that Dongkuk was affiliated

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<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at 14 (citing *Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018) (*Biodiesel Indonesia Inv. Final*), IDM at Comment 9).

<sup>99</sup> See *Hot-Rolled Steel Korea CVD Order*.

<sup>100</sup> See Dongkuk Rebuttal Brief at 6.

<sup>101</sup> *Id.*

<sup>102</sup> See Petitioners' Dongkuk Case Brief at 21.

with this Japanese HRC supplier during the POR. Given that Dongkuk had other clearly unaffiliated HRC suppliers from which Commerce can identify a market rate in the application of the major input rule, Commerce has no need to compare Dongkuk's purchases from JFE Steel with the MEPS Japan price.<sup>103</sup>

**Commerce's Position:** As noted in Comment 2, we have found that Dongkuk was not affiliated with POSCO during the POR. As such, Dongkuk properly reported the purchase price of its HRC purchases from POSCO as market prices and there is no basis to make the adjustment proposed by petitioners.

#### **Comment 5: Whether to Apply AFA to Freight Provided by Dongkuk's Affiliated Provider**

##### *Petitioners' Dongkuk Case Brief*

- Commerce should find that AFA is warranted for the final results because Dongkuk has not demonstrated that freight charges were made at arm's-length. Dongkuk failed to provide complete information regarding the "market rate" for inland freight charged by its affiliated freight company, Intergis Co. Ltd. (Intergis), and has failed to demonstrate that the price it paid for transportation is comparable to any market price.<sup>104</sup>
- Dongkuk incorrectly claims that its freight expenses are procured at arm's-length because it paid more than Intergis paid to an unaffiliated subcontractor. Simply because Intergis can recover its costs does not indicate that the transactions occurred at an arm's-length basis. While Dongkuk claims that it charges "comparable rates" to unaffiliated companies, the transactions identified by Dongkuk are solely for unloading and loading services and not international freight or trucking expenses. Moreover, the transactions identified by Dongkuk demonstrate that Intergis charges its affiliate less than the unaffiliated customer.<sup>105</sup>
- Dongkuk failed to establish a market rate, Commerce is unable to consider whether the transaction occurred at arm's-length, same as in the underlying investigation with respect to Hyundai's international freight. Accordingly, Commerce should determine that, as AFA, Dongkuk's freight expenses - for the production of the subject merchandise and for the sales of the finished product - were not procured at an arms-length.<sup>106</sup>
- In its *Preliminary Results*, Commerce determined that a downward adjustment was necessary because Dongkuk allegedly paid more to Intergis than to unaffiliated freight companies. While Dongkuk might have paid more on certain transactions than it paid to other unaffiliated freight companies, Commerce should not apply a downward adjustment for freight expenses because Dongkuk has not provided requisite information to prove that its expenses were procured at arm's-length.
- Commerce's practice is to apply an AFA rate as stated in *Carton-Closing Staples from China*. Dongkuk would receive a more favorable result if Commerce continues to downwardly adjust its freight expenses. Commerce should instead apply AFA to Dongkuk's freight costs.

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<sup>103</sup> See Dongkuk's First Rebuttal Brief at 6.

<sup>104</sup> See Petitioners' Dongkuk Case Brief at 21-23.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

### *Dongkuk's First Rebuttal Brief*

- Through Intergis, Dongkuk procured the transportation services other than the loading and unloading portion of domestic brokerage and handling (*i.e.*, DBROKU) from unaffiliated transportation companies. That is, Intergis arranged for, but did not itself provide, all of the transportation services, except for the loading and unloading portion of DBROKU.<sup>107</sup>
- Contrary to the petitioners' contention, Dongkuk provided the prices charged by the unaffiliated transportation companies and demonstrated that Intergis made a profit on its resale of these services to Dongkuk.
  - For domestic inland freight to distribution warehouse (*i.e.*, INLFTWH), Dongkuk submitted the "Transaction Detail" documentation from the unaffiliated trucking company showing the unit price charged by the unaffiliated trucking company. Dongkuk also provided schedules for the rates charged by the unaffiliated transportation company and copies of the contracts with the unaffiliated transportation company.
  - For domestic inland freight to the customer (*i.e.*, INLFTCH), Dongkuk provided documentation demonstrating the price charged by the outside trucking company for a sample transaction in the section B questionnaire response. Dongkuk also provided schedules for the rates charged by the unaffiliated transportation company and copies of the contracts with the unaffiliated transportation company.
  - For Inland Freight - Plant/Warehouse to Port of Exportation (*i.e.*, DINLFTPU), Dongkuk demonstrated the amount charged by the unaffiliated trucking company. Dongkuk also provided schedules for the rates charged by the unaffiliated transportation company and copies of the contracts with the unaffiliated transportation company.
  - For the loading and unloading/lashing portion of Brokerage and Handling Incurred in the Country of Manufacture (*i.e.*, DBROKU), Dongkuk submitted invoices showing Intergis' charges to unaffiliated customers.
  - For International Freight (*i.e.*, INTNFRU), Dongkuk submitted the invoice from the unaffiliated international freight company showing the price it charged.
- Where Intergis had comparable transactions with unaffiliated companies, Dongkuk provided information and documentation on the prices charged. For the other services, the petitioners ignore Dongkuk's explanation that Intergis did not provide comparable services to unaffiliated companies and therefore in such cases it was not possible to provide documentation. Dongkuk also explained that it did not obtain transportation services from unaffiliated vendors.
- Dongkuk fully responded to the initial questionnaire and supplemental questionnaire to place on the record all the information necessary for Commerce's analysis. Dongkuk has not failed to provide any requested information by the established deadlines or in the form and manner requested. Moreover, Dongkuk has not impeded this proceeding, but has provided detailed, comprehensive responses to all the Commerce' questions, which demonstrates that the information provided is verifiable. Thus, none of the statutory bases for applying facts available is present.

**Commerce's Position:** We have not applied AFA to Dongkuk's freight expenses for these final results.

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<sup>107</sup> See Dongkuk's First Rebuttal Brief at 7-11.



The evidence on the record establishes that Dongkuk is affiliated with Intergis within the meaning of section 771(33)(E) of the Act.<sup>108</sup> Pursuant to section 773(f)(2) of the Act, “{a} transaction directly or indirectly between affiliated parties may be disregarded if, in the case of any element of value required to be considered, the amount representing the element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration.” In determining whether to use transactions between affiliated parties, Commerce’s practice is to compare prices of transactions the respondent paid to affiliated suppliers (*i.e.*, transfer price) to: (1) prices of transactions the respondent paid to unaffiliated suppliers for the similar service (*i.e.*, arm’s-length test);<sup>109</sup> or (2) price of transactions the affiliated suppliers paid to unaffiliated contractors for the same service (*i.e.*, acquisition cost) plus the affiliated suppliers’ SG&A expenses.<sup>110</sup> In instances where the affiliated supplier functions as a middleman between the respondent and the unaffiliated producer, Commerce uses the affiliate’s company-wide SG&A expense rate as a component in its calculations rather than the SG&A expense rate of the division responsible for such transactions.<sup>111</sup>

The petitioners argue that Dongkuk failed to provide complete information regarding the “market rate” for inland freight charged by Intergis to demonstrate that the price Dongkuk paid for transportation is comparable to any market price and to prove that its expenses were procured at arm’s-length. This argument apparently interprets the arm’s-length test so as to compare the price of transactions Dongkuk paid to Intergis with the price of transactions Intergis charged to its unaffiliated customers. Such an interpretation is inconsistent with Commerce’s normal arm’s-length test, which would compare the price that Dongkuk paid to Intergis with the price Dongkuk paid to an unaffiliated supplier for similar services. This comparison was not possible as Intergis supplied all Dongkuk’s freight services.

The petitioners argue that Dongkuk failed to provide complete information regarding the “market rate” for inland freight charged by Intergis but do not identify where on the record Dongkuk failed to respond to a request for information. We requested Dongkuk to demonstrate that the services were produced at arm’s-length.<sup>112</sup> In its response,<sup>113</sup> Dongkuk explained that Integris:

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<sup>108</sup> Intergis is a publicly traded company. See Dongkuk AQR at Attachments A-7 and A-9; Dongkuk’s January 29, 2018 BQR at B-33 through B-36; and Dongkuk’s January 29, 2018 CQR at C-31 and C-33.

<sup>109</sup> Pursuant to Commerce’s current arm’s length test, for such sales to be “in the ordinary course of trade,” the weighted-average prices of transactions between affiliates must be between 98 percent and 102 percent of the weighted-average prices of transactions between unaffiliated parties (98-102 percent band test). Otherwise, transactions between affiliates are generally considered outside the ordinary course of trade. Commerce adopted the 98-102 percent band test in 2002, which modified the arm’s length test described in the *Preamble*. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002); see also *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27355 (May 19, 1997) (*Preamble*).

<sup>110</sup> See *CORE Korea Inv. Final IDM* at Comment 8 (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014) (*OCTG Korea Inv. Final*), *IDM* at Comment 9).

<sup>111</sup> See *CORE Korea Inv. Final IDM* at Comment 8 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from the Republic of Korea*, 77 FR 75988 (December 26, 2012) (*Washers Korea Inv. Final*), *IDM* at Comment 1).

<sup>112</sup> See Commerce’s May 24, 2018 Letter to Dongkuk re: Supplemental Questionnaire at 4.

<sup>113</sup> See Dongkuk’s June 20, 2018 Supplemental Questionnaire Response at 5.

(1) subcontracted ocean transportation, inland trucking and shoring and provided tables comparing rates to Dongkuk and to subcontractor by destination; and (2) conducted the loading and unloading services by itself and provided sample invoices to Dongkuk and to an unaffiliated customer.<sup>114</sup> Thus, contrary to the petitioners' claims, there is no basis to determine that Dongkuk failed to provide requested information and no basis to apply AFA to Dongkuk's freight expenses.

For the final results, we tested transfer prices against Intergis' acquisition costs plus SG&A expenses, and find those transfer prices cover the full cost of Intergis.<sup>115</sup> Thus, the transactions with Intergis reflect arm's length prices. Accordingly, for the final results we removed the downward adjustment to freight expenses made in the *Preliminary Results* in accordance with section 773(f)(2) of the Act.

### **Comment 6: Whether to Grant a CEP Offset to Dongkuk**

#### *Dongkuk's First Case Brief*

- When conducting its CEP offset analysis, Commerce's practice is to consider the number of selling functions, as well as their weight and intensity, performed by the respondent in the home market and for CEP sales.
- Dongkuk has identified significant differences in full range of selling functions adequate to justify granting a CEP offset.<sup>116</sup> Specifically, Dongkuk has provided detailed information showing that it performed twelve selling functions and at a higher level of intensity for home market sales than it did for CEP sales to Dongkuk International, Inc. (DKA).
- Commerce has considered the role played by the U.S. affiliate to be relevant in its decision to grant a CEP offset.<sup>117</sup> Commerce has reasoned that NV level of trade (LOT) was more advanced than the CEP LOT because the foreign producer performed selling activities in the home market that were handled by the U.S. affiliate in the U.S. market. DKA performs substantial selling activities in the United States. It logically follows that without DKA, Dongkuk itself would be required to fill in the gap and perform the same types of selling activities that DKA would have performed. Consequently, the home market LOT is necessarily more advanced than the CEP LOT after disregarding the selling activities performed by DKA.

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<sup>114</sup> *Id.* at Appendix S-61.

<sup>115</sup> See Final Calculation Memorandum. We used the average of 2016 and 2015 SG&A expense ratios for the POR.

<sup>116</sup> See Dongkuk's First Case Brief at 10 (citing 19 CFR 351.412(c)(2); *Roller Chain Japan AR Final*, *Stainless Steel Sheet and Strip in Coils from Germany*; *Notice of Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 45024 (August 8, 2006) (*Stainless Coils Germany AR 04-05 Prelim*) unchanged in *Stainless Steel Sheet and Strip in Coils from Germany*; *Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 74897 (December 13, 2006) (*Stainless Coils Germany AR 04-05 Final*); *Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 78417 (December 24, 2002) (*Stainless Pipe Taiwan AR Final*), IDM at Comment 6.

<sup>117</sup> See Dongkuk First Case Brief at 11 (citing *Stainless Coils Germany AR 04-05 Prelim* unchanged in *Stainless Coils Germany AR 04-05 Final*; *Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 70 FR 12443 (March 14, 2005) (*CORE Flat Korea AR Final*), IDM at Comment 4; *Mittal Steel USA ISG, Inc. v. United States*, Slip Op. 07-117 (CIT 2007); *Stainless Pipe Fitting Taiwan AR Final* IDM at Comment 6).

- Moreover, Commerce may consider the difference in levels of indirect selling expenses (ISE) attributable to home market and CEP sales when analyzing whether a CEP offset is warranted.<sup>118</sup> Consistent with Commerce's analysis in *Shrimp Thailand Inv. Final*, Dongkuk has shown that it incurred substantially higher ISE on home market sales than on CEP sales to DKA, which further demonstrating that home market sales were made at a more advanced LOT than CEP sales to DKA.<sup>119</sup>

#### *Petitioners' First Dongkuk Rebuttal Brief*

- Commerce correctly determined that Dongkuk did not perform substantially more selling activities for home market sales at a greater degree and intensity than those for its performed CEP sales through DKA. Commerce examines four categories of selling functions, for which differences must be so significant as to alter the establishment of the NV, EP and CEP prices. An analysis of each of the four selling function categories demonstrates no evidence that the home market LOT as a whole is sufficiently more advanced than the CEP LOT to warrant a CEP offset.<sup>120</sup>
- Dongkuk's claims that it had more intense home market selling functions, based on 12 out of 23 functions, are unsupported and are undermined by record evidence. Dongkuk's argument that its home market sales are made at more advanced LOT than its CEP sales is contradicted by extensive evidence on the record, importantly by DINDIRSU, INTNFRU, DINVCARU DBROKU reported in U.S. sales database. The record shows that Dongkuk provided virtually almost all sales services to DKA that it would provide to an unaffiliated customer. Moreover, Dongkuk performed these selling functions for its CEP sales at a nearly identical level of intensity it did for its home market sales.
- A comparison of Dongkuk's ISE incurred for home market and CEP sales is inappropriate. Dongkuk's reliance on *Shrimp Thailand Inv. Final* is unavailing. In that case, Commerce denied a CEP offset to the respondent after it determined that minor differences in selling functions were not material. Moreover, a larger ISE ratio for home market sales, alone, does not overturn the record evidence concluding selling function intensity levels are essentially identical between home market sales and for CEP sales. A conclusion cannot be drawn based solely on ISE ratios because the effort at which selling, and marketing functions are performed is not directly quantifiable into expenses.<sup>121</sup>
- The determination on whether a CEP offset should be granted depends on whether Dongkuk demonstrably engaged in several selling functions with a higher intensity regarding its home

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<sup>118</sup> *Id.* at 2-3 (citing *Koyo Seiko Co., Ltd. v. United States*, 8 F. Supp. 2d 862, 864 (CIT 1998); *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1315 (Fed. Cir. 2001); *Roller Chain, Other Than Bicycle, from Japan: Final Results of Antidumping Duty Administrative Review, and Determination Not To Revoke in Part*, 61 FR 64322 (December 4, 1996) (*Roller Chain Japan AR Final*); *Corus Eng'g Steel Ltd. v. United States*, Slip Op. 03-110 at 10 (CIT 2003); *Mittal Steel USA, Inc. v. United States*, Slip Op. 07-117 at 25 (CIT 2007); *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004) (*Shrimp Thailand Inv. Final*), IDM at Comment 5).

<sup>119</sup> *Id.* at 9-10.

<sup>120</sup> See Petitioners' First Dongkuk Rebuttal Brief at 7 (citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 47347 (July 21, 2016) (*HWR Pipes Tubes Korea Inv. Final*), IDM at 46).

<sup>121</sup> *Id.* at 18.

market sales compared to CEP sales to DKA. Further, Dongkuk's reliance on prior cases is misplaced. As explained in *ESB Rubber Mexico Inv. Final*,<sup>122</sup> a determination of whether to grant a CEP offset is, necessarily, a fact-specific inquiry that must be made based on the record of the antidumping proceeding and based on the selling activities of the respondent in question. In that case, Commerce denied a CEP offset where the respondent argued that its affiliated U.S. importer provided virtually all the selling functions with respect to the end-user customer in the U.S. market and {respondent} conducted all selling functions in the home market.<sup>123</sup>

**Commerce's Position:** We disagree with Dongkuk that Commerce should grant a CEP offset adjustment to NV in the final results of review, and affirm our finding from the *Preliminary Results* that, based on the totality of the facts and circumstances, a CEP offset is not warranted pursuant to section 773(a)(7)(B) of the Act.<sup>124</sup>

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same LOT as the U.S. sales. According to 19 CFR 351.412(c)(2), sales are made at different LOTs if they are made at different marketing stages (or their equivalent), and substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>125</sup> To determine if normal value sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.<sup>126</sup>

When Commerce is unable to match U.S. sales to sales in the home market at the same LOT as the EP or CEP sale, Commerce may compare the U.S. sales to sales at a different LOT in the home market. In comparing EP or CEP sales at a different LOT in the home market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of CEP but the data available do not provide a basis to determine whether the difference in LOTs is demonstrated to affect price comparability (*i.e.*, no LOT adjustment is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>127</sup>

As an initial matter, we note that Commerce is not necessarily bound by its determinations in a prior segment of a proceeding because each segment has its own unique factual record.<sup>128</sup> Commerce must examine each record on its own merits.

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<sup>122</sup> See *Emulsion Styrene-Butadiene Rubber from Mexico: Final Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 33062 (July 19, 2017) (*ESB Rubber Mexico Inv. Final*), IDM at 15.

<sup>123</sup> See *ESB Rubber Mexico Inv. Final* IDM at 14.

<sup>124</sup> See Preliminary Decision Memorandum at 23.

<sup>125</sup> See *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (Aug. 18, 2010) (*Orange Juice from Brazil*), and accompanying IDM at comment 7.

<sup>126</sup> See 19 CFR 351.412(c)(2).

<sup>127</sup> See *Orange Juice from Brazil*, IDM at comment 7.

<sup>128</sup> See *e.g.*, *Pakfood Public*, 34 CIT 1122, 1138 (2010); see also *Alloy Piping*, 33 CIT 349, 358-59 (2009) (citing *Timken U.S. Corp. v. United States*, 434 F.3d 1345 (Fed. Cir. 2006)).

In the *Preliminary Results*, we did not analyze the selling functions performed by DKA for CEP sales.<sup>129</sup> Our LOT analysis found that the selling activities Dongkuk performed for its home market sales were virtually the same as those performed for its CEP sales and that it performed those selling functions at the same or comparable intensity levels in each market. We also noted that the main differences were that Dongkuk provided inventory maintenance and warranty to its home market sales but not to its CEP sales, while Dongkuk acted as the U.S. importer of record on its CEP sales. As importer of record, Dongkuk paid U.S. customs duties, wharfage and marine insurances. We found such differences to be insignificant to treat CEP sales as a distinguishable LOT. Consequently, we found no basis for considering a CEP offset pursuant to section 773(a)(7)(B) of the Act.<sup>130</sup>

The decision to grant a CEP offset is a fact-specific inquiry that must be made based on the record.<sup>131</sup> In order to grant a CEP offset adjustment to normal value (NV), the Department must first determine that the NV LOT is more remote from the factory than the CEP LOT by examining whether sales are made at different marketing stages, as set forth in section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). Once this determination is made, Commerce examines whether there is available data to permit a LOT adjustment, in accordance with section 773(a)(7)(B) of the Act. Dongkuk's claim that it has shown that it performs substantially more selling functions at a higher intensity for its home market sales than it does for its CEP sales is not supported by the record.<sup>132</sup> We continue to find that the selling activities Dongkuk performed for its home market sales were virtually the same as those performed for its CEP sales and that it performed those selling functions at the same or comparable intensity levels in each market.

While there may be some differences in selling functions, these differences are limited, and are not sufficient to find the NV LOT constitutes a more advanced stage of distribution than the CEP LOT. Therefore, for the final determination, we continue to find that a CEP offset adjustment to NV is not warranted.

Finally, we examined Dongkuk's argument that its substantially higher home market ISE ratio is evidence that its home market sales are made at a more advanced LOT than its CEP sales. We note that Dongkuk's home market ISE is derived from allocation based on percentages of the salary and bonus of its staff.<sup>133</sup> However, Dongkuk has not established the relationship between staff compensation and selling functions. Thus, we find that Dongkuk's higher home market ISE is not necessarily an indication of a more advanced home market LOT. Because we continue to find that Dongkuk's home market sales and CEP sales were made at the same LOT, we find that there is no basis for a CEP offset pursuant to section 773(a)(7)(B) of the Act.

### ***Hyundai Comments***

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<sup>129</sup> The starting price for CEP sales reflect adjustments under section 772(d) of the Act. *See Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>130</sup> *See Preliminary Decision Memorandum* at 23.

<sup>131</sup> *See ESB Rubber Mexico Inv. Final and accompanying IDM* at 15

<sup>132</sup> *See Dongkuk's June 8, 2018 Supplemental Questionnaire Response* at Appendix S-4.

<sup>133</sup> *See Dongkuk BQR* at B-45.

## Comment 7: Whether Commerce Should Apply Total Adverse Facts Available to Hyundai

### *Petitioner's First Hyundai Case Brief*

- Hyundai's responses have major problems: (1) the misallocation of U.S. price for its sales of after service auto parts; (2) the failure to provide POR average CONNUM specific cost data; (3) the failure to submit one portion of its first supplemental section D response; and (4) the failure to disclose an intermediate processor close supplier relationship. Each of these major problems warrants the application of total AFA to Hyundai.<sup>134</sup>
- Taken together, these issues show a complete and sustained failure by Hyundai to cooperate to the best of its ability, which warrants the application of total AFA.<sup>135</sup>
- While Hyundai did submit responses to Commerce's questionnaires, Commerce should not mistake the submissions for cooperative behavior. Hyundai's "responses have failed to provide the information sought by {Commerce} in the manner and form requested."<sup>136</sup>
- Commerce is justified, under section 776(a)(2) of the Act, to apply total AFA to Hyundai, and, importantly, Commerce has satisfied the requirements of section 782 of the Act by providing Hyundai multiple opportunities to remedy its errors through supplemental questionnaires.<sup>137</sup>
- Hyundai clearly failed to put forth its maximum effort to provide accurate and complete information in this review.<sup>138</sup>
- Commerce must "ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully," and the selected AFA margin should "deter future uncooperative behavior."<sup>139</sup>
- As total AFA, as authorized by the statute, Commerce should apply a margin of 86.34 percent to Hyundai.<sup>140</sup>

### *Hyundai's First Rebuttal Brief*

- The petitioners have failed to demonstrate that Hyundai has failed to cooperate to the best of its ability. Therefore, the petitioners' proposal of total AFA, or even partial AFA, is misguided and not in accordance with the law.<sup>141</sup>

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<sup>134</sup> See Petitioner's First Hyundai Case Brief at 51-55.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*; *Taian Ziyang Food Co. v. United States*, 637 F. Supp. 2d 1093, 1115 (CIT 2009) (*Taian Food*); and section 776(a)(2) of the Act.

<sup>137</sup> See Petitioner's First Hyundai Case Brief at 51.

<sup>138</sup> *Id.* at 52; see also *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

<sup>139</sup> See Petitioner's First Hyundai Case Brief at 54 (citing *PAM, S.p.A. v. United States*, 31 CIT 1008 (2007) (*PAM S.p.A.*)); see also *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55796 (August 30, 2002); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998); see also *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1338-39 (Fed. Cir. 2002).

<sup>140</sup> *Id.* at 54-55; see section 776(b) of the Act; see also *Certain Corrosion-Resistant Steel Products from Italy, India, the People's Republic of China, the Republic of Korea, and Taiwan: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 37228 (June 30, 2015).

<sup>141</sup> See Hyundai's First Rebuttal Brief at 42.

- The U.S. Court of Appeals for the Federal Circuit (Federal Circuit) has found that a respondent satisfies the “best of its ability” standard under section 776(b) of the Act when it “puts forth its maximum effort to provide {Commerce} with full and complete answers to all inquiries in an investigation.”<sup>142</sup>
- Commerce’s AFA findings are unsupportable when, “the record does not support a finding that {the respondent} failed to act to the best of its ability to comply with the information requests in the form in which {Commerce} actually communicated those requests.”<sup>143</sup>
- None of the petitioners’ arguments for AFA undermine the credibility of Hyundai’s reporting, and even if they did, they are limited to discreet portions of Hyundai’s responses. Therefore, Commerce may not use total AFA in this proceeding.<sup>144</sup>

**Commerce’s Position:** We disagree with the petitioners that the application of total adverse facts available for Hyundai is warranted. The petitioners argue that Hyundai: (1) misallocated U.S. price for its sales of after service auto parts; (2) failed to provide POR average CONNUM specific cost data; (3) failed to submit one portion of its first supplemental section D response; and (4) failed to disclose an intermediate processor close supplier relationship. The record of this review does not support an application of total facts available, let alone total AFA.

Sections 776(a)(1) and 776(a)(2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply facts otherwise available in reaching the applicable determination if necessary information is not on the record, or if an interested party: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act.

Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information.

Section 782(d) of the Act provides that, if Commerce determines that a response to a request for information does not comply with the request, Commerce will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, Commerce may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

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<sup>142</sup> *Id.* at 43 (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon*)).

<sup>143</sup> *Id.* at 43 (citing *Shantou Red Garden Foodstuff Co., Ltd. v. United States*, 815 F. Supp. 2d 1311, 1319 (CIT 2012) (*Shantou Red Garden*)).

<sup>144</sup> *Id.* at 44 (citing *Krupp Thyssen Nirosta GmbH v. United States*, 24 CIT 666, 672-73 (2000) (*Krupp Thyssen*); *Wash. Int’l Ins. Co. v. United States*, 34 CIT 171, 173 (2010) (*Wash International*), *aff’d*, 409 Fed. Appx. 346 (CAFC 2011); *Shandong Huarong*, 435 F. Supp. 2d at 1273).

Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting from among the facts otherwise available.

With respect to the petitioners' allegation that Hyundai misallocated U.S price for its sales of after service auto parts (AS parts), we agree with the petitioners that Hyundai misapplied the methodology it used for the U.S. price allocation with respect to AS parts. The misallocation affects many of the reported adjustments, including further manufacturing charges, movement charges, and selling expenses, leading to overallocation of the invoice price. However, because Commerce did not provide any supplemental questions, or clarify instructions, on how to report AS Parts sales data, we find that we cannot apply adverse facts available as argued by the petitioners. For detailed discussion of that issue, *see* Comment 8, below.

We determined that the issues raised by the petitioners with respect Hyundai's cost reporting do not meet the threshold for AFA. However, we agree with the petitioners in part that Commerce should continue to adjust the incorrect and aberrant cost variances in DIRMAT, OTHDIRMAT, DIRLAB, VOH and FOH. Our analysis on this issue is discussed in detail at Comment 9, below.

We note that in the *Preliminary Results*, necessary information was not on the record of this review because Hyundai failed to submit a portion of its narrative in its first supplemental section D response, and Commerce applied partial AFA to certain CONNUM(s) Hyundai sold to the United States during the POR. However, Commerce issued a post-prelim supplemental questionnaire, and the missing information has since been placed on the record of this review. Therefore, we are no longer applying partial AFA to those CONNUM(s). For a detailed discussion, *see* Comments 10 and 13, below.

Regarding the close supplier/intermediate processor relationship, we determine that Hyundai has no ownership in the intermediate U.S. processors at issue. Further, as explained in Comment 2 above, for a close supplier relationship to rise to the level of "control" such that the parties are affiliated, the SAA and our practice state that one party must be reliant on the other. We determined the documentation placed on the record by the petitioners with respect to certain intermediate processors is speculative, incomplete, and not relevant to our affiliation analysis. Information on the record shows that each of the intermediate U.S. processors and/or its affiliates produces components for automotive and non-automotive companies that are not affiliated with Hyundai. For a full discussion on this issue, *see* Comment 11, below.



## **Comment 8: Whether Hyundai Overallocated U.S. Price to the CORE Input of its U.S. Sales of After-Service (AS) Auto Parts**

### *Petitioners' First Hyundai Case Brief*

- Commerce is required to calculate a margin for all U.S. sales of subject merchandise including those of AS auto parts.<sup>145</sup>
- Hyundai stated that it used the methodology elucidated in *Mexican Galvanized Wire* to allocate the gross per piece price of further-manufactured products, to the coils of subject merchandise.<sup>146</sup>
- However, Hyundai has grossly misapplied the methodology. The misallocation affects U.S. price by over allocating the proportion of the per piece AS auto part invoice price to the CORE input. The overallocation also affects all adjustments, including freight and selling expenses.<sup>147</sup>
- Since the AS auto parts did not consist solely of subject CORE inputs, Hyundai should not have allocated the entire invoice gross price per piece to only the CORE inputs.<sup>148</sup>
- Hyundai's AS auto parts data is so significantly and systemically flawed that Commerce should reject the relevant database in its entirety.<sup>149</sup>
- When faced with a similar circumstance in the *Preliminary Results*, Commerce applied a partial AFA rate to Hyundai's U.S. sales of a control number (CONNUM) for which it failed to timely answer Commerce's questions.<sup>150</sup> Thus, if Commerce does not apply total AFA to Hyundai, it should at least apply partial AFA to Hyundai's AS parts sales.<sup>151</sup>

### *Hyundai's First Rebuttal Brief*

- While the petitioners argue that Commerce, by statutory requirement must calculate a margin for all U.S. sales, they overlook the "special rule" for further manufactured goods with significant value added in the United States.<sup>152</sup>
- Hyundai timely<sup>153</sup> informed Commerce that a portion of its imported subject CORE was significantly further manufactured by affiliated parties in the United States, such that the first sale to an unaffiliated party was an automobile or an AS auto part. Hyundai therefore requested an exemption pursuant to section 772(e) of the Act.<sup>154</sup>
- Commerce "shall use alternate calculation methodologies if: (1) the 'value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise,' (2) there remains sufficient quantity of other usable transactions, and (3) {Commerce} determines the use of an alternative calculation method is appropriate."<sup>155</sup>

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<sup>145</sup> See Petitioners' First Hyundai Case Brief at 4.

<sup>146</sup> *Id.* (citing *Notice of Final Determination of Sales at Less Than Fair Value: Galvanized Steel Wire from Mexico*, 77 FR 17427 (March 26, 2012) (*Mexican Wire Rod*)).

<sup>147</sup> *Id.* at 4-5.

<sup>148</sup> *Id.* at 7-8.

<sup>149</sup> *Id.* at 11-12.

<sup>150</sup> *Id.* at 13-14; and PDM at 10.

<sup>151</sup> *Id.* at 12.

<sup>152</sup> See Hyundai's First Rebuttal Brief at 4-5.

<sup>153</sup> See 19 CFR 351.301(c)(1)(iii).

<sup>154</sup> See Hyundai's First Rebuttal Brief at 2.

<sup>155</sup> *Id.* at 5 (citing section 772(e) of the Act).

- The “special rule,” at section 772(e) of the Act, is an express statutory exception to the requirement that Commerce calculate a margin on all U.S. sales, and clearly applies in this case, where all three requirements of the statute are met.<sup>156</sup>
- 19 CFR 351.402(c)(2) provides that Commerce “estimate” the value added in the U.S., and if the added value exceeds 65 percent of the value of the imported merchandise, Commerce will “normally determine” that the prerequisite for applying the special rule has been satisfied.<sup>157</sup>
- Hyundai demonstrated that the value added in the United States ranged from 83 to 97 percent, and neither Commerce nor the petitioners challenged the calculations.
- In its request that Commerce exclude its sales of AS parts, Hyundai documented that that AS Parts, which comprise up 0.1 percent of Hyundai’s total POR sales quantity reported, are complex automobile parts containing a mix of subject and non-subject steel as wells as other materials.<sup>158</sup> Hyundai also documented that the quantity of subject CORE constitutes less than 1.5 percent of the weight of the finished AS part.<sup>159</sup>
- Commerce did not exclude Hyundai’s sales of AS parts. Moreover, it did not provide any instructions on how to report the AS parts sales data requested. Hyundai followed the same methodology as previously reported in its complex further manufacturing sales and cost data for its sales and costs of other further manufactured products.<sup>160</sup>
- Commerce stated in the *Preliminary Results* that the allocation methodology for gross-price per piece to AS parts was misapplied and excluded the sales from the preliminary margin analysis.<sup>161</sup>
- There is no basis for Commerce to apply adverse inferences to Hyundai’s AS parts data, as it has followed the methodology Commerce set out as appropriate. To date Commerce has not identified any deficiencies or requested any revisions in Hyundai’s reporting, nor did the petitioners identify any question Hyundai failed to respond to or data that differed from what was requested.<sup>162</sup>
- Pursuant to section 782(d) of the Act, Commerce has to promptly inform Hyundai of the nature of the deficiency and provide it with an opportunity to remedy or explain the deficiency, and without doing so, Commerce cannot resort to adverse facts available.
- The petitioners’ sole focus on the gross unit price concerns only half the equation, and there can be no distortion when the further manufacturing cost data are stated on the same basis.<sup>163</sup>
- Commerce’s section E questionnaire instructs to include all direct material costs incurred in the further manufacture of the subject merchandise in the field FURMAT, which is consistent with Commerce’s determination in *Silicon Metal from Brazil*.<sup>164</sup>

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<sup>156</sup> *Id.* at 5.

<sup>157</sup> *Id.* at 4-5.

<sup>158</sup> *Id.* at 3 and 6-7.

<sup>159</sup> *Id.* at 6.

<sup>160</sup> *Id.* at 3-4.

<sup>161</sup> *Id.* at 4.

<sup>162</sup> *Id.* at 7.

<sup>163</sup> *Id.* at 9.

<sup>164</sup> *Id.* at 9 (citing *Silicon Metal from Brazil: Affirmative Final Determination of Sales at Less Than Fair Value*, 83 FR 9835 (March 8, 2018) (*Silicon Metal from Brazil*), IDM at Comment 2.

- In *Silicon Metal from Brazil*, Commerce determined that the starting price should include the full starting price of the finished good, *i.e.*, subject and non-subject goods. For the further manufacturing costs (FURMANU), Commerce included non-subject goods.<sup>165</sup>
- There, Commerce recognized that the sales and cost data needed to be stated on the basis of the U.S. price per unit of subject merchandise for use in its margin programs. This is how Hyundai reported its sales and cost data for its AS Parts and is consistent with its reporting of the other sales and cost data.<sup>166</sup>
- Demonstrating this reporting methodology with a number example, Hyundai concludes that the petitioners' suggested approach would yield non-sensical results because they suggest allocating the price of the further manufactured good to subject and non-subject merchandise.<sup>167</sup>
- The petitioners' methodology does not consider the further manufacturing cost that is to be deducted, but is not included in the price, and thus should not be deducted therefrom. The petitioners' approach counters the basic principle that direct materials are deducted as a further manufacturing cost and would yield distorted results.<sup>168</sup>

**Commerce Position:** We agree with the petitioners and Hyundai that it is Commerce's practice and statutory obligation to calculate a margin on all sales of subject merchandise to the United States, pursuant to section 751(a)(2)(A) of the Act. For that reason, Commerce informed Hyundai that the inclusion of AS parts in the overall quantity of CORE examined for this administrative review would allow Commerce to fulfill its statutory obligation to calculate a dumping margin for Hyundai and requested Hyundai to revise its U.S. sales database to include its further manufactured AS parts in its reporting.<sup>169</sup> However, in the *Preliminary Results*, Commerce noted possible distortions caused by Hyundai's allocation methodology for those AS parts and decided not to use Hyundai's third database.<sup>170</sup>

Hyundai argues that Commerce should have exercised the "special rule" and exempted reporting for AS auto parts. Section 772(e) of the Act states that when the respondent sells the subject merchandise through an affiliated importer, and the value added by that affiliate substantially exceeds the value of the subject merchandise, Commerce may use an alternative calculation method for constructed export price. The alternative calculation method bases constructed export price for the sales to affiliates on the respondent's sales to unaffiliated purchasers; or, if there are insufficient sales to unaffiliated purchasers, to use some other reasonable methodology. Hyundai is affiliated with Hyundai Motors and Kia Motors, each of which have major automobile production facilities in the United States. The substantial majority of CORE that Hyundai sells in the United States is processed into Hyundai Motor or Kia Motor automobiles in the United States. Moreover, this further processing is conducted by affiliated parties in the United States such that the first unaffiliated customer in the United States is the car dealership.

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<sup>165</sup> *Id.*

<sup>166</sup> *Id.* at 9-10.

<sup>167</sup> *Id.* at 9-10.

<sup>168</sup> *Id.* at 10-11.

<sup>169</sup> See Commerce March 9, 2018 Letter re: Hyundai Steel Company's Exclusion Request (Commerce Response Exclusion Request).

<sup>170</sup> See Hyundai Preliminary Calculation Memorandum at 5.

Hyundai's exclusion requests covered CORE that was further processed into automobiles and CORE that was further processed into AS parts.<sup>171</sup> Commerce applied the "special rule" and exempted Hyundai from reporting its sales of CORE that was further processed in Hyundai Motor or Kia Motor automobiles by affiliates in the United States.<sup>172</sup> As noted above, these exempted sales accounted for a substantial majority of Hyundai's sales of CORE in the United States. Thus, even though the volume of AS parts sales was relatively small in proportion, Commerce requested Hyundai to report the sales of AS auto parts because we had already exempted reporting for a substantial majority of Hyundai's sales of subject merchandise from the dumping analysis and we found it inappropriate to exempt additional sales pursuant to the "special rule."<sup>173</sup> While Hyundai continues to argue that AS auto parts qualify for the "special rule," Commerce is not obligated to exempt such sales, as the "special rule" is intended to alleviate Commerce's burden, not the respondent's obligations.<sup>174</sup> Further, the CIT and the Federal Circuit have held that application of the "special rule" is discretionary, even when the statutory and regulatory criteria have been met.<sup>175</sup>

After examining the methodology used by Hyundai with respect to AS parts and the alternative approach suggested by the petitioners, we agree with petitioners that, in part, Hyundai misapplied the methodology it used for its U.S. price allocation with respect to AS auto parts. We agree that the misallocation affects many of the reported adjustments, including further manufacturing charges, movement charges, and selling expenses.<sup>176</sup> As noted above, Hyundai's AS auto parts are made from subject CORE coils, often from more than one subject CORE CONNUM, and significant quantities of other direct materials.

Hyundai's methodology first allocates the gross invoice price per piece of AS part<sup>177</sup> to the subject CORE input materials and then, after converting the allocated price to a metric ton basis, deducted the further manufacturing costs (FURMANU including the non-CORE inputs) and the total selling expenses and total movement expenses on a metric ton basis.<sup>178</sup> The petitioners

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<sup>171</sup> See Hyundai's December 26, 2017 AQR at 11-12 and Exhibits A-6 and A-7.

<sup>172</sup> See Commerce Response Exclusion Request.

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> See *Hyundai Steel Co. v. United States*, 282 F. Supp. 3d 1332, 1339 (CIT 2018) (citing *RHP Bearings Ltd. v. United States*, 288 F.3d 1334, 1344-46 (Fed. Cir. 2002)).

<sup>176</sup> Section E of Commerce's questionnaire instructs "to report the costs incurred for direct materials used to manufacture the subject merchandise, . . . This should include transportation charges and other expenses normally associated with combining the materials that become an integral part of the finished product sold in the United States." See Initial AD Questionnaire at E-8-9.

<sup>177</sup> Hyundai stated that it followed the *Mexican Galvanized Wire*, as it did in its prior section C response and data bases, allocating "the invoice line item to the individual constituent CONNUMs based on the relative cost of production of the CONNUMs contained in the finished product and calculated the reported CONNUM-specific gross unit price from the allocated amount. See Hyundai's April 6, 2018 CQR-AS Parts at C3-2-3.

<sup>178</sup> In *Silicon Metal from Brazil*, Commerce determined that the starting price should include the full starting price of the finished good, *i.e.*, subject and non-subject goods, and that Commerce for FURMANU included non-subject goods in its cost build-up. Commerce pointed out that by including the non-subject input of the downstream product, Commerce is relying on the respondent's books and records or that material in calculating the CEP on subject merchandise. However, in that case Commerce had all the information on the record, including the bills of materials separately identifying each product, the appropriate conversion factors, to recalculate all further manufactured selling expenses on the basis they were incurred, *i.e.*, the further manufactured product, *etc.*, to arrive

maintain that since AS auto parts do not only consist of subject CORE inputs, the invoice gross price of AS part pieces should be allocated to CORE and non-CORE input materials. We believe that neither Hyundai's nor the petitioners' starting points are inherently flawed, in that either approach could work, so long as the subsequent adjustments for further processing, other materials, selling expenses, movement expenses, etcetera, were also made on an equivalent basis, both in terms of the unit of measure and the allocation.

The issue with Hyundai's reporting methodology is that it first allocates the gross price to the subject CORE inputs and restates the amount on a metric ton basis. The resulting allocated prices per metric ton are the total invoice price split proportionally between the subject CORE input coils using their respective gross costs (*i.e.*, gross cost imbedding in the AS auto part). The resulting prices theoretically include not only the proportional revenue associated with the respective coils (*i.e.*, revenues covering the given CORE and its processing, selling, movement, and profit or loss), but also a portion of the revenue associated with the non-CORE materials. The other portion of the revenue associated with the non-CORE materials is allocated to the other half of the split invoice price (*i.e.*, that portion of the invoice price associated with the other CORE coil(s)). Hyundai errs in that it proceeds to subtract from such split prices the entire amount of the AS auto part's further manufacturing costs (exclusive of the other CORE coil(s)), selling expenses, and movement expenses, each stated on a metric ton basis. Subtracting the full amounts of the FURMANU, selling and movement creates distortions because all conversion and selling expenses, such as additional non-CORE material costs, freight expenses and inventory carrying costs, of the AS part are allocated entirely to the CORE content of the AS part. We do not believe that the record contains the necessary data to accurately calculate a margin for AS auto parts. As a result, Hyundai's AS parts data remain unusable.

As necessary information is not on the record, we must resort to facts available in accordance with section 776(a)(1) of the Act. There is no basis under 776(b) of the Act to find that Hyundai failed to cooperate to the best of its ability with respect to providing AS parts data. It responded to our request for information, and we did not request Hyundai to remedy any deficiency in its reporting methodology. As such, there is no basis to apply adverse facts available to Hyundai with respect to AS auto parts.

As neutral facts available, we will apply the weighted-average margin calculated for Hyundai's sales of tailor welded blanks to the quantity of subject merchandise included in the finished AS parts. Tailor welded blanks are a similar further manufactured product most closely resembling AS auto parts.

#### **Comment 9: Whether Hyundai Withheld CONNUM-Specific Costs and Submitted Aberrational Cost Data**

##### *Petitioners' First Hyundai Case Brief*

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at meaningful revenue calculation, cost of goods sold (COGS), selling and movement expenses for Commerce's CEP profit calculation. *See Silicon Metal from Brazil*, IDM at Comment 2. Here, we do not have that information on the record in a format to recalculate all the elements included in FURMANU.

- The statute and Commerce’s practice require CONNUM-specific costs, which “should reflect meaningful cost differences attributable to these different physical characteristics, {ensuring} that the product-specific costs accurately reflect the distinct physical characteristics of the products whose sales prices are used in {Commerce’s} dumping calculations.”<sup>179</sup>
- Furthermore, the statute states that, when making a DIFMER adjustment Commerce “will consider only differences in variable costs associated with the physical differences.”<sup>180</sup>
- In other cases, Commerce has found that Hyundai has failed to follow these requirements for reporting costs. In *CTL Plate from Korea*, Commerce found that Hyundai reported “differences in costs between CONNUMs {that} are not explained by the differences in the physical characteristics of those CONNUMs.”<sup>181</sup>
- Hyundai failed to report costs based on Commerce’s CONNUMs. This failure prevents Commerce from being able to accurately determine the sales-below-cost test, constructed export price profit, constructed value, the difference-in-merchandise adjustment, and ultimately, the dumping margin calculations.<sup>182</sup>
- Commerce requested CONNUM-specific cost data from Hyundai on three separate occasions. Hyundai has continued to withhold CONNUM-specific costs from Commerce. Accordingly, Commerce should not accept Hyundai’s cost data.<sup>183</sup>
- The cost data filed with Hyundai’s first supplemental response was not on a CONNUM-specific basis and contained numerous other problems.<sup>184</sup>
- Finally, Hyundai’s September 13, 2018 2<sup>nd</sup> SQR confirms that it has continued to withhold CONNUM-specific costs.<sup>185</sup>
- Hyundai did not report the direct material costs (DIRMAT) correctly. The reported DIRMAT costs do not reflect the CONNUM’s characteristics. According to Hyundai, “Quality and Yield Strength are dictated by the specification, which is achieved by the steel’s composition. Quality and Yield Strength are dictated by the specification, which is achieved by the steel’s composition.”<sup>186</sup>
- Hyundai might consume different thicknesses of substrate to produce the final CORE thickness product, that is not the same as the nominal thickness, which relates to the final

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<sup>179</sup> See Petitioner’s First Hyundai Case Brief at 17 (citing *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) IDM (CWP from Korea) at Comment 1).

<sup>180</sup> *Id.* at 17-18 (citing 19 CFR 351.411(b)).

<sup>181</sup> *Id.* at 18 (citing *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) IDM (*CTL Plate from Korea*) at 4-5).

<sup>182</sup> *Id.* at 19-20.

<sup>183</sup> *Id.* at 21; see also Hyundai’s February 1, 2018 Section D Questionnaire Response (Hyundai DQR); see also Commerce’s May 25, 2018 Letter re: First Supplemental Questionnaire to Sections A through E of Initial Questionnaire (Commerce’s First SQ for Hyundai) at 17-18; see also Hyundai’s September 13, 2018 Second Supplemental Questionnaire Response (Hyundai 2<sup>nd</sup> SQR) at 10-19.

<sup>184</sup> See Petitioner’s First Hyundai Case Brief at 23; see also Petitioners’ July 18, 2018 Letter, Significant Deficiencies in Hyundai Steel’s June 2018 Supplemental Questionnaire Response to Address in the Preliminary Results of this Review.

<sup>185</sup> See Petitioner’s First Hyundai Case Brief at 23; see also Hyundai 2<sup>nd</sup> SQR at 13 and 19.

<sup>186</sup> *Id.* at 24 (citing Hyundai 2<sup>nd</sup> SQR at 21).

thickness of the finished CORE coil. As such, the CORE thickness should have no direct impact on the reported DIRMAT costs.<sup>187</sup>

- Assuming that there is an indirect and unknown relationship between the cost per ton for hot-rolled substrate and final thickness, the cost of the substrate should decline when going from the thinnest to the thickest product. Thus, Hyundai's reported DIRMAT costs are illogical in both size and direction.<sup>188</sup>
- The inaccurate DIRMAT costs are noted for numerous CONNUMs. If Commerce does not apply total AFA, it should continue to adjust the incorrect and aberrant cost variances, as it did in the *Preliminary Results*.<sup>189</sup>
- Hyundai's reported other direct material costs (OTHDIRMAT) are unreliable in at least three ways.
  - Hyundai included refractories in OTHDIRMAT. Refractories are not a direct material cost, as they are not incorporated into the steel during the production process. Furthermore, Hyundai never identifies the other direct materials included in OTHDIRMAT.<sup>190</sup>
  - Hyundai admits that it incorrectly reported cost differences associated with different coating materials and processes that are not included in Commerce's CONNUM. Doing so has resulted in significant cost variations that are unrelated to the CONNUMs' physical characteristics.<sup>191</sup>
  - Hyundai has also reported negative OTHDIRMAT costs for numerous CONNUMs.<sup>192</sup>
- Commerce should reject Hyundai's OTHDIRMAT costs as reported. If Commerce does not apply total AFA, it should correct the errors evident in OTHDIRMAT by utilizing a similar methodology to that for DIRMAT.<sup>193</sup>
- Hyundai's costs do not accurately reflect the conversion costs associated with nominal thickness. Hyundai reported that the nominal thickness impacts the conversion costs, based on the rolling time, the reported conversion costs do not follow the logical cost trend for rolling steel.<sup>194</sup>
- The smoothing Commerce implemented at the *Preliminary Results* does not accurately calculate the correct cost trend for conversion costs, which should rise and fall with the degree of cold-rolling and other manufacturing differences. As such, partial AFA is warranted for Hyundai's DIRLAB, VOH, and FOH.<sup>195</sup>
- Hyundai's costs do not accurately reflect the conversion costs associated with nominal width. Hyundai explained that "nominal width results from a combination of rolling time and slitting, which again are allocated based on a combination of production time and production weight."<sup>196</sup>

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<sup>187</sup> *Id.* at 24.

<sup>188</sup> *Id.* at 25.

<sup>189</sup> *Id.* at 26.

<sup>190</sup> *Id.* at 27.

<sup>191</sup> *Id.* at 27-29.

<sup>192</sup> *Id.* at 29-30.

<sup>193</sup> *Id.* at 30.

<sup>194</sup> *Id.* at 31-33; *see also* Hyundai 2<sup>nd</sup> SQR at 21.

<sup>195</sup> *See* Petitioner's First Hyundai Case Brief at 33.

<sup>196</sup> *Id.* at 33 (citing Hyundai 2<sup>nd</sup> SQR at 21).

- Commerce’s smoothing does not accurately calculate the correct cost trend for conversion costs, which should rise and fall with the degree of cold-rolling and other manufacturing differences. As such, partial AFA is warranted for Hyundai’s DIRLAB, VOH, and FOH.<sup>197</sup>
- These issues combined call into question the accuracy of Hyundai’s reported costs for all CONNUMs. “By failing to accurately report the DIRMAT, OTHDIRMAT, DIRLAB, VOH, and FOH costs on CONNUM-specific basis, {Hyundai} has incorrectly shifted costs from one control number (CONNUM) to another.”<sup>198</sup>
- Since Hyundai reported inaccurate and unreliable CONNUM-specific costs, there is no way for Commerce to fully correct Hyundai’s costs in accordance with the statute.<sup>199</sup>

#### *Hyundai’s First Rebuttal Brief*

- The petitioners’ analysis of Hyundai’s different cost elements is wrong. Hyundai reported its costs on a CONNUM-specific basis.<sup>200</sup>
- The petitioners’ arguments show their “refusal to understand and acknowledge Hyundai’s explanations on how its costs are recorded in its process-based accounting system and explanations for the differing costs found between certain CONNUM pairs.”<sup>201</sup>
- There is no factual or legal basis for applying AFA to Hyundai, as its reported CONNUM-specific costs are reliable and verifiable.<sup>202</sup>
- Hyundai maintains its books and records in accordance with Korea’s generally accepted accounting principles, and Hyundai has reported CONNUM-specific costs and derived these costs from Hyundai’s actual accounting system.<sup>203</sup>
- Since real cost differences exist between different types of a single CONNUM characteristic, disparities in reported costs can arise for CONNUMs that are physically similar under Commerce’s CONNUM fields.<sup>204</sup>
- Commerce has found that it does not attempt to “account for every conceivable characteristic when selecting matching criteria. The criteria selection process allows Commerce to draw reasonable distinctions between products for matching purposes...”<sup>205</sup>
- The petitioners’ reliance on *CTL Plate from Korea* is inapposite. In that case, Commerce found certain instances where the differences in Hyundai’s reported costs between similar CONNUMs could not be explained by differences in the physical characteristics of those CONNUMs.<sup>206</sup>

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<sup>197</sup> *Id.* at 35.

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*; see also section 773(f)(1)(A) of the Act.

<sup>200</sup> *Id.* at 28.

<sup>201</sup> See Hyundai’s First Rebuttal Brief at 19.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.* at 19-20.

<sup>204</sup> *Id.* at 20.

<sup>205</sup> *Id.* at 21 (citing *Certain Circular Welded Non-Alloy Steel Pipe from Mexico; Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 23886 (May 23, 2018) IDM (CWP from Mexico) at Comment 3).

<sup>206</sup> *Id.* at 21-22 (citing *CTL Plate from Korea*, IDM at Comment 1).



- The CIT and Federal Circuit have affirmed Commerce’s practice of adjusting a respondent’s reported costs to more reasonably reflect CONNUM-specific costs when a respondent cannot offer meaningful evidence to explain the differences in costs.<sup>207</sup>
- Hyundai’s reporting of costs based on its books and records is in accordance with Commerce’s instructions, and case history.<sup>208</sup>
- Based on Commerce’s instructions in its second section D supplemental questionnaire, Hyundai revised its cost database such that the DIRMAT field contained the weighted average cost of the substrates. To respond to this instruction, Hyundai re-worked its direct material cost reporting by tracing the individual product costs through prior production processes back to the earlier production stages, segregating out the costs at each stage.<sup>209</sup>
- The record makes clear that neither AFA nor cost “smoothing” is appropriate. Should Commerce conclude an adjustment is warranted, it must limit the adjustment to the subset of CONNUMs identified as having potentially distortive costs.<sup>210</sup>
- Commerce has a statutory obligation of using costs as recorded on the company’s books and averaging them for the review period. Hyundai reported its costs as recorded in its normal cost accounting system on a product-specific basis, weight-averaged by CONNUM for the POR.<sup>211</sup>
- Its accounting system is process based, capturing the various cost elements on a product-specific basis.
- Hyundai applied plant-wide POR constituent ratios to segregate weighted-average CONNUM costs into Commerce’s prescribed cost elements (DIRMAT, OTHERDIRMAT, DIRLAB, VOH, and FOH), applying the overall ratio of costs experienced during the POR. Hyundai provided the overall mill ratio costs in Exhibit D-12.<sup>212</sup>
- The reported TOTCOM is CONNUM-specific and an accurate reflection of the physical characteristics of its products.
- Hyundai’s internal product codes do not uniformly correlate to Commerce’s CONNUM product characteristics, and a CONNUM, as defined by Commerce product characteristics, may include several internal product codes by Hyundai. In turn, an internal product code may meet the definition of more than one CONNUM.<sup>213</sup>
- In *Thai Plastic Bags CAFC* the Thai respondent explained to Commerce that disparities in the production quantities were largely responsible for the cost differences for nine pairs of physically similar CONNUMs.
- There, Commerce determined that the conversion costs did not reasonably reflect actual costs, and using facts otherwise available, without an adverse inference, reallocated the respondent’s labor and overhead costs on a per unit basis to diminish distortions.<sup>214</sup>

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<sup>207</sup> *Id.* at 22 (citing *Thai Plastic Bags Indus. Co. v. United States*, 853 F. Supp. 2d 1267, 1269 (CIT 2012), *aff’d*, *Thai Plastic Bags Indus. Co. v. United States*, 746 F.3d 1358, 1360-69 (Fed. Cir. 2014) (*Thai Plastic Bags CAFC*)).

<sup>208</sup> *Id.* at 23 (citing *Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination*, 82 FR 16369 (April 4, 2017) IDM (*CTL Plate from Korea*) at Comment 2).

<sup>209</sup> *Id.* at 27 (citing Hyundai 2<sup>nd</sup> SQR at 2-14).

<sup>210</sup> *Id.* (citing *CTL Plate from Korea*).

<sup>211</sup> *Id.* at 28-29.

<sup>212</sup> *Id.* at 29-30.

<sup>213</sup> *Id.* at 30.

<sup>214</sup> *Id.* at 31-32 (citing *Thai Plastic Bags CAFC*, 746 F.3d at 1361-63).

- The petitioners' analysis assumes a single variable must account for all cost differences, though the actual costs of production for any product will always be driven by many variables.
- The record demonstrates that Hyundai's reported costs reasonably reflect the costs associated with the physical differences of Hyundai's products.<sup>215</sup>
- The petitioners argue DIRMAT costs for three similar CONNUMs should decrease from thinnest to thickest product, when Hyundai explained that the cost difference reflected the different coating processes with different coating materials.<sup>216</sup>
- The petitioners argue OTHDIRMAT costs are unreliable as refractory material costs may have been included in DIRMAT instead, and that OHTDIRMAT do not decrease with increasing thickness, or that scrap offset fully offset other direct material costs and part of DIRMAT costs, when Hyundai explained that those differences are due to different coating processes and materials.<sup>217</sup>
- The petitioners wrongly argue that Commerce cannot accurately determine the sales-below-cost test, constructed export price profit, constructed value (CV) and the difference-in-merchandise adjustment (DIFMER). Commerce's margin analysis uses TOTCOM for the cost test, and concerning DIFMER for matching similar CONNUMs, Hyundai's product mix provides for identical matching.<sup>218</sup>
- The examples the petitioners point to do not demonstrate significant differences in the conversion costs, and Commerce needs to disregard the petitioners' suggestion for Commerce to not only smooth out the cost but also to substitute, as AFA, the highest values reported for labor and overhead costs.
- The petitioners example only shows insignificant differences of a few percentage points in the conversion costs. Hyundai's reporting reflects the company's actual cost data.<sup>219</sup>

**Commerce Position:** We disagree that the facts concerning Hyundai's reporting of COPs and CVs merit the application of AFA. Section 776(a) of the Act provides that Commerce shall apply "facts otherwise available" if, inter alia, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information in the form and manner requested by Commerce; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified. Section 776(b) of the Act provides that Commerce may apply an adverse inference when selecting from among the facts otherwise available if an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The issues raised by the petitioners concerning Hyundai's reported data and cost reporting method for COP and CV do not meet these criteria for facts available as defined in section 776(a) of the Act, much less demonstrate that Hyundai failed to comply to the best of its ability as defined by 776(b) of the Act.

The physical characteristics identified in this case are finish type, reduction process, coating metal, coating weight, coating process, quality, yield strength, nominal thickness, nominal

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<sup>215</sup> *Id.* at 32.

<sup>216</sup> *Id.*

<sup>217</sup> *Id.* at 33 (citing Hyundai 2<sup>nd</sup> SQR).

<sup>218</sup> *Id.* at 33-34.

<sup>219</sup> *Id.* at 34.

weight, and form.<sup>220</sup> In the *Preliminary Results*, Commerce found that Hyundai's reported per-unit costs exhibited significant variations that were unrelated to the physical characteristics of the products under review.<sup>221</sup> Such findings are not unusual in cases because Commerce is directed to use, as a starting point for reporting information, a respondent's normal books and records.<sup>222</sup> For large steel companies like Hyundai, these books and records are typically generated from computer-based enterprise-wide reporting systems, capable of calculating product costs monthly, or even over certain production runs. Costs captured at specific points in time will naturally vary due to timing differences. When such costs are assigned to specific CONNUMs, some of which had limited production quantities, differences between CONNUM costs arise that will not be related to the physical characteristics designated for an antidumping duty proceeding. To address this issue, Commerce has adopted a policy of smoothing out these differences by weight-averaging certain CONNUMs that share certain key physical characteristics. For example, in *CWP from Korea* Commerce stated:

{T}he Department is instructed to rely on a company's normal books and records if two conditions are met: 1) the books are kept in accordance with the home country's GAAP; and 2) the books reasonably reflect the cost to produce and sell the merchandise. In the instant case, it is unchallenged that the unadjusted per-unit costs are derived from Husteel's normal books and that those books are in accordance with Korean GAAP. Hence, the question facing the Department is whether the per-unit costs from Husteel's normal books reasonably reflect the cost to produce and sell the merchandise under consideration.

Based on an analysis of Husteel's reported cost data, the Department continues to find that the fluctuation in costs between CONNUMs cannot be explained by the differences in the physical characteristics of those CONNUMs.... Based on the foregoing discussion, i.e., the fact that the reported costs for different products do not reflect cost differences that logically result from differences in the products' physical characteristics, the Department finds that Husteel's HRC costs do not reasonably reflect POR average costs.... Thus, for these final results, the Department reallocated Husteel's reported raw material costs among products of the same pipe grade, nominal pipe size, surface finish, and end finish (coupled-versus non-coupled pipe) and fabrication costs among products of the same thickness, surface finish, and end finish.<sup>223</sup> (Emphasis added.)

In the *Preliminary Results*, Commerce mitigated these distortive cost fluctuations, by smoothing Hyundai's reported per-unit costs by weight-averaging direct material costs among products of the same finish type, reduction process, coating metal, coating weight, coating process, quality,

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<sup>220</sup> See Initial AD Questionnaire at B-8-B-14 and C-7-C-10.

<sup>221</sup> See *Preliminary Results*, IDM at 25-26 and Hyundai Preliminary Calculation Memorandum at 4-5.

<sup>222</sup> See section 773(f)(1)(A) of the Act.

<sup>223</sup> See *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 1 (*CWP from Korea*)

and yield strength.<sup>224</sup> While smoothing out the costs by weight averaging CONNUMs over certain characteristics does not eliminate all differences, it balances the need to use cost differences for certain purposes within an antidumping duty proceeding and the requirement to use a respondent's normal books and records as the starting point.<sup>225</sup> Smoothing or weight-averaging ensures that the product-specific costs we use for the sales-below-cost test, CV, and the DIFMER adjustment reflect the physical characteristics of the products whose sales prices are used in Commerce's dumping calculations. The record shows that Hyundai maintains its books and records in accordance with Korea's generally accepted accounting principles, and that Hyundai reported CONNUM-specific costs derived from its actual accounting system.<sup>226</sup> As discussed above, Hyundai's accounting system is typical for a large integrated steel producer, and we determine that Hyundai maintains its books and records in a manner that reasonably reflects the cost associated with the production and sales of the merchandise under review. Therefore, we have continued to use Hyundai's reported COP and CV data for the final results. However, we also continue to find that CONNUM cost differences are affected by processing and timing differences. Therefore, we will continue to apply as neutral facts available by smoothing costs across certain physical characteristics.<sup>227</sup>

Subsequent to the *Preliminary Results*, Commerce issued a supplemental questionnaire, and in its response, Hyundai reiterated that it maintains a process based accounting system, and that it

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<sup>224</sup> See Hyundai Preliminary Calculation Memorandum; see also *Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Final Results of Antidumping Duty Administrative Review*, 76 FR 9745 (February 22, 2011) IDM at Comment 1 (*PET Film from Taiwan*): "We find that Shinkong has adequately explained its inability to account for the variations among these surface treatment costs and has provided a calculation to support its claims regarding the insignificance of these variations in terms of COM... A demonstration that there are insignificant cost differences with respect to one of the matching characteristics has been permitted by the Department in the past. (See, e.g., *Certain Frozen Warmwater Shrimp from Ecuador: Final Results of Antidumping Duty Administrative Review*, 72 FR 52070 (September 12, 2007) IDM at Comment 5)... While ideally the Department seeks cost information relating to all differences among physical characteristics in the CONNUM, in this case, Shinkong has demonstrated to the best of its ability that it is unable to provide such information, and has adequately supported its claim that varying surface treatments have only insignificant cost differences. Thus, we do not find a basis for applying facts available as Petitioners argue." Also See, *Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Brazil*, 60 FR 31960, 31968 (June 19, 1995) (*Line Pipe from Brazil*); *Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination*, 82 FR 16369 (April 4, 2017) IDM at Comment 2 (*CTL Plate from Korea*); and, *Stainless Steel Bar from the United Kingdom: Final Results of Antidumping Duty Administrative Review*, 72 FR 43598 (August 6, 2007) IDM at Comment 1 ("SS Bar from the UK").

<sup>225</sup> Commerce does not attempt to "account for every conceivable characteristic when selecting matching criteria. The criteria selection process allows Commerce to draw reasonable distinctions between products for matching purposes..." See, e.g., *Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 23886 (May 23, 2018) IDM (*CWP from Mexico*) at Comment 3; *Fine Denier Polyester Staple Fiber from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 24743, (May 30, 2018), and accompanying IDM at Comment 6(c) ("Commerce is directed to calculate costs 'based upon 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... and reasonably reflect the costs associated with the production and sale of the merchandise.' Commerce cannot justify an AFA decision on the mere fact that a respondent uses as its accounting system an integrated electronic ERP such as SAP®.")

<sup>226</sup> See Hyundai's February 2, 2018 Section D Questionnaire Response (Hyundai DQR) at D-11 -D12 and D-17.

<sup>227</sup> See Hyundai Final Calculation Memorandum.

“applied plant-wide POR constituent ratios to segregate the weighted-average CONNUM costs into the elements that the Department’s questionnaire requires (materials, labor, etc.).”<sup>228</sup> Hyundai also notes that cost differentials associated with Commerce’s product characteristics are a reflection of differences in inputs (materials), combination of processes, and/or processing time (labor and/or overhead).<sup>229</sup> Hyundai further clarified that the type characteristic, *e.g.*, indicates the type of coating which then determines the production routing like painting, lamination, clad or none.<sup>230</sup> As indicated in Exhibit S2-13-E, the finish/paint is a major cost driver, included in OTHDIRMAT. The coating material and coating weight make a difference in cost.<sup>231</sup> Hyundai further notes that the finish type also impacts the conversion costs of DIRLAB, VOH, and FOH due to the coating process, or the impact of the product characteristics of quality and yield strength on the production processes and is reflected in OTHDIRMAT

For the final results, we have weight-averaged the reported DIRMAT costs between CONNUMs with the same CQUAL (*e.g.*, structural ASTM or drawing ASTM) and CSTERN (yield strength) fields. We have weight-averaged the reported OTHDIRMAT costs between CONNUMs with the same CTYPE (*e.g.*, metal coated only vs metal coated with paint), CMETAL (*i.e.*, coating metal), CWEIGHT (*i.e.*, coating material weight). Finally, we have weight-averaged the reported DIRLAB, VOH and FOH costs between CONNUMs with the same CTYPE, ROLL (*i.e.*, reduction process), CPROCES (*i.e.*, metal coating process). We then recalculated the general and administrative expenses and the financial expenses by applying the corresponding rate to the revised costs.<sup>232</sup>

## **Comment 10: Whether Hyundai Withheld Other Information Requested by Commerce**

### *Petitioners’ First Hyundai Case Brief*

The petitioners argued that Hyundai has withheld information regarding: 1) Affiliated Party Inputs; 2) Cost Documentation; 3) Internal Taxes; 4) Interest Expenses and that we should apply AFA to Hyundai.<sup>233</sup>

#### Affiliated Party Inputs

- In relation to affiliate-provided inputs, Commerce asked Hyundai to provide each affiliated-party’s cost of production and movement costs.<sup>234</sup>
- A review of Hyundai’s resubmitted major inputs chart shows that Hyundai did not report each affiliated-party’s cost of production.<sup>235</sup>

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<sup>228</sup> See Hyundai 2<sup>nd</sup> SQR at S2-11.

<sup>229</sup> *Id.* at 11-12.

<sup>230</sup> *Id.* at 12.

<sup>231</sup> *Id.* at S2-19-21 and Exhibit S2-13-E.

<sup>232</sup> See Hyundai Final Calculation Memorandum.

<sup>233</sup> See Petitioners’ First Hyundai Case Brief at 39-45.

<sup>234</sup> *Id.* at 39; *see also* Commerce’s First SQ for Hyundai at 22.

<sup>235</sup> *Id.* at 39-40; *see also* Hyundai’s June 26, 2018 SQR Part 3 at Exhibits SD-153-A, SD-153-B, SD-153-C, and SD-155.

- Hyundai submitted estimated supplier costs, which are a hybrid of unrelated and incorrect values that cannot be considered the same as the actual costs of the suppliers.<sup>236</sup>
- For its affiliated scrap supplier, Hyundai did not report the affiliate’s cost, but instead relied on that suppliers pricing, which may be related to one of Hyundai’s customers.<sup>237</sup>
- Hyundai was granted three separate extensions to submit the requested information, and it did not notify Commerce of any difficulties in providing the requested information.<sup>238</sup>
- Without accurate and complete major input data, Commerce cannot assess whether Hyundai’s material input costs should be adjusted under the major input test. Commerce should conclude that it cannot rely on Hyundai’s cost data, and that Hyundai failed to cooperate to the best of its ability.<sup>239</sup>

#### Certain Cost Documentation

- In its first supplemental questionnaire, Hyundai was requested to demonstrate how it calculated the DIRMAT and OTHDIRMAT costs.<sup>240</sup> Hyundai was asked to provide: (1) source accounting documents (vendor invoices); (2) detailed accounting ledgers; (3) detailed cost product coding data; (4) detailed manufacturing statements; and (5) production documents.<sup>241</sup> Hyundai did not provide any of the requested supporting documentation.

#### Internal Taxes

- Hyundai was asked to “report the net amount incurred for each type of internal tax during the cost calculation period.”<sup>242</sup> In a supplemental questionnaire, Hyundai was again asked to provide the information, along with copies of its value added tax (VAT) returns to support the calculation of the net VAT amount.<sup>243</sup> In response, Hyundai only provided its December 2016 VAT return.<sup>244</sup>

#### Interest Expense

- Commerce instructed Hyundai to revise its interest expense ratio in a supplemental questionnaire. In response, Hyundai made other, unsolicited, changes to the interest expenses.<sup>245</sup> Specifically, Hyundai removed non-operating losses from the interest expense calculation. Hyundai did not provide an explanation, nor supporting documentation, concerning the removal of the expenses.<sup>246</sup>

#### Hyundai’s First Rebuttal Brief

##### Affiliated Party Inputs

- None of the inputs from affiliates are major inputs, and therefore, they are not subject to the major input rule.
- Commerce looks to the percentage of the cost of the affiliate-provider’s input to the total cost of manufacturing to determine if the major input rule applies.

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<sup>236</sup> *Id.* at 40.

<sup>237</sup> *Id.*

<sup>238</sup> *Id.* at 40-41.

<sup>239</sup> *Id.* at 41.

<sup>240</sup> *Id.* at 41-42 (citing Hyundai’s June 25, 2018 SQR at 13).

<sup>241</sup> *Id.*

<sup>242</sup> *Id.* at 43 (citing Hyundai DQR at 10).

<sup>243</sup> See Petitioners’ First Hyundai Case Brief at 43; see also Hyundai’s June 25, 2018 SQR Part 2 at SD-17.

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*; and Hyundai’s June 25, 2018 SQR Part 2 at SD-16 and Exhibit SD-157.

<sup>246</sup> *Id.*

- None of Hyundai's inputs exceeded the minor input "threshold." In fact, nearly all were less than 0.1 percent.<sup>247</sup>
- Additionally, Commerce did not address the valuation of minor costs for affiliate-provided inputs in the Preliminary Results. Furthermore, Commerce's post-preliminary supplemental questionnaires did not include questions relating to affiliates' cost of production for provided inputs.
- It is understandable that Hyundai was unable to obtain COP data from 25 separate affiliated companies that provided inputs. Importantly, Hyundai notified Commerce of its difficulties in completing this request.
- Hyundai provided estimated costs of production in place of the data it was unable to obtain, which is supported by case history, and the CIT.
- The estimated costs of production allow Commerce to determine if the affiliated-provided inputs were provided above cost. "By using {Hyundai's} purchase price as the proxy for the scrap suppliers' COP, {Hyundai} almost certainly overstated the suppliers' actual COP."
- Contrary to the petitioners' claim, no "circular close-supplier relationship" exists between Hyundai and its unaffiliated U.S. customer further processing CORE purchased from Hyundai.
- As demonstrated in the corporate governance structure chart, there is also no affiliation between the aforementioned U.S. customer and the company named by the petitioners. Neither are the two companies affiliated with each other nor is either affiliated with Hyundai.

#### Certain Cost Documentation

- Hyundai reasonably submitted documentation to support its calculation of DIRMAT and OTHDIRMAT costs.

#### Internal Taxes

- In response to the petitioners' arguments concerning unsolicited changes to interest expenses, Hyundai took the necessary steps to comply with Commerce's instructions.
- Commerce requested that Hyundai remove "dividend income...gain{s} on trading derivatives...gain{s} on trading AFS...and gain{s} on evaluation derivatives." Commerce seems to have requested their removal because it viewed the line items as investment related. Therefore, Hyundai applied that same logic to the identical expenses on the non-operating side, "consistent with {Commerce's} desire to adjust the calculations for all non-operating items."
- In relation to the petitioners' arguments concerning VAT returns, Hyundai has explained its tax treatment and provided all requested documentation.<sup>248</sup>
- Furthermore, Commerce only requested "copies of Hyundai's VAT returns to support the calculation of the net VAT amount." Commerce did not request Hyundai to submit all of its VAT returns.<sup>249</sup>

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<sup>247</sup> See Hyundai's First Rebuttal Brief at 35; see also *Chlorinated Isocyanurates from Spain: Final Results of Antidumping Duty Administrative Review*, 72 FR 64194 (November 15, 2007) IDM (*Chloro Isos from Spain*) at 14

<sup>248</sup> *Id.* at 40; and Hyundai's June 25, 2018 SQR at SD-17 and Exhibit SD-157.

<sup>249</sup> *Id.* at 40.

- If Commerce required further documentation, it had ample opportunities to request more to supplement Hyundai's submitted VAT returns for December 2016.<sup>250</sup>

### Interest Expense

- Commerce does not, and should not, include expenses and exclude gains related to the very same activities in its G&A or INTEX calculations.<sup>251</sup>
- Finally, Commerce did not notify Hyundai that its response was deficient, as is required in section 782(d) of the Act.<sup>252</sup>

**Commerce's Position:** We do not find that total or partial AFA is warranted. Hyundai has not withheld information relating to the above issues: (1) Affiliated Party Inputs; (2) Certain Documentation; (3) Internal Taxes, and (4) Interest Expense. Commerce finds that Hyundai responded to our questions on these issues based on reasonable interpretations of those questions, and furthermore, provided comprehensive explanations complete with the types of supporting documentation normally provided by respondents.

#### 1. Affiliated Party Inputs

We find that Hyundai's affiliated inputs and services, as listed in Exhibit S2-14A of Hyundai's second supplemental response, do not constitute major inputs falling within the realm of section 773(f)(3) of the Act. With the exception of steel scrap purchases from an affiliate and certain freight expenses, each of the inputs and services provided by Hyundai's affiliates were less than two percent of the cost of manufacture (COM).<sup>253</sup> As such, they do not constitute major inputs. Additionally, neither the percentages of purchases from affiliates for steel scrap nor for freight represent percentages of COM that would justify their treatment as major inputs.

In instances where an input is not a major input, section 773(f)(2) of the Act directs Commerce to determine whether the transactions between affiliates fairly reflect the amount usually reflected in sales of the merchandise under consideration in the market under consideration. Hyundai provided market prices for both inputs, which were compared to the transfer prices. We compared the average per metric ton (MT) price of scrap Hyundai purchased from unaffiliated suppliers to the average per MT price of scrap Hyundai purchased from its affiliated suppliers and determined that Hyundai purchased scrap below fair market value from its affiliated suppliers.<sup>254</sup> Accordingly, we made adjustments to Hyundai's cost of production to value its scrap purchases from its affiliated suppliers at market price. For freight, we found that the transfer prices were above market price. For the final results, we have adjusted Hyundai's purchases of steel scrap from affiliates to reflect a market price.<sup>255</sup>

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<sup>250</sup> *Id.* at 40-41.

<sup>251</sup> *See* Hyundai's First Rebuttal Brief at 42.

<sup>252</sup> *Id.*

<sup>253</sup> *See* Hyundai's June 27, 2018 1<sup>st</sup> DSQR at Exhibit S1-D-155.

<sup>254</sup> *See* Final Calculation Memorandum at Attachment IV.

<sup>255</sup> *Id.*



We agree with the petitioners that for the other minor inputs Hyundai did not provide a market price.<sup>256</sup> Further, while market prices may not have been easily obtainable, Commerce on two occasions requested support for the transfer prices and Hyundai was aware that, if such prices were not available, alternatively it could have provided the affiliated party's cost of production the cost of production as a surrogate for price. Hyundai, in response to our requests, provided for several of the inputs an estimate of the cost, which was based on the overall profitability of the given affiliate.<sup>257</sup> Such an estimate is not the cost of the affiliate and only provides the affiliate's overall profitability, not the profitability of the specific products in question. Therefore, absent any market price for certain inputs from some of the unaffiliated input/service providers, or those affiliates' prices to unaffiliated customers, and cost estimates that only demonstrate overall profitability, Commerce does not have the information on the record to properly test the market prices for those inputs. Therefore, as neutral facts otherwise available, we have adjusted the other purchases from affiliated suppliers by the adjustment ratio calculated for suppliers where the information was provided, (*i.e.*, steel scrap and freight).<sup>258</sup>

## 2. Internal Taxes

We agree with Hyundai that it explained in its first supplemental response that it did not report VAT as a cost because it did not pay net VAT taxes during the period or review.<sup>259</sup> The Korean government refunds VAT taxes on purchased inputs upon sale of the finished product (*i.e.*, offset against VAT taxes collected from customers in the home market). For export sales, the Korean government allows an offset.<sup>260</sup> Therefore, Hyundai did not incur any costs associated with VAT taxes. The record supports a finding that Hyundai receives VAT refunds and paid no net VAT taxes by providing a copy of its VAT tax return for December 2016.<sup>261</sup>

## 3. Certain Cost Documentation

We disagree with the petitioners that total or partial AFA is warranted. We do not find that Hyundai withheld information pertaining to supplemental questionnaire inquiries relating to cost documentation. While Hyundai did not provide a complete replication of its entire accounting system,<sup>262</sup> Hyundai did provide source accounting documents, copies of certain ledgers, manufacturing reports, and certain sample accounting documents.<sup>263</sup> We also note that Commerce did not verify Hyundai's costs and sales in this segment; and, therefore, did not request more detailed information.

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<sup>256</sup> See Hyundai's June 27, 2018 1<sup>st</sup> DSQR at Exhibit S1-D-155.

<sup>257</sup> *Id.* at Exhibits S1-D-153-A, -B, -C, and -D, S1-D-155, S1-D156.1-S1-D-156.26.

<sup>258</sup> *Id.*

<sup>259</sup> *Id.* at D-17.

<sup>260</sup> See Hyundai's June 25, 2018 DSQR at SD-17 and Exhibit SD1-157.

<sup>261</sup> *Id.*

<sup>262</sup> See, *e.g.*, Hyundai's February 2, 2018 DQR, Hyundai's June 25, 2018 Section D Supplemental Questionnaire Response (Hyundai's June 25, 2018 1<sup>st</sup> SQR), and Hyundai's June 27, 2018 1<sup>st</sup> DSQR., and Hyundai's September 13, 2018 2<sup>nd</sup> SRQ.

<sup>263</sup> See, *e.g.*, Hyundai's February 2, 2018 DQR, Hyundai's June 25, 2018 Section D Supplemental Questionnaire Response (Hyundai's June 25, 2018 1<sup>st</sup> SQR), and Hyundai's June 27, 2018 1<sup>st</sup> DSQR.,

More importantly, Hyundai provided detailed cost buildups for certain products. While Commerce may not agree with every methodology employed by Hyundai, the respondent provided detailed explanations of such methodologies, including details on how Hyundai used its records for reporting to Commerce. Additionally, Hyundai submitted answers to our questions based on reasonable interpretations of those questions; and furthermore, provided comprehensive explanations with the types of supporting documentation normally provided by respondents.

#### 4. Interest Expense

We agree with Hyundai that its interpretation of our supplemental question on this issue implied a request for Hyundai to revise its reported interest expense calculation for certain investing expenses. As Hyundai argues, the petitioners do not recognize that Hyundai, in removing non-operating losses from the calculation, simply took the necessary steps to comply with the Commerce's specific instructions.<sup>264</sup> Hyundai applied the logic of excluding investment related income to likewise apply to investment related losses. Because Hyundai was instructed to exclude gains on evaluation of dividends and gains on trading derivatives, Hyundai likewise excluded losses on evaluation of derivatives and losses on the trading of derivatives.<sup>265</sup> Commerce does not include expenses and exclude gains related to the very same activities in its G&A or INTEX calculations.

### **Comment 11: Whether a Close Supplier Relationship Exists Between Hyundai's Captive, Intermediate Processors and the Hyundai Group, Thereby Creating Artificial U.S. Prices**

#### *Petitioners' Second Hyundai Case Brief*

- Record evidence demonstrates that the "Hyundai Group"<sup>266</sup> is operationally in a position to control Hyundai's intermediate processors through its significant involvement in the processors' decision regarding production and sales.<sup>267</sup>
- Hyundai's claim that certain U.S. customers are not controlled by Hyundai is unsupported by the record evidence.<sup>268</sup>

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<sup>264</sup> See Hyundai's Supplemental Questionnaire (May 25, 2018) at page 22, Question 151.

<sup>265</sup> See Hyundai's Supplemental Questionnaire Response (June 25, 2018) at SD-16 and Exhibit SD-151.

<sup>266</sup> The petitioners' brief does not define the constituent members of the "Hyundai Group." See Petitioners' Second Hyundai Case Brief at 1.

<sup>267</sup> *Id.* at 2-3 (citing section 771(33) of the Act; 19 CFR 351.102(b)(3); and SAA at 838).

<sup>268</sup> *Id.* at 8-11 (citing Petitioners' October 4, 2018 Letter at Attachments 1-3, 5-6).

- Similar patterns of dependency on both inputs for, and sales of, further processed goods are evidenced by sales from certain customers.<sup>269</sup>
- The relationship between Hyundai, its affiliates, and its customers mirrors the dual-sided operational opportunity for control found in *OCTG Korea Inv. Final*<sup>270</sup> and *Welded Line Pipe from Korea*.<sup>271</sup>
- A U.S. further-manufacturer of materials can be controlled because its operations are intermediate to, *i.e.*, captive between, the group's supplier of a primary steel material (CORE from Hyundai in this case) and the corporate group's purchases of the further-manufactured goods.<sup>272</sup>
- Due to Hyundai's control of its nominal U.S. customers, there are no arm's-length prices available for captive further-manufacturing sales before the sale of completed automobiles.<sup>273</sup>
- Hyundai did not make a good faith effort to obtain information requested by Commerce regarding its customers, with only the most cursory, low level contacts and minimal time and no documented contact between Hyundai Group members such as Kia Motors Manufacturing Georgia (KMMG) or Hyundai Motor Manufacturing Alabama (HMMA).<sup>274</sup>
- Hyundai possibly failed to disclose its affiliations and to provide public information, such as its suppliers' annual reports because such data would reveal the non-arm's length of certain transactions and confirm the finding of a PMS.<sup>275</sup>
- Hyundai itself could have provided the data requested by Commerce, as indicated by communications from one of Hyundai's customers.<sup>276</sup>
- Hyundai did not identify all affiliated parties that impact the production of subject merchandise, including a number of companies listed in the annual reports of Hyundai's reported affiliates that are involved in the production of subject merchandise.<sup>277</sup>
- Hyundai has clearly withheld information requested by Commerce and chosen not to cooperate by failing to provide a complete record regarding its captive, intermediate processors, justifying the application of facts available with adverse inference.<sup>278</sup>

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<sup>269</sup> *Id.* at 13 (citing Petitioners' October 4, 2018 Letter at Attachment 15).

<sup>270</sup> *Id.* at 15-17 (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014) (*OCTG Korea Inv. Final*) and IDM at Comment 20 and *Husteel Co. v United States*, 98 F. Supp. 3d 1315, 1350-51 (CIT September 2, 2015) (*Husteel*)).

<sup>271</sup> *Id.* at 17 (citing *Welded Line Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 84 FR 4046 (February 14, 2019) (*Welded Line Pipe from Korea*) and IDM at 6).

<sup>272</sup> *Id.*

<sup>273</sup> *Id.* at 18.

<sup>274</sup> *Id.* at 6-7 (citing Hyundai's September 13, 2018 2nd SQR at S2-3 through S2-7 and Exhibit SS-6-B).

<sup>275</sup> *Id.* at 13.

<sup>276</sup> *Id.* at 7 (citing Hyundai's September 13, 2018 2nd SQR at Exhibit SS-6-B).

<sup>277</sup> *Id.* at 14 (citing Petitioners' October 4, 2018 Letter at Attachment 6).

<sup>278</sup> *Id.* at 21-22 (citing section 776(a)(2)(A) and (b) of the Act; *Tian Ziyang Food Co. v United States*, 637 F. Supp. 2d 1093, 1115 (CIT 2009); *Fujian Lianfu Forestry Co., v United States*, F. Supp. 2d 1324, 1340 CIT 2009); *Nippon Steel Corp. v United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); and *Fushun Jinly Petrochem, Carbon Co. v United States*, Ct. No. 14-00287, Slip Op. 2016-25 (CIT 2016) at 42).

- Commerce should assign Hyundai a total AFA<sup>279</sup> margin of 86.34 percent from the initiation notice in the original investigation.<sup>280</sup>
- If Commerce does not rely on total AFA, it should apply the highest margin calculated for non-captive customers to all sales in the above-named captive customers in the U.S. sales databases.<sup>281</sup>
- If Commerce believes it must calculate margins in some manner on the volume of those sales, while still including partial AFA in its calculations, it should apply the lowest U.S. gross price reported for arms-length (non-captive) sales to the captive customer transactions.<sup>282</sup>

#### *Hyundai's Second Rebuttal Brief*

- Commerce has a self-described “history of recognizing that exclusivity arrangements that arise either through contractual provisions or market conditions do not automatically result in a finding of affiliation.”<sup>283</sup>
- Furthermore, even where a sole-supplier relationship situation exists, it does not normally indicate control of one party over another.<sup>284</sup>
- The petitioners do not provide any evidence of affiliation between Hyundai and the U.S. customers at issue, but merely rely upon a potential theory of control without demonstrating how any such relationships rise to a level of “control” that renders the parties affiliated.<sup>285</sup>
- Moreover, the petitioners wholly disregard Hyundai’s submissions and counter evidence that demonstrate that it is not affiliated with the companies.<sup>286</sup>
- The petitioners’ argument for finding affiliation between Hyundai and certain Hyundai customer under the “close supplier relationship” concept relies on two documents that are inaccurate, irrelevant, and contradicted by record evidence.<sup>287</sup>
- Contrary to the petitioners’ assertion, HMMA or KMMG have a tooling arrangement with a certain Hyundai customer, wherein HMMA and KMMG paid that customer to build and

<sup>279</sup> *Id.* at 22 (citing *PAM, S.p.A. v United States*, 31 CIT 1008 (2007) (*PAM*); *Certain Steel Concrete Reinforcing Bar from Turkey, Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (November 7, 2006) (*Rebar from Turkey*); *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1338-39 (Fed. Cir. 2002) (*Ta Chen*); *Timken Co. v United States*, 59 F. Supp. 2d 1371, 1376-77 (CIT 1999) (*Timken*); and *QVD Food Co., v. United States*, 683 F.3d 1318, 1324 (Fed. Cir. 2011) (*QVD Food*)).

<sup>280</sup> *Id.* at 22-23 (citing *F.lli de Cecco Di Filippo Fara S. Martino S.p.A. v United States*, 216 F.3d 1027, 1032 (Fed. Cir 2000) (*F.lli de Cecco*); 19 USC 1677e(b); 19 CFR 351.308(c); and SAA 829-832)).

<sup>281</sup> *Id.* at 24.

<sup>282</sup> *Id.*

<sup>283</sup> See Hyundai’s Second Rebuttal Brief at 4 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea*, 63 FR 40404 (July 29, 1998), IDM at Comment 2).

<sup>284</sup> *Id.* (citing, e.g., *Melamine Institutional Dinnerware Products from Indonesia: Determination of Sales at Less Than Fair Value*, 62 FR 1719 (January 13, 1997) (*Melamine Dinnerware from Indonesia*); *Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol from the Republic of South Africa*, 62 FR 61084 (November 14, 1997) at Comment 2; *Certain Pasta from Turkey*, 76 FR 68399 (November 4, 2011), IDM at Comment 1; and *Chlorinated Isocyanurates from Spain*, 72 FR 64194 (November 15, 2007), IDM at Comment 4)).

<sup>285</sup> *Id.* at 5 (citing Petitioners’ Second Hyundai Case Brief)

<sup>286</sup> *Id.*

<sup>287</sup> *Id.* at 7-12 (citing Hyundai’s June 27, 2018 SQR at Exhibit SA-4-E; and Hyundai’s September 13, 2018 SQR at Exhibit SS-6-B).

deliver machinery that satisfied HMMA and KMMG's specifications for the production of parts for HMMA and KMMG.<sup>288</sup>

- Moreover, one of Hyundai's customers is a member of a larger corporate group with affiliates that produce components for a number of companies unaffiliated with HMMA and KMMG,<sup>289</sup> and was able to negotiate commercially effective transactions in purchasing from Hyundai and selling to HMMA and KMMG.<sup>290</sup>
- The petitioners' claim that Hyundai's relationship with a number of its customers is similar to the fact pattern in *OCTG Korea Inv. Final*, relying on the abovementioned facts concerning a certain Hyundai customer and Hyundai, is counterfactual to the administrative record.<sup>291</sup>
- Hyundai and American motor companies alike rely on the automotive supply chain: outsourcing the manufacture of parts to outside suppliers in order to optimize efficiencies of market forces.<sup>292</sup>
- Unlike the circumstances in *OCTG Korea Inv. Final*, there is no evidence of shared technology, whereby Hyundai is providing a benefit to Hyundai's customers, nor is there evidence that employees from Hyundai, HMMA, or KMMG are actively engaging with the production and sales operations of Hyundai's U.S. customers.<sup>293</sup>
- Hyundai and its affiliates were not in a position to exercise restraint or control over both the production and sales operations of Hyundai's customers, as these customers do not rely exclusively on Hyundai for their inputs or Hyundai's affiliates for their sales.<sup>294</sup>
- On the other hand, the record demonstrates that these U.S. customers have other lines of business with inputs sourced from suppliers other than Hyundai and sales to entities other than Hyundai affiliates.<sup>295</sup>
- Contrary to the petitioners' claim, Hyundai put forth the maximum effort to obtain information from its unaffiliated customers, and thus, Commerce should not apply an AFA rate to Hyundai based on the actions of another party.<sup>296</sup>
- Although Hyundai reached out to its unaffiliated U.S. customers on multiple occasions (and documented these attempts),<sup>297</sup> similar to *OCTG Korea Inv. Final*, Hyundai was not in a position to compel its unaffiliated U.S. customers to provide their business proprietary data.<sup>298</sup>

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<sup>288</sup> *Id.* at 11, 13-14 (citing Hyundai's November 26, 2018 SQR at 1-10 and Exhibits 1-B through 1-F).

<sup>289</sup> *Id.* at 10 (citing Hyundai's January 17, 2018 Letter at 5-6 and Exhibit 4).

<sup>290</sup> *Id.* at 13 (citing Petitioners' October 4, 2018 Letter at Attachment 10; and Hyundai's June 26, 2018 SQR at Exhibit SA-33(C) and (E)).

<sup>291</sup> *Id.* at 14 (citing *OCTG Korea Inv. Final*, IDM at Comment 20).

<sup>292</sup> *Id.* at 18-19 (citing Hyundai's November 26, 2018 SQR at Exhibit 1-G).

<sup>293</sup> *Id.* at 15.

<sup>294</sup> *Id.* at 17.

<sup>295</sup> See Memorandum, "Certain Corrosion-Resistant Steel Products from the Republic of Korea: Close Supplier Relationships between Hyundai's Captive Intermediate Processors and Hyundai Group," dated concurrently with this memorandum (Close Supplier Relationship Memo).

<sup>296</sup> *Id.* at 24 (citing *SKF USA, Inc v United States*, 675 F.Supp.2d 1264, 1276 (CIT 2009); *Tianjin Magnesium Int'l Co. v United States*, Slip Op. 11-17 (CIT 2011); and *Mueller Comercial de Mexico, S. de R. L. de C.V. v. United States*, 753 F.3d 1227, 1232-36 (Fed. Cir. 2014).

<sup>297</sup> *Id.* at 28-30 (citing Hyundai's June 26, 2018 SQR at Exhibit SA-4-E; and Hyundai's September 13, 2018 2nd SQR at Exhibits SS-6-A and SS-6-B).

<sup>298</sup> *Id.* at 25-30 (citing *OCTG Korea Inv. Final*).

- The petitioners rely on mere snippets of the record completely taken out of context to support the claim that Hyundai could have provided the requested data by relying on its own records.<sup>299</sup> Further review of the full correspondence between Hyundai and its customers confirms that these customers misunderstood the requests and do have other customers.<sup>300</sup>
- Commerce never requested that Hyundai or its customers provide sales databases for their customers, and therefore, cannot resort to facts available for information never requested.<sup>301</sup>
- Unlike *Hot-Rolled Steel from Japan* and *Cold-Rolled Steel from Korea*, and similar to *OCTG Korea Inv. Final* Hyundai owns no interest in and has no managerial overlap with any of the companies at issue, and accordingly could not compel the customers to provide the requested information.<sup>302</sup>
- The petitioners' proposed calculations confirm that the petitioners would have Commerce find that Hyundai is affiliated with all of its U.S. customers, with the exception of two, without providing rationale for the different treatment of these companies.<sup>303</sup>
- In the event that Commerce excludes sales to or assigns alternative prices to "captive" customers on a CONNUM by CONNUM basis, Commerce must conclude that all its automotive customers fall in this category and exclude all of the sales to "affiliates" or consider the sales part of the reporting exclusion covered by the "special rule."<sup>304</sup>
- If Commerce considers all of Hyundai's sales to be "captive" sales to unaffiliated parties then it can: (1) pursuant to the special rule, use the reported sales prices, even if the sales are to affiliated parties,<sup>305</sup> or (2) conclude that Hyundai had no reviewable transactions and carry forward Hyundai's current antidumping duty rate.<sup>306</sup>

**Commerce's Position:** We find that Hyundai and its U.S. customers are not affiliated within the meaning of section 771(33) of the Act. Section 771(33)(G) of the Act provides, *inter alia*, that parties will be considered affiliated when one controls the other. Section 771(33) of the Act further provides that "a person shall be considered to control another person if the person is

<sup>299</sup> *Id.* at 34-36 (citing Hyundai's September 13, 2018 2nd SQR at Exhibit SS-6-B; and Hyundai's Letter, "Corrosion-Resistant Steel Products (CORE) from the Republic of Korea: Rebuttal Factual Information," dated October 16, 2018 (Hyundai's October 16, 2018 Letter) at 8).

<sup>300</sup> *Id.*

<sup>301</sup> *Id.* at 37-38 (citing *Qingdao Qihang Tyre Co. v. United States*, No. 16-00075, 2018 WL 1635920, at 22 (CIT 2018); and *Hyundai Steel Co. v. United States*, 282 F. Supp. 3d 1332, 1333-4 (CIT 2018)).

<sup>302</sup> *Id.* at 39-40 (citing *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 49953 (July 29, 2016) (*Cold-Rolled Steel from Korea*), IDM at Comment 8; *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Japan*, 64 FR 24329, 24368 (May 6, 1999) *Hot-Rolled Steel from Japan*; and *OCTG Korea Inv. Final*, sustained in *Husteel v. United States*, 98 F. Supp.3d 1315, 1361 (CIT 2015)).

<sup>303</sup> *Id.* at 40-41.

<sup>304</sup> *Id.* at 42-44 (citing *Rhone Poulenc, Inc., v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990)).

<sup>305</sup> *Id.* at 46 (citing SAA at 826; and *Silicon Metal from Brazil: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review and Notice of Intent to Revoke Order in Part*, 68 FR 44285 (July 28, 2003), unchanged in Final Results, 68 FR 57670 (October 6, 2003)).

<sup>306</sup> *Id.* at 47-48 (citing *Aluminum Extrusions from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Review in Part; 2015-2016*, 82 FR 26055 (June 5, 2017), IDM at 10-12, unchanged in Final Results (November 13, 2017); and *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Determination of Investigation and Notice of Amended Final Results*, 83 FR 39054 (August 8, 2018)).

legally or operationally in a position to exercise restraint or direction over the other person.” Commerce’s regulations at 19 CFR 351.102(b)(3)(iv) state that, in finding affiliation based on control, Commerce will consider, among other factors: (i) corporate or family groupings; (ii) franchise or joint venture agreements; (iii) debt financing, and (iv) close supplier relationships. With respect to close supplier relationships, Commerce has determined that the threshold issue is whether either the buyer or seller has, in fact, become reliant on the other.<sup>307</sup> A “close supplier relationship” is established when a party demonstrates that the relationship is significant and could not be easily replaced.<sup>308</sup> Only if Commerce determines that there is reliance does it evaluate whether one of the parties is in a position to exercise restraint or direction over the other.<sup>309</sup> Commerce will not, however, find affiliation on the basis of this factor unless the relationship has the potential to affect decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.<sup>310</sup>

Pursuant to section 771(33) of the Act, we reviewed the record evidence regarding Hyundai’s relationships with certain U.S. customers. In this review, we have found that there is insufficient evidence to demonstrate reliance for purposes of finding affiliation through control under section 771(33)(G) of the Act.

The petitioners argue that because Hyundai’s customers’ operations are intermediate to the operations of Hyundai and its affiliates, these customers are reliant upon the Hyundai for inputs and Hyundai’s affiliates sales of these further processed goods.<sup>311</sup> Thus, Hyundai has the ability to exercise control concerning the production, pricing, or cost of the subject merchandise, according to the petitioners.<sup>312</sup> The information placed on the record by the petitioners does not confirm that Hyundai’s customers were exclusively bound to purchase from Hyundai and sell to Hyundai affiliates, including HMMA and KMMG, and thus reliant upon them.<sup>313</sup> Instead, the petitioners provide incomplete public information and ask Commerce to make a logical leap about “patterns of dependency.” In contrast to the petitioners’ argument regarding reliance, copies of email communications, websites, and other documents indicate that Hyundai’s customers were free to, and did, engage in commercial activity with other entities.<sup>314</sup>

Assuming, *arguendo*, that the record contained sufficient evidence to determine exclusivity between Hyundai, its affiliates, and each of the customers subject to this allegation, we note that

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<sup>307</sup> See, e.g., SAA at 838.

<sup>308</sup> See, e.g., *Final Results of Antidumping Duty Administrative Reviews of Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea*, 62 FR 18404, 18417 (April 15, 1997).

<sup>309</sup> See, e.g., *Multilayered Wood Flooring from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011), IDM at Comment 21; and *TIJID, Inc. v. United States*, 366 F. Supp. 2d 1286, 1298-1300 (CIT 2005) (*TIJID*).

<sup>310</sup> See 19 CFR 351.102(b)(3).

<sup>311</sup> See Petitioners’ Second Hyundai Case Brief at 8-11 (citing Petitioners’ October 4, 2018 Letter at Attachments 1-3, 5-6).

<sup>312</sup> See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27298 (May 19, 1997) (final rule).

<sup>313</sup> The names of Hyundai’s U.S. customers are considered business proprietary in nature. Accordingly, the publicly-sourced documents are considered proprietary for the purposes of this administrative review. See Petitioners’ October 4, 2018 Letter at Attachments 1-20.

<sup>314</sup> See Close Supplier Relationship Memo; Hyundai’s October 16, 2018 Letter at Attachments 2-5; Petitioners’ October 4, 2018 Letter at Attachments 12, 15; and Hyundai’s June 26, 2018 SQR at Exhibit SA-4-A.

there is a distinction between *de facto* exclusivity and exclusivity based on control.<sup>315</sup> Parties might engage in “exclusive” relationships because of their given situation at a point in time, but that does not mean that they are reliant upon one another or bound to one another by the control of one over the other.<sup>316</sup> For example, a new start-up producer might find that a single customer is able to consume its entire production capacity, and not have any need for additional customers at that time.<sup>317</sup> Or, in the automotive industry, motor companies may rely on the automotive supply chain – outsourcing the manufacture of parts to specialized outside suppliers – to optimize efficiencies of market forces, as the Ford Motor Company does.<sup>318</sup> Further, we note that, even in cases where one party sold all of its output to another, the CIT has found that Commerce reasonably concluded that there was no close supplier relationship because the party was free to sell to other customers.<sup>319</sup>

The petitioners’ reliance on *OCTG Korea Inv. Final* to support its close supplier argument is misplaced.<sup>320</sup> In that case, we stated that, given POSCO’s *involvement* in both the production and sales process, POSCO was in a rather unique position to exercise restraint or control over NEXTEEL.<sup>321</sup> While Commerce’s affiliation decision weighed the importance of the dual-sided operational relationship between the customer and the respondent, Commerce emphasized the uniqueness of POSCO’s active and extensive participation in NEXTEEL’s production and sales processes. Specifically, POSCO monitored NEXTEEL’s inventory; oversaw its finished product shipping; and provided marketing assistance, research and development capacity, management consulting, and production and sales assistance.<sup>322</sup> Moreover, the input purchased by NEXTEEL from POSCO accounted for the vast majority of NEXTEEL’s cost of production, granting POSCO significant potential for manipulation with respect to NEXTEEL’s production, pricing, or cost.<sup>323</sup> “There is *no other business relationship* in the Korean OCTG industry like the one between POSCO and NEXTEEL.”<sup>324</sup> The considerable presence of POSCO in both NEXTEEL’s production and sales processes mirrors the relationship of affiliated parties. Thus, the petitioners’ use of *Welded Line Pipe from Korea* to support the idea that a dual-sided relationship alone is sufficient evidence of affiliation, is an equally improper comparison, as NEXTEEL and POSCO are the parties in question in that case.<sup>325</sup>

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<sup>315</sup> See *Notice of Final Results and Rescission, in Part, of the Antidumping Duty Administrative Review: Petroleum Wax Candles from the People’s Republic of China*, 69 FR 12121 (March 15, 2004) (*Wax Candles from China*), IDM at 7 (citing *Melamine Dinnerware from Indonesia*).

<sup>316</sup> See *Wax Candles from China*; PAM, 31 CIT 1008 (2007); *Rebar from Turkey*; *Ta Chen*, 298 F.3d 1338-39; *Timken*, 59 F. Supp. 2d 1376-77; *QVD Food*, 683 F.3d 1324; and *F.lli de Cecco*, 216 F.3d 1032.

<sup>317</sup> See *Wax Candles from China*.

<sup>318</sup> See Hyundai’s Second Rebuttal Brief at 18-19 (citing Hyundai’s November 26, 2018 SQR at Exhibit 1-G).

<sup>319</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from the Republic of Korea*, 77 FR 75988 (December 26, 2012), IDM at Comment 8 (citing *TIJID*, 366 F. Supp. 2d 1286).

<sup>320</sup> See Petitioners’ Second Hyundai Case Brief at 15-17 (citing *OCTG Korea Inv. Final*, sustained in *Husteel*, 98 F. Supp. 3d 1315, 1350-1).

<sup>321</sup> See *OCTG Korea Inv. Final* IDM at 73 (emphasis added).

<sup>322</sup> *Id.* at 69.

<sup>323</sup> *Id.*

<sup>324</sup> *Id.*

<sup>325</sup> See Petitioners’ Second Hyundai Case Brief at 17 (citing *Welded Line Pipe from Korea*).



In the instant review, there is no evidence that Hyundai has extra-commercial involvement with its customers resulting in reliance and control. Notably, excluding the dual-sided relationship, none of the above factors are present between Hyundai and its customers. The relationship between an automotive steel processor like Hyundai and its affiliate (an automotive manufacturer) does not necessitate reliance or control. Furthermore, there is evidence that many of Hyundai's customers were beholden to larger corporate groups with distinct commercial interests separate from Hyundai.<sup>326</sup> In addition, these customers and their affiliates supply to other automotive manufacturers unaffiliated with Hyundai, sell and operate in other regions and countries, and sell and operate in other industries.<sup>327</sup> The petitioners claim that Hyundai affiliates provided machinery to one of Hyundai's customers, evidencing Hyundai and its affiliates' control over its customers.<sup>328</sup> However, review of the tooling contracts for 2008 to 2010, provided by Hyundai, demonstrate that the customer was paid to build machinery (*i.e.*, tooling) which met the production specifications for HMMA and KMMG.<sup>329</sup> Further, the presence of another similar agreement on the record from Ford Motor Company supports Hyundai's argument that these agreements are commonplace commercial negotiations in the American automotive industry.<sup>330</sup>

While Hyundai and its customers cooperate closely, we do not consider this cooperation to be out of the ordinary for the industry, nor demonstrate reliance for purposes of finding affiliation through control under section 771(33)(G) of the Act. The arguments concerning the application of facts available and AFA regarding the potential affiliation between Hyundai and its customers will not be addressed here. Due to its business proprietary nature, this issue is discussed in more detail at "Close Supplier Relationship Memo," dated concurrently with this Issues and Decision Memorandum.<sup>331</sup>

## **Comment 12: Whether Commerce Should Continue to Apply Partial AFA to Hyundai**

### *Hyundai's First Case Brief*

- Commerce's preliminary AFA determination was punitive, unsupported by the facts, and contrary to law.<sup>332</sup>
- Importantly, the "gaps" in the record created by Commerce's rejection of a portion of Hyundai's supplemental response no longer exist, as Commerce issued post-preliminary supplemental questionnaires to Hyundai, to which Hyundai fully responded.<sup>333</sup>
- Hyundai acted to the best of its ability in submitting its June 26, 2018 supplemental questionnaire response, and due to encountering technical issues upon filing the "bracketing not final version," Hyundai inadvertently omitted the narrative section D response, totaling 18 out of 12,000 pages in total.<sup>334</sup>

<sup>326</sup> See Hyundai's January 17, 2018 Letter at 5-6 and Exhibit 4.

<sup>327</sup> See Hyundai's November 26, 2018 SQR at Exhibits 1-B through 1-F.

<sup>328</sup> See Petitioners' Second Case Brief at 10-12 (citing Petitioners' October 4, 2018 Letter at 11-16).

<sup>329</sup> See Hyundai's November 26, 2018 SQR at 3 and Exhibits 1-C through 1-F.

<sup>330</sup> See Hyundai's Second Rebuttal Brief at 14 (citing Hyundai's November 26, 2018 SQR).

<sup>331</sup> See Close Supplier Relationship Memo.

<sup>332</sup> See Hyundai's First Case Brief at 3.

<sup>333</sup> *Id.*

<sup>334</sup> *Id.* at 4-5.

- Hyundai notified Commerce immediately of that issue by phone and in writing, also requesting that Commerce permit Hyundai to file the missing 18-page narrative. Absent a Commerce response, Hyundai filed the missing narrative in the final business proprietary (BPI) version, pointing out that the missing narrative was included in the filing.<sup>335</sup>
- Subsequent to the filing, Commerce requested that Hyundai’s counsel provide further explanation as to how the issue arose and remedial steps taken. Based on Hyundai’s response, Commerce issued a letter formally accepting the filing.<sup>336</sup>
- While the petitioners argued to Commerce that there was no “good cause” or “extraordinary circumstances” warranting Commerce’s acceptance of Hyundai’s submission, Hyundai points out that the petitioners also corrected a filing error after an initial deadline associated with one of their submissions, submitting three additional pages.<sup>337</sup>
- Commerce rejected Hyundai’s 18 pages, as above, in the *Preliminary Results*, citing 19 CFR 351.303(c)(2) and its stated practice of allowing a law firm missing a filing deadline one opportunity to submit timely information to be able to enforce its deadlines.<sup>338</sup>
- Commerce has no basis for continuing to apply adverse facts available because, even if it continues to reject Hyundai’s omitted pages, Hyundai in the meantime fully responded to the three aspects identified by Commerce as incomplete: (1) differences in material costs of nearly identical CONNUMs; (2) explaining the revisions made to the databases and worksheets; and (3) inputs/services provided by affiliated parties.<sup>339</sup>
- Hyundai provided a full explanation of its reporting methodology, and Commerce did not identify any shortcomings in the data.<sup>340</sup>
- To address Commerce’s issues with the allocations of total product costs (DIRMAT, other direct materials (OTHER DIRMAT), *etc.*), Hyundai explained that it used its plant-wide ratios to segregate total products to their constituent elements, as explained in the original section D response, which explains the differences in material costs for similar CONNUMs. That is, the different material costs were calculated based on a percentage of the total costs.<sup>341</sup>
- In its post-preliminary supplemental questionnaire, Commerce instructed Hyundai to report the weighted average cost of the substrates in DIRMAT. Hyundai addressed Commerce’s concerns and revised its cost-reporting, tracing the individual product costs through prior

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<sup>335</sup> *Id.* at 5.

<sup>336</sup> *Id.* at 6.

<sup>337</sup> *Id.* at 7 (citing Petitioners’ Letter, “Petitioners’ Request for Reconsideration of the Department’s July 12, 2018 Memorandum Accepting Hyundai Steel’s Untimely Filed Extension Request and Supplemental Questionnaire Response,” dated July 17, 2019 (Petitioners’ Reconsider Letter); Hyundai’s Letter, “Response to Petitioners’ Request to Reconsider,” dated July 19, 2018 (Hyundai Response to Reconsider Letter); and Petitioners’ Letter, “Erratum to Submit Pages to Attachment 2B of Petitioner’s Section A Deficiency Comments,” dated January 12, 2018 (Petitioners’ Erratum Letter).

<sup>338</sup> *Id.* at 7-8 (*See* Commerce Letter re: Antidumping Duty Administrative Review of Corrosion-Resistant Steel Products from the Republic of Korea, dated August 3, 2018 (Commerce Rejection Letter)).

<sup>339</sup> *Id.* at 8-9.

<sup>340</sup> *Id.* at 11; *see also* Hyundai’s April 6, 2018 Section C3-AS Parts Questionnaire Response (Hyundai’s April 6, 2018 CQR-AS Parts) at C30.

<sup>341</sup> *Id.* at 10.

production processes back to the earlier production stage to segregate out the cost, to then rolling it forward again.<sup>342</sup>

- Specific differences in material costs that still exist for similar CONNUMs, as identified by Commerce, Hyundai explained were due to the different coating processes and the production quantities of these two products.<sup>343</sup>
- Hyundai's September 13, 2018, supplemental questionnaire response fully addressed Commerce's concerns regarding differences in material costs under the former reporting methodology and renders the issue moot.<sup>344</sup>
- Commerce did not identify any specific unexplained revisions it was concerned about in the *Preliminary Results*, but Hyundai believes that Commerce had concerns due to the differences between the sample CONNUM cost build-up in the initial section D response and the production quantities in the initial cost database and the scrap worksheets.<sup>345</sup>
- Hyundai likewise addressed those issues in the same supplemental response. Specifically, the initial worksheet provided in Exhibit SD-13-A was not based on a final and correct assignment of the products to the CONNUM, whereas the originally submitted database was based on the correct CONNUM assignment.
- This was an isolated issue and there are now no unexplained differences or revisions to worksheets on the record.<sup>346</sup>
- The record is complete now for inputs/services provided by affiliated parties. Since the *Preliminary Results*, Hyundai responded to Commerce's request to provide the average unit market value per similar transactions with unaffiliated suppliers or customers as for its affiliated party purchased items, *etc.*, and also updated the affiliated party input chart.<sup>347</sup>
- While the deficiencies identified by Commerce in the *Preliminary Results* are now resolved and the issue is moot, Commerce had no legal basis to apply AFA as a result of this minor error.<sup>348</sup>
- In the *Preliminary Results*, Commerce relied on sections 776(a)(1)-(2) and 782(d) of the Act, but the prerequisites for neither provision were met. Commerce may use facts available to fill gaps in the record but may not replace the record in a punitive manner in light of a cooperative respondent.<sup>349</sup>
- In *Nippon Steel*,<sup>350</sup> the Federal Circuit has clarified that the "best ability" standard under section 776(a) of the Act is met when a respondent puts forth its maximum effort to respond to Commerce inquiries. It does not require perfection.<sup>351</sup>
- Section 782(d) of the Act requires Commerce to promptly notify a person when a response is deficient and to provide an opportunity to explain or remedy the alleged deficiency.

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<sup>342</sup> *Id.*

<sup>343</sup> *Id.* at 11-12.

<sup>344</sup> *Id.* at 12.

<sup>345</sup> *Id.* at 12-13.

<sup>346</sup> *Id.* at 13.

<sup>347</sup> *Id.* at 14 (citing Hyundai's June 27, 2018 Section D First Supplemental Questionnaire Response (Hyundai's June 27, 2018 DSQR1) at Exhibit S1D-155 and responses to questions 153 and 155; Hyundai's September 13, 2018 Second Supplemental Questionnaire Response (Hyundai's September 13, 2018 SQR2) at S2-22.

<sup>348</sup> *Id.* at 16-17.

<sup>349</sup> *Id.* (citing SAA).

<sup>350</sup> See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).

<sup>351</sup> *Id.*

Subsection (e) permits Commerce to use a respondent information even if it does not meet all of Commerce requirements as long as it is reliable, and respondent acted to the best of its abilities in providing the information.<sup>352</sup>

- The Courts have reversed Commerce decisions to reject untimely filings from the record, when the consequence is severe compared to minor compliance failures, and a short filing delay by an otherwise fully cooperative respondent cannot be the basis for the application of an adverse inference.<sup>353</sup>
- In *Neo Solar Power Corp. v. United States*, the CIT has recognized that, in case of a filing error, instant communication with Commerce is an indicator whether a respondent is cooperative and acts to the best of its ability.<sup>354</sup>
- Commerce must consider these principles in the final results. Hyundai had one error, 18 pages out of more than 12,000, that was due to technical problems in preparing the submission that was communicated to Commerce immediately and remedied the next business day.<sup>355</sup>
- Hyundai did not fail to cooperate or did not show best efforts to comply, and Commerce deemed its efforts sufficient, until Commerce reversed its decision in the *Preliminary Results*, identifying no course of action for Hyundai short of not making any minor errors.<sup>356</sup>
- For Commerce to accept Hyundai's section D response one day late would have been inconsequential and no hindrance to Commerce's analysis.
- As stated in *Usinor Sacilor v. United States*, the Court considers the interests of accuracy and fairness, and whether accepting the late submission imposes burden on an agency. Commerce indicated no burden on the agency accepting the submission.<sup>357</sup>
- Commerce is obligated to calculate a dumping margin as accurately as possible. The CIT previously held that the burden of correction for clerical errors, as Hyundai's in preparing voluminous materials, outweighs the preference for accurate final dumping determinations.<sup>358</sup>
- Commerce has established procedures how parties certify missing pages or inadvertent omissions yet applies adverse facts available for corrections to inadvertent omissions filed the next business day.<sup>359</sup>
- Commerce is inconsistent in its treatment of the same technical error, by not rejecting the petitioner's errata submission placing additional pages on the record that due to technical

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<sup>352</sup> *Id.* at 17.

<sup>353</sup> *Id.* at 18-19 (citing *Artisan Mfg. Corp. V. United States*, 978 F. 2dm1334, 1345, 1347 (CIT 2014) re *Drawn Stainless Steel Sinks from the People's Republic of China*).

<sup>354</sup> *Id.* at 19 (citing *Neo Solar Power Corp. v. United States*, 190 F. Supp. 3d 1255, 1260, 1262-63 (CIT 2016)).

<sup>355</sup> *Id.* at 19-20.

<sup>356</sup> *Id.* (citing Hyundai's Letter, "Extension Request for financial Statements Due to Technical Difficulties," dated June 26, 2018, and Hyundai's Letter, "June 26 Supplemental Questionnaire response," dated July 9, 2018).

<sup>357</sup> *Id.* at 21 (citing *Usinor Sacilor v. United States*, 872 F. Supp. 1000, 1008 (CIT 1994)).

<sup>358</sup> *Id.* at 22 (citing *Tehnoimportexport v. United States*, 15 CIT 250, 260, 766 F. Supp. 1169, 1178 (1991); *Koyo Seiko Co. v. United States*, 14 CIT 680, 683, 746 F. Supp. 1108, 1111 (1990); *Serampore Indus. Pvt., Ltd. v. United States*, 12 CIT 825, 834, 696 F. Supp. 665, 673 (1988); *Serampore Indus. Pvt., Ltd. v. United States*, 12 CIT 825, 834, 696 F. Supp. 665, 673 (1988)).

<sup>359</sup> *Id.* at 23 (citing *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678, 42689 (July 17, 2013)).

issues were inadvertently omitted and rejecting Hyundai's next day submission of pages inadvertently omitted from its submission due to technical difficulties.<sup>360</sup>

- Record evidence indicates that Commerce does not apply its practice of enforcing its submission deadlines uniformly to all law firms, by affording just one opportunity to correct a filing.<sup>361</sup>
- In its August 10, 2018, factual information submission, Hyundai enumerates multiple occasions where the law firm of the petitioners filed additional missing pages after the deadline.<sup>362</sup>
- Commerce has no legal or factual basis for continuing to apply AFA to the particular CONNUM in Hyundai's U.S. sales database because any issues no longer exist. Hyundai provided complete and accurate data and supporting materials for this CONNUM that ties to the database.<sup>363</sup>
- If Commerce continues to apply AFA in some format, it must be limited to those data elements where the record is incomplete. In the *Preliminary Results*, Commerce identified only the cost for one particular CONNUM, and did not identify any issue with Hyundai's U.S. sales prices or data, or costs for any other CONNUMs.<sup>364</sup>
- Commerce has no legal basis replace known and unchallenged record information, *i.e.*, disregard all data points for those sale, and to apply AFA to that CONNUM. In fact, section 782(e) of the Act requires Commerce to use the remaining data unaffected by the situation giving rise to Commerce's application of AFA.<sup>365</sup>

#### *Petitioners' First Rebuttal Brief*

- The record continues to contain gaps because Hyundai did not timely file portions of the narrative in its supplemental section D questionnaire response; Hyundai's subsequent supplemental cost responses do not resolve the gaps in the record.<sup>366</sup>

**Commerce Position:** In the *Preliminary Results*, Commerce applied partial adverse facts available to Hyundai because it failed to timely submit a portion of the narrative in its supplemental section D questionnaire response. Specifically, on June 26, 2018, Hyundai submitted the bracketing not final version of its supplemental section D questionnaire response. On June 27, 2018, pursuant to the one-day lag rule under 19 CFR 351.303(c), Hyundai submitted the final business proprietary and public versions of its supplemental section D questionnaire response. The full narrative to the supplemental section D response was included in the final versions submitted under the one-day lag rule on June 27, 2018, but a portion of the narrative was not included in the bracketing not final submission due on the June 26, 2018, deadline. Because the versions differed in respects other than bracketing, we determined in the *Preliminary Results* that Hyundai's filing was not made in accordance with 19 CFR

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<sup>360</sup> *Id.* (citing Petitioners' Erratum Letter at 2).

<sup>361</sup> *Id.* at 24.

<sup>362</sup> *Id.* (citing Hyundai's Letter, "Rebuttal Factual Information," dated August 10, 2018).

<sup>363</sup> *Id.* at 26 (citing Hyundai's September 13, 2018 SQR2 at S2-15-21 and Exhibit S2-13A).

<sup>364</sup> *Id.* at 27.

<sup>365</sup> *Id.*

<sup>366</sup> *See* Petitioners' First Rebuttal Brief at 4-6.

351.303(c)(2) and was not timely submitted by June 26, 2018.<sup>367</sup> Hyundai's missing narrative response covered 13 questions that focused on: (1) differences in material costs for CONNUMs, which were nearly identical (*i.e.*, differences in thickness, width or type); (2) explanations of revisions made to databases or worksheets; and (3) inputs/services provided by affiliated parties. In the *Preliminary Results*, we identified issues with several CONNUMs in the questions at issue, and we applied, as partial adverse facts available (AFA), Hyundai's highest transaction-specific margin calculated in this review to Hyundai's sales of those CONNUMs in the United States.<sup>368</sup> As explained below, the record no longer warrants the application of partial AFA to Hyundai and we disagree with petitioners' claim that the record contains gaps as a result of Hyundai's missing narrative response.

After the *Preliminary Results*, Commerce issued a supplemental questionnaire to Hyundai concerning its section D response. The questionnaire instructed Hyundai to revise its cost database such that the DIRMAT field contained the weighted average cost of the substrates (*i.e.*, hot-rolled or cold-rolled coil) used in the CORE production process for those products within the given CONNUM. The questionnaire also instructed Hyundai to revise its cost database such that the OTHDIRMAT field included the weighted average cost of the other materials (*i.e.*, coating materials) used in the CORE production process for those products within the given CONNUM. We have now analyzed Hyundai's second supplemental response and the accompanying revised cost database.<sup>369</sup> We find that in complying with our request to revise its cost database for all CONNUMs as described in our second section D supplemental questionnaire, Hyundai satisfactorily addressed Commerce's concerns regarding the CONNUMs at issue in the *Preliminary Results*.

Specifically, the missing narrative response at issue for Commerce's application of AFA to the U.S. sales of certain CONNUM(s) sought clarification on why nearly identical CONNUM(s) showed significant differences in the reported DIRMAT when the only characteristic that differed was the finish type. Following the *Preliminary Results*, in the narrative accompanying its second supplemental section D questionnaire, which instructed Hyundai to revise its cost database such that the OTHDIRMAT field contained all "coating materials," Hyundai explained that the "type" characteristic defines the coating, whether it is painted, laminated, or clad, *etc.*, and depending on the finish, requires different production routing. In addition, the cost of material differs depending on whether it is painted or not and what type of paint or coating. Hyundai described those processes as a cost driver. Hyundai captured those expenses in OTHDIRMAT.<sup>370</sup> Hyundai continued explaining that the production routing determines the reduction process characteristic that will add to conversion costs, and Dirlab, variable overhead (VOH), and fixed overhead (FOH), so that the differences in unit costs are due to a combination of the total costs incurred in the different processes and relative quantities produced of each.<sup>371</sup> With respect to Commerce's concerns regarding nominal thickness, Hyundai stated

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<sup>367</sup> See PDM at 9-11.

<sup>368</sup> See *Preliminary Results*, PDM at 9-12 and Preliminary Calculation Memorandum at 6-7.

<sup>369</sup> We note that Hyundai's responses to Commerce second supplemental questionnaire were within the scope of the questions contained therein.

<sup>370</sup> See Hyundai's September 13, 2018 SQR2 at S2-20-21 and Exhibit S2-15-E.

<sup>371</sup> *Id.*

that it is a function of the rolling time, and that the processing costs are allocated based on a combination of production time and weight. With regard to nominal width, Hyundai stated that it depends on the rolling time and slitting which is also allocated based on weight and production time.<sup>372</sup>

The second issue Commerce listed in the *Preliminary Results* concerns the revisions made to previously submitted databases or worksheets. In the first supplemental questionnaire to section D, Commerce noted differences between the production quantities for a certain CONNUM in the cost database and the CONNUM cost worksheet showing Hyundai's cost build-up based on Commerce's product characteristics. In its post-prelim supplemental cost response, Hyundai fully explained how it created all the databases and worksheets that it submitted with its second section D supplemental response.<sup>373</sup>

The third issue raised by Commerce was in reference to Hyundai's inputs/services provided by affiliated parties. In its third supplemental response Hyundai provided a narrative explanation of the affiliated input/services suppliers and calculation worksheets.<sup>374</sup> The issue is further discussed under Comment 11.

Based on the information now on the record of this review and Hyundai's second supplemental questionnaire response, Commerce determines that the questions and issues identified in the *Preliminary Results* with respect Hyundai's cost responses are no longer valid. Accordingly, we find it is no longer necessary to apply partial AFA to the U.S. sales of the CONNUM(s) at issue. We will include all of Hyundai's U.S. sales of those particular CONNUM(s) in our margin analysis for the final results of review.<sup>375</sup>

As a result of the above finding, we no longer need to address whether the application of partial AFA was appropriate, or whether Commerce's rejection of Hyundai's late filing was appropriate. Those issues are now moot.

### **Comment 13: Whether Commerce Should Use Hyundai's Manufacturer Variable**

#### *Hyundai's Case Brief*

- The statute directs Commerce to compare U.S. sales to home market sales of the foreign like product, with a requirement that the products are produced in the same country by the same manufacturer as the subject merchandise.<sup>376</sup>
- For home market sales, Hyundai reported itself in the manufacturer field. However, in its U.S. sales databases, Hyundai reported either the identity of the producer for coil products, or the final U.S. processor in the case of further manufactured products in its manufacturer variable.<sup>377</sup>

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<sup>372</sup> *Id.* at 21.

<sup>373</sup> *Id.* at 15-16.

<sup>374</sup> *Id.* at 22 and Exhibits S2-14-A-1, S2-14-B-1-3, and S2-14-C-1-2.

<sup>375</sup> See Hyundai Final Calculation Memorandum.

<sup>376</sup> See Hyundai's First Case Brief at 27-28; see also section 771(16) of the Act.

<sup>377</sup> *Id.* at 28; see also Hyundai's February 1, 2018 BQR at Exhibit B-23; see also Hyundai's February 1, 2018 CQR at 58; see also Hyundai's April 6, 2018 Hyundai's April 6, 2018 CQR-AS Parts at C3-48.

- Commerce’s inclusion of the manufacturer variable in its margin calculation resulted in the matching of all U.S. sales of further manufactured products to constructed value.<sup>378</sup>
- For the *Final Results*, Commerce should set the manufacturer variable in the margin program to NA.<sup>379</sup>

The petitioners did not comment on this issue.

**Commerce’s Position:** The record of this review confirms that Hyundai was the manufacturer of all the CORE used in its home market sales and its U.S. sales, including its sales of further manufactured products. We have revised our SAS comparison market and margin program so Hyundai, rather than the U.S. processor, is identified as the manufacturer for all U.S. sales.

#### **Comment 14: Whether Commerce Should Grant a CEP Offset to Hyundai**

##### *Hyundai’s First Case Brief*

- Information on the record of this proceeding shows that the selling functions performed by Hyundai for its home market sales are significantly more involved than those it performs for CEP sales.<sup>380</sup>
- Commerce’s regulations state that it “will determine that sales are made at different levels of trade if they are made at different marketing stages....”<sup>381</sup>
- In the home market, Hyundai engages in significant selling activities at a high intensity when dealing with numerous customers for thousands of transactions. Hyundai performs the same activities for its CEP sales, but to a lesser degree.<sup>382</sup>
- In other words, Hyundai’s U.S. affiliates perform the bulk of selling functions in the United States; therefore, there is no need for Hyundai in Korea to replicate these functions for sales to the United States.<sup>383</sup>
- Moreover, Hyundai argues that the volume of home market shipments, variation in shipment quantity, and number of home market customers indicates that its freight and delivery activities are performed at a more intense level than the U.S. market.<sup>384</sup>
- While Hyundai incurred warehousing expenses for some of its home market sales and some of its sales to the United States, the sheer size of Hyundai’s home market requires Hyundai to incur more warehousing expenses, thus showing that this function was performed to a greater degree in the home market.<sup>385</sup>
- Finally, Hyundai also performed a greater degree of warranty and technical support activities in the home market.<sup>386</sup>

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<sup>378</sup> *Id.* at 29; see also Commerce August 3, 2018 Memorandum re: Preliminary Margin Calculation for Hyundai Steel Company (Hyundai Preliminary Calc Memo) at Attachment 2.

<sup>379</sup> See Hyundai’s First Case Brief at 29.

<sup>380</sup> *Id.* at 31.

<sup>381</sup> *Id.* at 32 (citing 19 CFR 351.412(c)(2)).

<sup>382</sup> *Id.* at 32-33.

<sup>383</sup> *Id.* at 33.

<sup>384</sup> *Id.* at 34.

<sup>385</sup> *Id.*

<sup>386</sup> *Id.*



- Granting a CEP offset to Hyundai would be consistent with the underlying investigation in this case,<sup>387</sup> and consistent with the treatment of Hyundai's predecessor, Hyundai HYSCO, in previous proceedings before Commerce.<sup>388</sup>

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- Commerce correctly denied a CEP offset to Hyundai in the *Preliminary Results* because the record shows that Hyundai's essential sales process is the same in both the home market and the U.S. market.<sup>389</sup>
- Regarding freight and delivery, "there are complexities of logistical strategies and efficiencies in having three routing options in the home market, and two {distinct} channels with multiple layers of expenses and various affiliated and unaffiliated agents for delivery to CEP agencies in the United States."<sup>390</sup> Hyundai does not provide any numerical data to support its argument that it performs freight and delivery activities at a more intense level in the home market.<sup>391</sup>
- With respect to inventory maintenance and warehousing, the record shows that a minority of both sales to the United States, and sales in the home market incurred transaction-specific warehousing.<sup>392</sup> As such, Hyundai's arguments concerning inventory management and warehousing activities also fail.<sup>393</sup>
- Finally, Hyundai's arguments concerning warranty and technical support activities are illogical. Hyundai does not point to any record evidence to support its argument, in fact, Hyundai did not report direct technical service expenses in the home market.<sup>394</sup>
- For warranties, Hyundai is confusing transmitting claims and remedying those claims. "While the U.S. affiliates may often be the first point of contact with an end-user or further-processor regarding problems with incoming CORE, each such complaint must be relayed with equal or greater detail and follow-up as the affiliates report back to {Hyundai}."<sup>395</sup>
- Commerce must reject Hyundai's argument that it should be granted a CEP offset in this proceeding to be consistent with past proceedings involving Hyundai.<sup>396</sup>

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<sup>387</sup> *Id.* at 35 (citing *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 78 (January 4, 2016) and accompanying Preliminary Decision Memorandum (*Korea CORE Preliminary Determination*) at 23).

<sup>388</sup> See Hyundai's Case Brief at 35-36; see also *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results of the Seventeenth Antidumping Duty Administrative Review*, 76 FR 55004, 55009 (September 6, 2011), unchanged in the *Final Results* (77 FR 14501, March 12, 2012); see also *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of the Sixteenth Antidumping Duty Administrative Review*, 75 FR 55769 (September 14, 2010), unchanged in the *Final Results* (76 FR 15291, March 21, 2011).

<sup>389</sup> *Id.* at 29-30.

<sup>390</sup> *Id.* at 30-31.

<sup>391</sup> *Id.* at 27.

<sup>392</sup> *Id.* at 31.

<sup>393</sup> *Id.*

<sup>394</sup> *Id.* at 28.

<sup>395</sup> *Id.*

<sup>396</sup> *Id.* at 32.

- Both the CIT and Federal Circuit have found that Commerce’s decisions in one segment of a proceeding do not dictate its decision in subsequent segments.<sup>397</sup>
- Similarly, Commerce has found that “‘whether {it} has granted a CEP offset to {a respondent} in a different proceeding with a different factual record...does not necessarily bind {Commerce} in determining whether to grant or deny an offset adjustment to NV’ in another proceeding.”<sup>398</sup>

**Commerce’s Position:** We have not granted a CEP offset to Hyundai in the final results of review. Based on our analysis of the record of this review, we continue to determine that a CEP offset is not warranted pursuant to section 773(a)(7)(B) of the Act.<sup>399</sup>

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same LOT as the U.S. sales. According to 19 CFR 351.412(c)(2), sales are made at different LOTs if they are made at different marketing stages (or their equivalent), and substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>400</sup> To determine if normal value sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.<sup>401</sup>

When Commerce is unable to match U.S. sales to sales in the home market at the same LOT as the EP or CEP sale, Commerce may compare the U.S. sales to sales at a different LOT in the home market. In comparing EP or CEP sales at a different LOT in the home market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of CEP but the data available do not provide a basis to determine whether the difference in LOTs is demonstrated to affect price comparability (*i.e.*, no LOT adjustment is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>402</sup>

As an initial matter, Commerce conducts a level of trade analysis in each antidumping segment based on the record of that segment. Contrary to Hyundai’s claim, the record of this review does not demonstrate that it performed: (1) freight and delivery services at a more intense level; (2) more warehousing services; and (3) warranty services and technical assistance at a greater degree for its home market sales than for its U.S. sales.

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<sup>397</sup> *Id.*; see also *Pakfood Public Co. v. United States*, 34 CIT 1122 (2010) (Pakfood Public); see also *Alloy Piping Prods. v. United States*, 33 CIT 349 (2009) (Alloy Piping); see also *Timken United States Corp. v. United States*, 434 F.3d 1345 (CAFC 2006) (Timken).

<sup>398</sup> See Petitioners’ First Hyundai Rebuttal Brief at 33 (citing *Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review*, 80 FR 19633 (April 13, 2015) IDM (*Steel Pipe from Mexico*) at 3); see also *Shandong Huarong Machinery Co. v. United States*, 29 CIT 484, 491 (2005) (*Shandong Huarong*).

<sup>399</sup> See *Preliminary Results*, IDM at 24.

<sup>400</sup> See *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (Aug. 18, 2010) (*Orange Juice from Brazil*), and accompanying IDM at comment 7.

<sup>401</sup> See 19 CFR 351.412(c)(2).

<sup>402</sup> See *Orange Juice from Brazil*, IDM at comment 7.

With respect to freight and delivery services, the record shows that Hyundai reported three modes of distribution in the home market, *i.e.*, by truck through warehousing, domestic sea line through warehousing, and delivery by rail to customers.<sup>403</sup> For its U.S. sales, Hyundai sold through two modes of distribution, by container shipments and bulk, alternating between affiliated and unaffiliated freight companies.<sup>404</sup> For those sales, Hyundai also coordinated the freight to warehouse, foreign brokerage and handling, ocean freight and marine insurance.<sup>405</sup> While the services for freight and delivery differ for each market, they are equally complex and employ the same level of planning and organization and do not show a greater level of intensity in the home market.

Hyundai's claim that it provides more warehousing in the home market, and thus, warrants a CEP offset to NV, is also not supported by the record of this review. While Hyundai incurred warehousing expenses for its home market sales more frequently than for its U.S. sales,<sup>406</sup> the reported inventory maintenance expenses for its U.S. sales were far more extensive than those reported for home market sales.<sup>407</sup> Thus, the differences in warehousing activities in each market are not significant enough to warrant a finding the sales were made at different levels of trade.

Hyundai also incorrectly claims that it performs warranty and technical support for home market sales to a greater degree than for its U.S. sales. First, we note that Hyundai did not report any technical services expense for either its home market sales or its U.S. sales.<sup>408</sup> Further, while its U.S. affiliates received the warranty claims from its U.S. customers, and are responsible for any product defects on the characteristics on the further manufactured qualities of the further manufactured products sold in the United States,<sup>409</sup> Hyundai in Korea remains the ultimate guarantor of the qualities of the subject CORE sold in the United States<sup>410</sup>. Accordingly, Hyundai, as the producer of subject CORE, is responsible for addressing any warranty claims against subject CORE in the United States, as much as in the home market.<sup>411</sup>

Finally, Hyundai's argument that Commerce should grant it a CEP offset in this segment because it did so in the underlying investigation is misplaced. Commerce is not necessarily bound by its determinations in a prior segment of a proceeding because each segment has its own unique factual record. Commerce must examine each record on its own merits.<sup>412</sup> We have examined

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<sup>403</sup> See Hyundai AQR at 18-24 and Exhibits A-11-A-13.

<sup>404</sup> See Hyundai's June 27, 2018 Section C First Supplemental Questionnaire Response (Hyundai's June 27, 2018 1<sup>st</sup> CSQR at 12-13.

<sup>405</sup> See Hyundai's February 2, 2018 CQR at C-35, 38, and C-40, and Hyundai's December 26, 2017 AQR at Exhibit A-13.

<sup>406</sup> See Hyundai's February 2, 2018 C&BQR at B-42-43 and C-34-35.

<sup>407</sup> *Id.* at B-42-43 and Exhibit B-20, and C-53 and Exhibit C-20.

<sup>408</sup> See Hyundai's February 2, 2018 BQR at B-39-40 and C-49.

<sup>409</sup> *Id.* at C-49 and Hyundai's December 26, 2017 AQR at Exhibit A-13.

<sup>410</sup> *Id.*

<sup>411</sup> See Hyundai AQR at A-21-22 and Exhibit A-13.

<sup>412</sup> See *e.g.*, *Pakfood Public*, 34 CIT 1122, 1138 (2010); see also *Alloy Piping*, 33 CIT 349, 358-59 (2009) (citing *Timken U.S. Corp. v. United States*, 434 F.3d 1345 (Fed. Cir. 2006)).

the facts on the record of this review and continue to determine that the record does not support granting a CEP offset to Hyundai for these final results.<sup>413</sup>

### **Comment 15: Whether Commerce Should Use Hyundai's Customer-Specific Warranty Expenses**

#### *Hyundai's First Case Brief*

- Hyundai's reported customer-specific warranty expenses are reasonable and accurate. Hyundai's methodology attributes the actual warranty expenses incurred by the customers who raised quality claims during the POR.<sup>414</sup>
- Commerce's use of the alternate warranty expense variable (WARRU\_ALT) attributes quality claim expenses to customers who did not actually raise claims.<sup>415</sup>
- If Commerce continues to use an average warranty expense for all sales, it should do so using either the originally-reported warranty expenses or apply a ratio to all sales.<sup>416</sup>
- The use of WARRU\_ALT amounts to double counting as "the expenses included in the customer-specific expenses already reported in the field WARRU are the same expenses that feed into the average calculation" found in WARRU ALT.<sup>417</sup>
- Applying average warranty expenses to all sales is distortive, as it applies an expense to customers for which Hyundai has no reason to expect quality claims.<sup>418</sup>
- Finally, Hyundai notes that it incorrectly applied the percent ratio in the field WARRU\_ALT. Should Commerce continue to use WARRU\_ALT, it should recalculate the expense field.<sup>419</sup>

#### *Petitioners' First Hyundai Rebuttal Brief*

- Hyundai misunderstands the reasoning for Commerce's questions concerning historical warranty expenses by market. "Warranty claims and the expenses they engender often require resolution and recordation for extended periods after the initial delivery of the goods."<sup>420</sup>
- Hyundai argues incorrectly that Commerce failed to treat WARRU\_ALT and WARRU as mutually exclusive. Hyundai is asking Commerce to revise Hyundai's own response database for the first of two calculation methods employed (WARRU\_ALT for all sales to the United States).<sup>421</sup>
- In addition, it is also not clear that the actual warranty expenses reported in WARRU and the imputed warranty expenses reported in WARRU ALT are mutually exclusive, as the WARRU expenses do not necessarily give rise to the WARRU\_ALT expenses.<sup>422</sup>

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<sup>413</sup> See *Steel Pipe from Mexico*, IDM at 3; see also *Shandong Huarong*, 29 CIT 484, 491 (2005).

<sup>414</sup> See Hyundai's First Case Brief at 36.

<sup>415</sup> *Id.* at 37.

<sup>416</sup> *Id.*

<sup>417</sup> *Id.*

<sup>418</sup> *Id.* at 37-38.

<sup>419</sup> *Id.* at 38; see also Hyundai's July 25, 2018 Letter re: Response to Petitioner's July 18, 2018 Comments in Advance of the Upcoming Preliminary Results (Hyundai's Pre-Preliminary Rebuttal Comments) at 8.

<sup>420</sup> See Petitioners' First Hyundai Rebuttal Brief at 34.

<sup>421</sup> *Id.*

<sup>422</sup> *Id.*

- Hyundai’s argument that applying warranty expenses to customers that do not and have not had warranty claims over the last three years is incorrect. Since “warranty claims have such a long-expected life, {Commerce} is properly assessing likely future expenses...thus applying a historical ratio to such customers is not unreasonable.”<sup>423</sup>
- Finally, in response to Hyundai’s request that Commerce revise Hyundai’s reported data, Commerce is not responsible for ensuring the accuracy and completeness of a response. The errors Hyundai made in reporting WARRU\_ALT to Commerce add to the long list of other errors that warrant the application of total AFA to Hyundai.<sup>424</sup>
- If Commerce does calculate a margin for Hyundai, it should deduct both WARRU and WARRU\_ALT as reported by Hyundai, “to reflect the warranty expenses recognized during the POR, and those not yet realized but applicable to, the POR.”<sup>425</sup>

**Commerce’s Position:** We disagree with Hyundai that Commerce should either only apply the customer- or POR- specific warranty expenses reported by Hyundai for its United States sales. Hyundai’s argument to apply the actual POR warranty expenses by customer to the sales of that customer fails to take the nature of warranty claims into consideration. Warranty claims frequently extend over a period of time that is longer than the POR, and many warranty claims on sales made during the POR end up not being captured in the POR reporting period. Thus, Commerce asks respondents to report,<sup>426</sup> and frequently bases a respondent’s per-unit warranty expenses on a weighted-average of the annual amounts for warranty expenses over the three-year period prior to the POR.<sup>427</sup> This methodology allows Commerce to go beyond the “screen-shot” view of a respondent’s POR warranty expenses and see the historical pattern of warranty claims that a respondent experiences overall. In the absence of warranty agreements, this methodology also assists Commerce in establishing a link to the sales.

Hyundai reported that it does not maintain specific warranty agreements with its customers<sup>428</sup> and initially reported warranty expenses for sales to only specific customers and incurred during the POR. However, in the absence of any warranty agreements, relying on the customer specific POR claims alone would not take into account the long lead time for many warranty claims and expenses, preventing Commerce from calculating a margin for Hyundai as accurately as possible. By including both the customer specific warranty claims during the POR and the historical data on warranty claims, Commerce includes the warranty claims already recognized during the POR, and those not yet realized, but applicable to, the POR in the margin calculations. Based on the fact that certain claims related to sales during the POR are not recognized yet, Commerce has to turn to historical data. Hyundai objects to Commerce attributing the weighted-average of warranty claims to customers that did not have any claims during the reporting period, but the weighted average warranty expense is an estimate of the warranty claims expected for the POR that is based on the actual experience of the company over an extended period of time.

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<sup>423</sup> *Id.* at 34-35.

<sup>424</sup> *Id.* at 35.

<sup>425</sup> *Id.*

<sup>426</sup> Commerce December 5, 2017 Letter re: Antidumping Duty Questionnaire (Initial AD Questionnaire) at C-30.

<sup>427</sup> See, e.g., *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013-2014*, 81 FR 39905 (June 20, 2016), and accompanying IDM at comment 25.

<sup>428</sup> See Hyundai’s February 2, 2018 BQR & CQR at C-49.

We also disagree with Hyundai's claim that Commerce, by applying the customer-specific warranty claim amounts in the weighted-average warranty expenses, is double counting as "the expenses included in the customer-specific expenses already reported in the field WARRU are the same expenses that feed into the average calculation." Commerce calculates the weighted-average of the three most recently completed fiscal years and excluding those customer specific warranty expenses reported incurred during the POR would manipulate the historical data used and would lead to gross inaccuracies. Accordingly, the specific warranty claims already recognized in this POR belong into the weighted-average for this POR as well as the subsequent two review periods.

Also, Hyundai reported that it made a calculation error in reporting the historical warranty expenses in its U.S. sales data base and requested Commerce to correct that oversight in its calculations. Commerce is not correcting unverified data in respondents' submissions.

For the reasons explained above, we continue to apply Hyundai's reported customer specific warranty expenses to those customers and the weighted-average warranty expenses to all of Hyundai's other U.S. sales.

## VII. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If accepted, we will publish the final results in the *Federal Register*.

☒

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\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

3/18/2019

X



Signed by: CHRISTIAN MARSH

\_\_\_\_\_  
Christian Marsh  
Deputy Assistant Secretary  
for Enforcement and Compliance

## Attachment

### Scope of the Order

The products covered by this order are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

- (1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and
- (2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this order are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or

- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (“IF”)) steels and high strength low alloy (“HSLA”) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (“AHSS”) and Ultra High Strength Steels (“UHSS”), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this order unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this order:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin free steel”), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.



The products subject to the order may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.