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MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
2016-2017 Administrative Review of the Antidumping Duty
Order on Heavy Walled Rectangular Welded Carbon Steel Pipes
and Tubes from the Republic of Korea

I. SUMMARY

We analyzed the comments of interested parties in the 2016-2017 administrative review of the antidumping duty (AD) order covering heavy walled rectangular welded carbon steel pipes and tubes (HWR) from the Republic of Korea (Korea). As a result of our analysis, we made changes to the margin calculations from the *Preliminary Results*¹ for the two mandatory respondents in this review, Dong-A Steel Company (DOSCO) and HiSteel Co., Ltd. (HiSteel) as well as the non-selected companies. We continue to find that DOSCO and HiSteel made sales at prices below normal value (NV), and we are applying the weighted average of the cash deposit rates for these two companies to the eleven companies not selected for individual examination.²

We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of issues in this administrative review for which we received comments from the interested parties.

¹ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016– 2017*, 83 FR 50892 (October 10, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

² These companies are: 1) Ahshin Pipe & Tube Company; 2) Bookook Steel Co., Ltd.; 3) Dongbu Steel Co., Ltd.; 4) Husteel Co., Ltd.; 5) Hyundai Steel Pipe Company; 6) Hyundai Steel Co.; 7) Miju Steel Manufacturing Co., Ltd.; 8) NEXTEEL Co., Ltd.; 9) Sam Kang Industries Co., Ltd.; 10) Kukje Steel Co., Ltd.; and 11) Yujin Steel Industry Co. Ltd.

General Issues

Comment 1: Existence of a Particular Market Situation (PMS)

Comment 2: Additional PMS Adjustments

Comment 3: Home Market Viability Allegation

DOSCO-Specific Issues

Comment 4: Weight Basis for DOSCO's Comparison Methodology

Comment 5: DOSCO's Constructed Export Price (CEP) Offset Claim

Comment 6: Cost Differences Unrelated to the Defined Physical Characteristics

Comment 7: Services Sourced from Affiliated Parties

HiSteel-Specific Issues

Comment 8: Differential Pricing

II. BACKGROUND

On October 10, 2018, the Department of Commerce (Commerce) published the *Preliminary Results* of this administrative review. This review covers 14 producers and exporters. The period of review (POR) is March 1, 2016, through August 31, 2017.³

We invited parties to comment on the *Preliminary Results*.⁴ On November 27, 2018, we received case briefs from the petitioners,⁵ DOSCO, and HiSteel.⁶ On December 3, 2018, we received rebuttal briefs from the same parties.⁷ After analyzing the comments received, we changed the weighted-average margins for DOSCO, HiSteel, and the companies involved in the review but not selected as mandatory respondents (the “non-reviewed” companies) from those presented in the *Preliminary Results*.

³ See 19 CFR 351.213(e)(1)(i).

⁴ See *Preliminary Results*, 83 FR at 50893.

⁵ These companies are Independence Tube Corporation and Southland Tube, Incorporated, Nucor companies; Atlas Tube, a division of Zekelman Industries; and Searing Industries.

⁶ See DOSCO's Case Brief, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea – Case Brief,” dated November 27, 2018 (DOSCO Case Brief); HiSteel's Case Brief, “Heavy Walled Rectangular Carbon Steel Pipe and Tube from Korea 2016-2017 Antidumping Duty Review – HiSteel's Case Brief,” dated November 27, 2018 (HiSteel Case Brief); and the petitioners' Case Brief, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Case Brief,” dated November 27, 2018 (Petitioners' Case Brief).

⁷ See DOSCO's Rebuttal Case Brief, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea – Rebuttal Case Brief,” dated December 3, 2018 (DOSCO Rebuttal Brief); HiSteel's Rebuttal Case Brief, “Heavy Walled Rectangular Carbon Steel Pipe and Tube from Korea 2016-2017 Antidumping Duty Review – HiSteel's Rebuttal Case Brief,” dated December 3, 2018 (HiSteel Rebuttal Brief); and the petitioners' Rebuttal Case Brief, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Rebuttal Case Brief,” dated December 3, 2018 (Petitioners' Rebuttal Brief).

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through January 29, 2019.⁸ On February 28, 2019, Commerce extended the deadline for the final results of this administrative review, until May 20, 2019.⁹

III. MARGIN CALCULATIONS

For DOSCO and HiSteel, we calculated export price (EP), CEP, and NV using the same methodology stated in the *Preliminary Results*, except as follows:

- We weight averaged the reported hot-rolled coil (HRC) costs for products identical in all physical characteristics except painting to mitigate the impact of cost differences unrelated to the physical characteristics of the products (*e.g.*, steel input type, quality, metallic coating, perimeter, wall thickness, scarfing, and shape).¹⁰ *See* Comment 6.
- We revised the calculation of the PMS adjustment for both DOSCO and HiSteel to reflect POSCO's subsidy rate as amended pursuant to a court remand. *See* Comment 1.
- We corrected an error in the calculation of the cash deposit rate for the non-reviewed companies.¹¹

IV. DISCUSSION OF ISSUES

General Issues

Comment 1: Existence of a PMS

In the *Preliminary Results*, Commerce determined that a PMS existed in Korea which distorted the cost of production (COP) of HWR. We preliminarily found that the PMS resulted from the cumulative effects of: 1) subsidization of Korean hot-rolled steel products by the Korean government; 2) the distortive pricing of unfairly traded HRC from China; 3) strategic alliances between Korean HRC suppliers and Korean HWR producers; and 4) distortive government control over electricity prices in Korea. In the *Preliminary Results*, we quantified the impact of the PMS in Korea by making an upward adjustment to the respondents' reported HRC costs,

⁸ *See* Memorandum, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

⁹ *See* Memorandum, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated February 28, 2019.

¹⁰ *See* Memorandum entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Final Results – Dong-A Steel Company," dated May 20, 2019.

¹¹ *See* Memorandum entitled, "Calculation of the Cash Deposit Rate for Non-Reviewed Companies" dated May 20, 2019.

basing that adjustment on the subsidy rates, net of export subsidies, from the countervailing duty (CVD) investigation in *Hot-Rolled Steel from Korea*.¹²

DOSCO's Case Brief

*Cost-based PMS Limited to the Calculation of Constructed Value*¹³

- The statute does not permit an adjustment to the COP used to test whether DOSCO's home market sales were made at below COP based on an alleged PMS in Korea.
- Section 504 of the Trade Preferences Extension Act of 2015 (TPEA) modified the definition of "ordinary course of trade" and the provisions concerning the calculation of "constructed value" to permit Commerce to adjust constructed value (CV) "if a {PMS} exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade;" however, it did not change the statutory provisions regarding the calculation of COP or application of the sales-below-cost test.

*Commerce's Affirmative PMS Finding is Unsupported by the Record*¹⁴

- Commerce's preliminary finding that a PMS exists contains no analysis on how the "four factors" apply to DOSCO in this administrative review or to the specific merchandise under consideration. Instead, Commerce relied on PMS determinations in other cases involving other products.
- There is no record evidence in this review demonstrating that the factors cited by Commerce in its PMS determination distorted DOSCO's actual costs to produce HWR.
- Commerce undertook no analysis in the *Preliminary Results* to show that the prices DOSCO paid for its HRC inputs used to produce HWR, either from Korean or foreign suppliers, were inconsistent with market prices or were below the suppliers' COP. Further, there is no record evidence of any cost distortions caused by domestic subsidization in DOSCO's downstream manufacture of HWR.
- Likewise, the evidence does not show that the Korean market has been distorted by imported HRC volumes, especially considering the ample domestic supply of HRC that exists in Korea. Nor have the petitioners or Commerce shown that HRC imports into Korea are significant enough to have any impact on HRC prices in the Korean domestic market.

¹² See *Preliminary Results* and accompanying PDM at 10-13 (citing *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016) (*Hot-Rolled Steel—Korea (CVD)*), as amended in *Certain Hot-Rolled Steel Flat Products from Brazil and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders*, 81 FR 67960 (October 3, 2016) (*Hot-Rolled Steel – Korea CVD Order*) (collectively, *Hot-Rolled Steel from Korea*).

¹³ See DOSCO Case Brief at 5-7.

¹⁴ *Id.* at 8-12.

- Commerce made no effort on the record of this review to confirm or corroborate the existence of a strategic alliance between DOSCO and its HRC suppliers or how a strategic alliance might have contributed to a PMS.
- It is unreasonable to impute the existence of strategic alliances in this case based on findings made for other companies involved in oil country tubular goods (OCTG), line pipe, or standard pipe production, especially given that the HRC used to manufacture OCTG or line pipe is distinct from HRC used to manufacture HWR, and the finished products are sold to different customers, for different grades, for different end uses, and at different price points.¹⁵
- The Court of International Trade (CIT) has discredited Commerce’s *Preliminary Results* PMS findings with respect to the alleged “strategic alliance” as a basis for finding a PMS.¹⁶
- DOSCO’s relationships with its suppliers are not atypical or different from the business relationships of producers and input suppliers across industries and countries. There is nothing outside the ordinary course of trade with respect to this market. Thus, no adjustment to DOSCO’s costs is warranted based on such claims.
- Commerce has consistently found no countervailable subsidies exist regarding Korean electricity that confer benefits to Korean steel producers.¹⁷ Moreover, record evidence contemporaneous with the instant POR shows that Korean electricity rates reflected market principles.¹⁸

*Application of Adverse Facts Available (AFA) to a Fully-Cooperative Respondent*¹⁹

- Commerce must reverse its PMS finding for the final results. However, if Commerce continues to find that it is necessary to make an adjustment to DOSCO’s costs, Commerce should not rely on AFA rates as it did in the *Preliminary Results*, considering DOSCO has cooperated to the best of its abilities in this administrative review.

¹⁵ See DOSCO Case Brief at 9, (citing *See DOSCO’s Letter re: “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Rebuttal Factual Information Relating to Alleged Particular Market Situation,”* dated October 2, 2018 (DOSCO’s October 2 Letter) at Attachment D)).

¹⁶ *Id.* at 8 (citing *Husteel Co., Ltd. v. United States*, 98 F. Supp.3d 1315, 1359 (CIT 2015) (*Husteel*)).

¹⁷ *Id.* at 10 (citing *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49946 (July 29, 2016) (*Cold-Rolled Steel Korea CVD Final Determination*) and accompanying IDM at Comment 2; *Hot-Rolled Steel—Korea CVD IDM* at Comment 2; *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015) (*WLP Korea CVD Final Determination*); and *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) (*CTL Plate Korea CVD Final Determination*)).

¹⁸ *Id.* at 11 (citing DOSCO’s October 2 Letter at Attachment A).

¹⁹ *Id.* at 11-13.

- The Tariff Act of 1930, as amended (the Act) does not contain a basis for applying CVD rates from a separate proceeding as an upward adjustment in the calculation of a respondent's costs. Further, Commerce should not apply CVD findings from other proceedings whether calculated or based on AFA.
- Commerce should rely on more recent determinations that are more reflective of the POR for this administrative review and which are actual calculated rates, not based on the application of AFA, or the domestic subsidies that POSCO has received (*e.g.*, *CTL Plate Korea CVD Final Determination*).²⁰
- The CIT recently remanded to Commerce the CVD AFA rate applied in *Hot-Rolled Steel from Korea*,²¹ which followed the CIT's earlier decision concerning the parallel investigation of *Cold-Rolled Steel from Korea*, based on facts virtually identical.²² In the redetermination of *Cold-Rolled Steel from Korea* Commerce revised its selection of the AFA rate for POSCO, thereby reducing it.²³ In light of these facts, Commerce should not rely on POSCO's AFA rate from *Hot-Rolled Steel from Korea* to quantify a PMS adjustment in this administrative review.²⁴
- Commerce should base any PMS adjustment in this case on the first CVD administrative review of *Hot-Rolled Steel from Korea* because it covers August 12, 2016, through December 31, 2016, which is contemporaneous with the POR of the current administrative review.²⁵

²⁰ See DOSCO Case Brief at 12-13, (citing DOSCO's October 2 Letter at Attachment E).

²¹ *Id.* at 14 (citing DOSCO's October 2 Letter at Attachment B and *POSCO et al. v. United States*, Consol. Court No. 16-00227, Slip Op. 18-117 (CIT Sept. 11, 2018) (*POSCO v. United States HRS*)).

²² *Id.* at 14-15 (citing DOSCO's October 2 Letter at Attachment C; *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49946 (July 29, 2016) (*Cold Rolled Steel from Korea*); and *POSCO et al. v. United States*, Consol. Court No. 16-00225, Slip Op. 18-18 (CIT March 8, 2018) (*POSCO v. United States CRS*)).

²³ *Id.*

²⁴ *Id.* at 15. Further, DOSCO argues that if Commerce adjusts DOSCO's costs based on *Hot-Rolled Steel from Korea*, it should demonstrate how much these subsidy benefits passed through DOSCO's downstream HWR manufacturing (if at all).

²⁵ *Id.* at 15-16. DOSCO notes that Commerce should place on the record of this review, all proprietary analysis memoranda issued in the preliminary results of the first CVD administrative review of *Hot-Rolled Steel from Korea* and allow interested parties to submit comments on the information and data. *Id.* at 16. However, DOSCO notes that the proprietary data is not critical because the public decision memorandum for the preliminary results of the first CVD administrative review of *Hot-Rolled Steel from Korea* contains sufficient information to recalculate the PMS adjustment for DOSCO. *Id.* at 16 and Attachment. Further, DOSCO also notes that if Commerce has concerns about using the preliminary results rates, then it should ensure that the final results of the first CVD review of *Hot-Rolled Steel from Korea* occur before the final results of this current administrative review. *Id.* at 17-20.

HiSteel's Case Brief

- The statute does not permit an adjustment to the COP used to test whether HiSteel's home market sales were made at below COP based on an alleged PMS in Korea. The TPEA allows Commerce to make adjustments only when the PMS affects the comparability of U.S. sales to the sales in the comparison market, but not to adjust the COP for the below-COP analysis.
- Three of the four factors leading to Commerce's PMS finding in the *Preliminary Results*, strategic alliances, government control over electricity costs, and dumping of hot-rolled steel into Korea by Chinese producers are irrelevant to HiSteel. Regarding strategic alliances, there is no record evidence that HiSteel has strategic alliances with any Korean hot-rolled steel producers.²⁶ As for electricity, Commerce has consistently found that Korean electricity prices do not confer any subsidy benefit.²⁷ Third, there is no evidence that HiSteel purchased hot-rolled steel from any Chinese suppliers at unfairly low prices.
- With respect to the HRC that HiSteel purchased from POSCO, there is no evidence that the prices HiSteel paid did not accurately reflect the COP in the ordinary course of trade.
- Commerce's reliance on alleged subsidies to HRC producers in making its PMS determination is inconsistent with the provision of the statute that provides a separate remedy for alleged upstream subsidies.²⁸
- Commerce should not rely on AFA rates as it did in the *Preliminary Results*, considering HiSteel has cooperated to the best of its abilities in this administrative review. The CIT has consistently held that Commerce may not penalize a cooperative party for non-cooperation by an unaffiliated party.²⁹
- The CIT recently remanded to Commerce the CVD AFA rate applied in *Hot-Rolled Steel from Korea*,³⁰ which followed the CIT's earlier decision concerning the parallel investigation of *Cold-Rolled Steel from Korea*, based on facts virtually identical.³¹ In the redetermination of *Cold-Rolled Steel from Korea*, Commerce revised its selection of the AFA rate for POSCO thereby reducing it.³² Commerce should not rely on rates that are pending redetermination when other more recent rates for the same subsidies are available.

²⁶ HiSteel maintains that there is no evidence that POSCO's small ownership (*i.e.*, 6.77 percent) of HiSteel had any effect on the operations or strategy of either POSCO or HiSteel. See HiSteel Case Brief at 4.

²⁷ *Id.* (citing *WLP Korea CVD Final Determination* IDM at Comment 1; *CTL Plate Korea CVD Final Determination* IM at Comment 2; *Cold-Rolled Steel Korea CVD Final Determination* IDM at Comment 2; and *Hot-Rolled Steel—Korea (CVD)* IDM at Comment 2).

²⁸ *Id.* at 5-6 (citing 19 USC 1677-1).

²⁹ *Id.* at 6 (citing *SKF USA v. United States*, 675 F. Supp. 2d 1264, 1276 (CIT 2009) (*SKF USA v. United States*) and *Carpenter Tech. v. United States*, 26 CIT 830, 843 (CIT 2002)).

³⁰ *Id.* at 8 (citing *POSCO v. United States HRS*).

³¹ *Id.* (citing *POSCO v. United States CRS*).

³² *Id.*

- Commerce should base any PMS adjustment in this case on the first CVD administrative review of *Hot-Rolled Steel from Korea* because it covers August 12, 2016, through December 31, 2016, which is contemporaneous with this POR. However, if Commerce is unwilling to rely solely on a preliminary determination, it should rely on other more recent cases concerning Korean government subsidization to POSCO that are not based on the application of AFA (e.g., *CTL Plate Korea CVD Final Determination*).³³
- Commerce’s application of the PMS adjustment to HiSteel’s purchases from non-Korean suppliers was an error because it is illogical to apply a Korean subsidy rate to steel purchased from non-Korean suppliers that did not receive subsidies from the Korean government.³⁴

*HiSteel Additional Factual Information Comments Not Part of HiSteel’s Brief*³⁵

- The petitioners link their PMS allegation in this case to the PMS allegations made in previous reviews of the antidumping duty order of OCTG from Korea. However, in *OCTG from Korea 14-15 AR*, Commerce reversed its preliminary negative PMS findings under improper political interference from the White House.³⁶
- The petitioners base much of their PMS allegation on articles allegedly obtained from various sources. Commerce cannot rely on such articles in the absence of corroboration. For example, the petitioners claim that various press articles indicate POSCO’s profitability has been adversely affected by imports of steel products from China; however, POSCO’s actual financial results show that its operating profit and net income in 2016 and 2017 were higher than in any previous year from 2013.³⁷

*Petitioners’ Rebuttal Brief*³⁸

- Under Section 504 of the TPEA, Commerce has the broad authority to address situations in a foreign market where inputs are purchased and where inherent distortions in the market

³³ *Id.* at 7-8.

³⁴ *Id.* at 9.

³⁵ In the *Preliminary Results*, Commerce noted that there was insufficient time to consider the rebuttal factual information comments submitted by DOSCO and HiSteel prior to the preliminary results, and that we intended to consider this information in our final results. See *Preliminary Results* and accompanying PDM at 3. DOSCO and HiSteel reiterated their rebuttal PMS arguments in their briefs, with the exception of these additional arguments made by HiSteel. See HiSteel’s Letter re: “Administrative Review of the Antidumping Duty Order on Heavy Walled Rectangular Carbon Steel Pipes and Tubes from Korea – Response to the Department’s September 20 Request for Comments on “Particular Market Situation Allegations,” dated October 2, 2018 (HiSteel’s October 2 Letter).

³⁶ See HiSteel’s October 2 Letter at 2 (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 from Korea 14-15 AR*) and accompanying IDM at Comment 3) and Attachment 11 containing Email correspondence from White House trade policy advisor Peter Navarro.

³⁷ *Id.* at 5 and Attachments 5 - 9 (containing information from POSCO’s website and copies of POSCO’s financial statements for each year from 2013 to 2017).

³⁸ See Petitioners’ Rebuttal Brief at 2-22.

prevent a fair comparison. Commerce has the authority to choose any alternative methodology to account for distorted prices and costs as reported.

- Commerce should continue to find that a PMS exists in Korea that distorts the COP of HWR, and continue to increase reported costs for HRC purchased from Korean suppliers using the subsidy rates in *Hot-Rolled Steel from Korea*. Further, Commerce should make the additional or alternative adjustments discussed already in petitioners' case brief to account for the distortive effects of Chinese overcapacity in the Korean market, strategic alliances between Korean suppliers and consumers, and the Korean government control over electricity costs to steel producers.
- The petitioners reiterate the arguments presented in their case brief.

Existence of a PMS in Korea

- The four alleged factors combine to cause a distortion in the price and cost of steel production in Korea, preventing an accurate comparison, as Commerce has recognized in prior proceedings.³⁹
- Although OCTG and HWR and other pipe products are different products, the similarities between their production processes, as well as the fact that these products are manufactured by the same mills, using the same equipment, in the same facilities, and utilizing the same HRC primary input, facing the same distortive market conditions, support Commerce's PMS finding in this case.⁴⁰

³⁹ *Id.* at 5-6 and 9 (citing *OCTG from Korea 14-15 AR* 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; 2015-2016*, 83 FR 17146 (April 18, 2018) (*OCTG from Korea 15-16 AR*) and accompanying IDM at Comment 1; *Certain Oil Country Tubular Goods from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 51442 (October 11, 2018) (*OCTG from Korea 16-17 Preliminary Results*) (collectively *OCTG from Korea*); *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 57583 (December 6, 2017) (*CWP from Korea 15-16 Preliminary Results*), unchanged in *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 from Korea 15-16 AR*) and accompanying 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 from Korea 15-16 AR*) and accompanying IDM at Comment 1; and *Large Diameter Welded Pipe from the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 83 FR 43651 (August 27, 2018) (*LDWP from Korea Preliminary Determination*)).

⁴⁰ *Id.* at 7 (citing Petitioners' Letter re: "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Particular Market Situation Comments," dated October 2, 2018 (Petitioners' October 2 Letter); and Petitioners' Letter re: "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Particular Market Situation Allegation and Supporting Information," dated August 31, 2018 (Petitioners' PMS Allegation)).

- Neither DOSCO nor HiSteel refute the evidence on the record regarding the existence and impact of Chinese overcapacity in the Korean market or of the Korean government’s subsidization of the steel industry (particularly HRC).
- Commerce should reject HiSteel’s claim that the PMS finding is inconsistent with the provisions of the statute that provide a separate remedy for alleged upstream subsidies because:
 - The PMS allegation is not an upstream subsidy allegation but instead a separate claim brought under the 2015 PMS language in the TPEA for the antidumping portion of the statute (emphasis added); and
 - The overall subsidies determined in *Hot-Rolled Steel from Korea* distort the costs of producing HWR such that they are outside the ordinary course of trade.
- HiSteel’s contention that the statute contains a two-part requirement to make an affirmative PMS finding represents an incorrect reading of the statute. Rather, Commerce determined that, under the PMS provision, “where a particular market situation affects the cost of production for the foreign like product, such as through distortions in the cost of inputs, for example, it is reasonable to conclude that such a situation may prevent a proper comparison with the export price or CV.”⁴¹
- Contrary to HiSteel’s claims, its costs do not accurately reflect the COP in the ordinary course of trade. HiSteel ignores the fact that the PMS provision permits the finding that certain market prices (*i.e.*, Korean steel manufacturers’ costs) are distorted such that they are outside the ordinary course of trade.

*Chinese HRC Imports*⁴²

- While HiSteel claims that there is no evidence that: 1) HiSteel purchased HRC from any Chinese suppliers at unfairly low prices, and that this factor relies on the alleged general dumping of Chinese HRC into Korea; nor that 2) the prices HiSteel paid for HRC purchased from POSCO did not accurately reflect the COP in the ordinary course of trade, Commerce has explained that if the market is distorted, companies either have to adjust their pricing to market distortions or leave the market.⁴³ Further, the U.S. courts, as well as the WTO, have all recognized that input subsidies affect the price of the downstream goods.⁴⁴

⁴¹ *Id.* at 15-16 (citing *OCTG from Korea 14-15 AR IDM* at Comment 3).

⁴² *Id.* at 11-13. The petitioners maintain that the record demonstrates the impact of unfairly traded Chinese HRC in Korea (citing to Petitioners’ PMS Allegation) and neither respondent has pointed to any meaningful evidence demonstrating otherwise.

⁴³ *Id.* at 11-12 (citing *OCTG from Korea 15-16 AR IDM* at Comment 1).

⁴⁴ *Id.* at 12 (citing *China Nat. Machinery Import & Export Corp. v. United States*, 264 F. Supp. 2d 1229, 1237 (CIT 2003); *GPX Intern. Tire Corp. v. United States*, 780 F.3d 1136 (Fed. Cir. 2015); and *Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road*

Strategic Alliances

- With respect to the respondents' arguments concerning the strategic alliances PMS factor, Commerce's evaluation of the existence of a PMS is based on the totality of circumstances in the market. Further, it is unnecessary for every company operating in the market to be a member of a strategic alliance.⁴⁵ Moreover, there is evidence on the record of this proceeding to support a finding of strategic alliances between HRC suppliers and downstream producers (*i.e.*, HWR producers).⁴⁶

Electricity Pricing

- Contrary to HiSteel's claims regarding electricity, the existence of an affirmative subsidy finding on electricity is not a prerequisite to a PMS finding, nor does it affect the substantial evidence of market distortion in Korean electricity prices.⁴⁷

*PMS Adjustment*⁴⁸

- Commerce should reject DOSCO's arguments that the CVD rates from *Hot-Rolled Steel from Korea*, and the use of POSCO's subsidy rate in particular, cannot be used to quantify a PMS adjustment in this administrative review because:
 - DOSCO's argument is limited to cold-rolled steel, which is not the primary input in the production of HWR;
 - The CIT's decision is currently under appeal at the U.S. Court of Appeals for the Federal Circuit (CAFC); and
 - The remand determination found that a high margin is warranted to account for the deep government subsidization of steel products in Korea.
- Commerce should reject the respondents' claims that the PMS adjustment unduly applies AFA to the respondents thus penalizing them. Rather, those rates represent the subsidy rates that would apply if the respondents in *Hot-Rolled Steel from Korea* had cooperated, with a reasonable, built-in incentive to induce cooperation. Further, Commerce rejected similar claims in *OCTG from Korea 14-15 AR*, explaining that the application of the rates from *Hot-Rolled Steel from Korea* is within the agency's authority under the PMS law.⁴⁹

Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube from the People's Republic of China, 77 FR 52683 (August 30, 2012)).

⁴⁵ *Id.* at 10 (citing *OCTG from Korea 15-16 AR* IDM at Comment 1; *WLP from Korea 15-16 AR* IDM at Comment 1; and *OCTG from Korea 14-15 AR* IDM at 41).

⁴⁶ *Id.*

⁴⁷ *Id.* at 10-11.

⁴⁸ *Id.* at 17-25.

⁴⁹ *Id.* at 21 (citing *OCTG from Korea 14-15 AR* IDM at Comment 3).

- There is no basis to revise the PMS adjustment to rely on the preliminary subsidy rates from the first CVD administrative review of *Hot-Rolled Steel from Korea* as suggested by the respondents, because the final results of that proceeding will not occur until after the final results in this administrative review. Further, with respect to the appeal at the CIT, the court has not yet issued its decision on Commerce's remand determination.
- Commerce should continue using rates from *Hot-Rolled Steel from Korea*, which are more appropriate than the CVD rates from *Cut-to-Length Plate from Korea* because it specifically relates to HRC, the actual input used to make HWR.
- Commerce's application of the PMS adjustment to HiSteel's purchases from non-Korean suppliers was an intentional and methodological step.⁵⁰
- There is no reason for Commerce to limit its adjustments to HRC costs to purchases from Korean suppliers, because doing so will only address a portion of the PMS in Korea caused by the distortive effects of the Chinese overcapacity crisis.
- Commerce appropriately increased prices of inputs purchased from non-Korean suppliers to account for the fact that Korean and non-Korean steel prices all compete, undercut, and distort one another in the Korean domestic steel market.

Commerce's Position:

Section 504 of the TPEA⁵¹ added the concept of the term "particular market situation" to the definition of "ordinary course of trade," under section 771(15) of the Act, and for purposes of CV under section 773(e) of the Act. Through section 773(e), "particular market situation" also applies to COP under section 773(b)(3) of the Act. Section 773(e) of the Act states that "if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the COP in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology."

In this administrative review, the petitioners alleged that a PMS exists in Korea which distorts the COP for HWR based on the following four factors: (1) subsidization of Korean hot-rolled steel products by the Korean government; (2) the distortive pricing of unfairly traded Chinese HRC; (3) strategic alliances between Korean HRC suppliers and Korean HWR producers; and (4) distortive government control over electricity prices in Korea. Section 504 of the TPEA does not specify whether to consider these allegations individually or collectively. In recent administrative reviews of OCTG, circular welded pipe (CWP), and welded line pipe (WLP)

⁵⁰ *Id.* at 22-23 (citing Memorandum entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Dong-A Steel Company," dated October 3, 2018; and Memorandum entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – HiSteel Co., Ltd.," dated October 3, 2018).

⁵¹ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).

from Korea, as well as in the antidumping duty investigation of large diameter welded pipe (LDWP) from Korea, the petitioners alleged that a PMS existed in Korea based on the same four factors and, upon analyzing the four allegations as a whole, we found that a PMS existed in Korea.⁵² For this review, after analyzing the petitioners' allegation, as well as the factual information and case briefs subsequently submitted by interested parties, we determine that the circumstances present during this review – that is, the PMS allegation itself and the record evidence concerning the allegation – remained largely unchanged from those which led to the finding of a PMS in Korea in the other reviews. Therefore, we find that, based on the collective impact of Korean HRC subsidies, Korean imports of HRC from China, strategic alliances, and government involvement in the Korean electricity market, a PMS exists in Korea which distorts the cost of production for HWR.

In this review, we considered the four aspects underlying the PMS allegation as a whole, based on their cumulative effect on the cost of production for Korean HWR.⁵³ Based on the existence of these conditions in the Korean market, we continue to find that a single PMS exists which impacts the COP for HWR. The record evidence demonstrates that the Korean government subsidized HRC and that the mandatory respondents purchased HRC from entities receiving these subsidies, including POSCO.⁵⁴ The record evidence also shows that the subsidies received by certain Korean HRC steel producers totaled almost 60 percent of the cost of hot-rolled steel, the primary input into HWR production.⁵⁵ Additionally, we note that HRC as an input of HWR constitutes a substantial proportion of the cost of HWR production; thus, distortions in the HRC market have a significant impact on the COP for HWR.⁵⁶

Further, as a result of significant overcapacity in Chinese steel production, which stems, in part, from the distortions and interventions prevalent in the Chinese economy, the Korean steel market has been flooded with imports of cheaper Chinese steel products, placing downward pressure on Korean domestic steel prices.⁵⁷ This situation, along with the domestic steel production being heavily subsidized by the Korean government, distorts the Korean market prices of HRC, the main input in Korean HWR production.

⁵² See *OCTG from Korea 14-15 AR* IDM at Comment 3; *OCTG from Korea 15-16 AR* IDM at Comment 1; *OCTG from Korea 16-17 Preliminary Results*; *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 from Korea 15-16 AR*) and accompanying IDM at Comment 1; *WLP from Korea 15-16 AR* IDM at Comment 1; and *LDWP from Korea Preliminary Determination*, unchanged in *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 from Korea Final Determination*) and accompanying IDM at Comment 1.

⁵³ See *Preliminary Results* and accompanying PDM at 11-13.

⁵⁴ See PMS Allegation at Exhibit 9; see also DOSCO's May 22, 2018, Supplemental Section D Response (DOSCO's May 22, 2018 SDQR) at Exhibit SD-11; DOSCO's July 5, 2018, Supplemental Section D Response (DOSCO's July 5, 2018 SDQR) at Exhibit SD3-13; and HiSteel's March 9, 2018, Sections B-D Questionnaire Response (HiSteel's March 9, 2018 BCDQR) at Appendix D-3-B.

⁵⁵ See PMS Allegation at Exhibit 9.

⁵⁶ See DOSCO's March 12, 2018, Sections B-D Questionnaire Response (DOSCO's March 12, 2018 BCDQR) at D-8; and HiSteel's March 9, 2018 BCDQR at Appendix D-3-A.

⁵⁷ See PMS Allegation at Exhibits 2-5.

With respect to the petitioners' contention that certain Korean HRC suppliers and Korean HWR producers attempt to compete by engaging in strategic alliances, we agree that the record evidence supports that such strategic alliances exist in Korea.⁵⁸ Because strategic alliances have led to distortions in the prices of HRC, as evidenced by the record information, we find that such strategic alliances are a contributing factor to the PMS in Korea impacting the COP for HWR.

With respect to the allegation of distortion present in the electricity market, consistent with the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, a PMS may exist where there is government control over prices to such an extent that home market prices cannot be considered to be competitively set.⁵⁹ Moreover, electricity in Korea functions as a tool of the government's industrial policy. Furthermore, the largest electricity supplier, KEPCO, is a government controlled entity.⁶⁰ Accordingly, the Korean government's involvement in the electricity market in Korea is a contributing factor to the PMS in Korea impacting the COP for HWR.

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

With respect to the respondents' arguments concerning the legal standard for finding a cost-based PMS, all parties agree that section 504 of the TPEA enables Commerce to address a PMS where the cost of materials, fabrication, or processing fail to accurately reflect the COP in the ordinary course of trade. DOSCO and HiSteel 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.⁶¹ We disagree with this interpretation of the Act. Specifically, the term "ordinary course of trade," defined in section 771(15) of the Act, includes situations in which "the administering authority determines that the {PMS} prevents a proper comparison {of normal value} with the export price or constructed export price." Thus, where a PMS affects the COP for the foreign like product through distortions to the cost of inputs, it is reasonable to conclude that such a situation may prevent a proper comparison of the export price with normal value based on home market prices just as with normal value based on CV. The claim that an examination of a PMS for purposes of the sales-below-cost test goes beyond the plain language of the Act fails to consider that the provision at issue, section 773(e) of the Act, specifically includes the term "ordinary course of trade." Thus, the definition of that term, again, found in section 771(15) of the Act, is integral to that PMS provision. Accordingly, we disagree with the argument that Commerce cannot analyze a PMS claim in determining whether a company's

⁵⁸ *Id.* at 2-6, 95-103.

⁵⁹ See SAA accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) at 822).

⁶⁰ See *WLP from Korea 15-16 AR* IDM at Comment 1; and *LDWP from Korea Final Determination* IDM at Comment 1.

⁶¹ See DOSCO Case Brief 6-7; and HiSteel Case Brief at 1-2.

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 DOSCO’s and HiSteel’s arguments are inconsistent with the intent of Congress in adding this provision to the Act, and we agree with the petitioners that Commerce is granted the discretion to use “any other calculation methodology”⁶² if costs are distorted by a PMS, including for the purposes of COP under section 773(b)(3) of the Act.

With respect to DOSCO’s argument that Commerce has made no new factual findings with regard to a PMS in the instant proceeding, relying instead on previous determinations in other cases, we find that the same factors that led to the finding that a PMS existed in the other proceedings (*e.g.*, *OCTG from Korea*, *CWP from Korea 15-16 AR*, *WLP from Korea 15-16 AR*, and *LDWP from Korea LTFV Final Determination*) are also present in this administrative review, and that the facts of these other records support the continued finding that a PMS existed during this POR. Specifically, the facts in this review are largely identical to the facts in *OCTG from Korea*, as HRC is the primary input for OCTG as well as HWR and the same market conditions for Korean HRC apply, and the same evidence is on the record of this review.

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

We also disagree with the respondents’ contentions that POSCO’s subsidy rate from *Hot-Rolled Steel from Korea* is irrelevant because it covered 2014 (*i.e.*, it is not contemporaneous) and does not relate to HWR. Regarding the fact that the rates from *Hot-Rolled Steel from Korea* precede the instant POR, we note that these are the rates in effect for that proceeding because Commerce has not yet completed a CVD review to date. We disagree that we should make our PMS adjustments using subsidy rates from the ongoing first CVD administrative review of Hot-Rolled Steel from Korea; given that this review remains ongoing means that Commerce’s preliminary results findings may be subject to change in the final results.

The respondents’ contentions that the subsidization finding does not pertain to this proceeding is misplaced, because it relates to the inputs used in the production of HWR (*i.e.*, HRC) and we apply the adjustment (*i.e.*, the relevant CVD rate) to the cost of inputs used in the production of HWR. This approach is consistent with the approach taken in *OCTG from Korea*, *CWP from Korea 15-16 AR*, *WLP from Korea 15-16 AR*, and *LDWP from Korea Final Determination*, because the production OCTG, CWP, WLP, LDWP, and HWR production processes all rely on HRC as an input.

⁶² See section 773(e) of the Act.

Contrary to the respondents' arguments, we continue to find that the subsidy rates from *Hot-Rolled Steel from Korea* are more appropriate than the subsidy rates from Commerce's CVD investigation of *Cut-to-Length Plate from Korea*, because the former rates are for hot-rolled steel, the primary input used to make WLP, whereas the latter are not. In our view, the difference in the PORs of these two determinations does not outweigh our consideration that it is preferable to rely on CVD rates which apply to the relevant input, versus CVD rates which apply to other products other than the respondents' primary input. Accordingly, we continue to find that the CVD rates from the investigation on *Hot-Rolled Steel from Korea*, as modified on remand, are an appropriate basis for making a PMS adjustment in this review. However, Commerce continues to consider and develop the basis for its PMS adjustment under section 773(e) of the Act.

With respect to the PMS adjustment to the respondents' COP, we disagree with the respondents' argument that the CVD rates applied in *Hot-Rolled Steel from Korea* are not an appropriate basis for the adjustment. The respondents argue that it would not be appropriate to make a PMS adjustment based on the CVD rate applied to POSCO in *Hot-Rolled Steel from Korea*, because that rate was based on total AFA and is for a period that does not overlap with this review. Regarding the fact that POSCO's CVD rate was based on total or partial AFA, we disagree that this fact alone should discredit its use in making a PMS adjustment. The total or partial AFA rates were imposed because the respondents failed to cooperate to the best of their abilities. As the CVD rates currently being applied to HRC reflect the results of Commerce's investigation into the subsidies the Korean producers received in *Hot-Rolled Steel from Korea*, we determine that the CVD rates from *Hot-Rolled Steel from Korea* represent an accurate measure of the subsidies received by the producers of HRC, and are a reasonable basis for Commerce's adjustment to reflect the Government of Korea's (GOK's) subsidization of HRC products in Korea. In fact, this rate, as modified on remand, was recently affirmed by the CIT.⁶³

Further, the AFA rate only applied to POSCO because POSCO failed to cooperate to the best of its ability, and in this review, we only applied POSCO's rate as an adjustment to the HRC sourced from POSCO. For HRC sourced from other Korean companies, we applied the all-others rate, which was not based on AFA. Moreover, we find that POSCO could have acted to the best of its ability in responding to Commerce's requests for information in *Hot-Rolled Steel from Korea*. The fact that it did not suggests that its full cooperation may have resulted in a higher CVD rate than the one based on total or partial AFA. Regardless of the motives, however, nothing on the record of this proceeding demonstrates that the CVD rates assigned to the producers in *Hot-Rolled Steel from Korea* are inaccurate or inappropriate for use in making a PMS adjustment. Indeed, to date, the HRC producers' rates remain the rates applied to relevant subject merchandise entering the United States. Further, we find the respondents' arguments that it was contradictory for Commerce to find that it could not accurately calculate a subsidy rate for POSCO in *Hot-Rolled Steel from Korea*, yet use that same subsidy rate to quantify a PMS adjustment, to be misplaced. In determining to apply AFA to POSCO in *Hot-*

⁶³ See *POSCO v. United States*, Slip. Op. 19-52, at 9 (CIT May 1, 2019).

Rolled Steel from Korea, Commerce did not find that the AFA rate itself was inaccurate, but, rather, that we could not calculate an accurate rate for POSCO in that proceeding due to POSCO's failure to submit "complete, accurate and reliable data."⁶⁴ Therefore, there is no basis for the respondents' claims that POSCO's AFA rate from *Hot-Rolled Steel from Korea* cannot be used to quantify a PMS adjustment here.

With respect to the respondents' contention that there is no evidence showing that any alleged subsidies received by the HRC producers affected the HRC prices charged to HWR producers, we disagree. In this case, record evidence shows subsidization of HRC producers by the Korean government,⁶⁵ as well as purchases of HRC by the mandatory respondents from Korean HRC suppliers that received such subsidies.⁶⁶

With respect to HiSteel's argument that the use of alleged subsidies provided to HRC 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 administrative 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 proceeding inconsistent with this section of the statute.

Furthermore, regarding the respondents' arguments that there is no evidence that their specific purchases of HRC were outside the ordinary course of trade, we believe that no such analysis is necessary. We disagree with the notion that such company-specific analysis is necessary and appropriate in a situation where, as here, there is sufficient evidence demonstrating that the market as a whole is distorted and a PMS exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the 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 costs.

We also disagree with DOSCO that Chinese imports into Korea are not significant enough to have an impact on the Korean market. Record evidence shows that POSCO's profits have been affected by "a deluge of Chinese exports" which "pushed global prices to their lowest in at least a decade."⁶⁷

With respect to the respondents' contention that there is no evidence that they have strategic alliances with any Korean producers of HRC, we nonetheless find that strategic alliances

⁶⁴ See *Hot-Rolled Steel from Korea* IDM at Comment 5.

⁶⁵ See PMS Allegation at Exhibit 9.

⁶⁶ *Id.*; see also DOSCO's May 22, 2018 SDQR at Exhibit SD-11; DOSCO's July 5, 2018 SDQR at Exhibit SD3-13; and HiSteel's March 9, 2018, Sections B-D Questionnaire Response (HiSteel's March 9, 2018 BCDQR) at Appendix D-3-B.

⁶⁷ See PMS Allegation at Exhibit 31 and 77 (Exhibit 4 within).

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.⁶⁸ Further, we evaluate the existence of a PMS based on the totality of circumstances in the market. Accordingly, to the extent that strategic alliances may have a distortive effect on the market as a whole, in our view, it is unnecessary for every company operating in the market to be a member of a strategic alliance. Thus, whether or not DOSCO and/or HiSteel are part of such an alliance is not relevant to our consideration of the presence of strategic alliances in the Korean HRC and HWR industries.

Finally, regarding the respondents' arguments that Commerce previously found that the prices Korean steel producers paid for electricity did not confer any subsidy benefit, and DOSCO's argument that Commerce has yet to find any countervailable subsidies with respect to electricity in Korea, we disagree that these factors should have an impact on our PMS determination in this case. As an initial matter, as discussed in Comment 2, because we were unable to quantify the effect of distortions in the electricity market, we did not include an adjustment factor for electricity in the PMS adjustment. However, the fact that we were not able to quantify the amount of the distortion does not undermine the fact that the government's policies have an effect on electricity prices.⁶⁹ As stated previously, we evaluate the existence of a PMS based on the totality of circumstances in the market. Based on the record, we find that government involvement in the Korean electricity market distorts the cost of producing HWR. In conjunction with the other three factors discussed above, we continue to find that a PMS exists in Korea with respect to the HRC input in HWR production.

Regarding HiSteel's argument that Commerce's decision process regarding the PMS in Korea was influenced improperly, we disagree. In reaching our determination, we relied solely on the record of this review, as well as our analysis and findings in *OCTG from Korea*, *CWP from Korea 15-16 AR*, *WLP from Korea 15-16 AR*, and *LDWP from Korea Final Determination*.

In *OCTG from Korea 14-15 AR*, Commerce placed a memorandum on the record containing an email message from the Director of the National Trade Council to Commerce.⁷⁰ HiSteel placed the memorandum from *OCTG from Korea 14-15 AR* on the record of this review.⁷¹ As we stated in *OCTG from Korea 14-15 AR*, and again in *OCTG from Korea 15-16 AR*⁷² and *CWP from Korea 15-16 AR*,⁷³ other government agencies, as well as members of Congress, are free to submit their views on questions before Commerce in AD and CVD proceedings. We are free to take these views into account, provided the application of the statute to the facts on the record does not compel a different result, and provided the time allows for comment on such views in keeping with our statutory deadlines.

Separate and apart from any views expressed by the National Trade Council in *OCTG from Korea 14-15 AR*, we, on our own, have been actively engaged in an ongoing examination of the

⁶⁸ See PMS Allegation.

⁶⁹ See PMS Allegation at Exhibit 4; see also *CWP from Korea* IDM at Comment 1.

⁷⁰ See *OCTG from Korea 14-15 AR* IDM at Comment 4.

⁷¹ See Hyundai Steel PMS Comments at Exhibit 11.

⁷² See *OCTG from Korea 15-16 AR* IDM at Comment 3.

⁷³ See *CWP from Korea* IDM at Comment 3.

new statutory provisions pertaining to PMS allegations and the implication of these new provisions, as required and expected of us in order to fulfill our function as the agency responsible for administering the AD and CVD laws. In this case, we relied upon our interpretation of the amended statute and the facts submitted and certified as accurate by the parties in their submissions. After considering the facts and comments on the record, we find that a PMS exists in Korea based on the petitioners' allegations and supporting evidence taken as a whole, as explained above.

Regarding HiSteel's argument that Commerce cannot rely on articles submitted by the petitioners in their PMS allegation in the absence of corroboration, we disagree. We note that the articles in petitioner's PMS allegation are included, along with other evidence on the record, to support their PMS allegation.

Further, contrary to HiSteel' claim that POSCO's financial results show an increase in its operating profit and net income in 2016 and 2016 compared to prior years, as noted above, record evidence shows that POSCO's profits have in fact been affected by "a deluge of Chinese exports" which "pushed global prices to their lowest in at least a decade."⁷⁴

Comment 2: Other PMS Adjustments

Petitioners' Case Brief

- While Commerce properly found in the *Preliminary Results* that a PMS exists in Korea, Commerce's adjustment for the PMS⁷⁵ does not fully address the depth of the distortion. In particular, in applying the all-others subsidy rate from *Hot-Rolled Steel from Korea* to certain HRC purchases, Commerce only partially accounted for the distortive effects of the PMS because this rate only reflects a portion of the distortion and only for a single Korean producer, Hyundai, and excludes the rate assigned to the largest and most heavily subsidized Korean HRC supplier, POSCO.
- Commerce should average all subsidy rates from *Hot-Rolled Steel from Korea*, including POSCO's rate, for its adjustment to all non-POSCO and non-Korean HRC purchases for the final results.
- Commerce's preliminary decision to not integrate the POSCO rate into the CVD rates for purchase from non-POSCO entities is inconsistent with Commerce's recognition in this and other cases that the PMS in Korea affects the entire Korean steel market.⁷⁶

Adjustment using Proposed Regression Analysis

⁷⁴ See PMS Allegation at Exhibit 31 and 77 (Exhibit 4 within).

⁷⁵ See Petitioners' PMS Allegation.

⁷⁶ See Petitioners' Case Brief at 9 (citing *WLP from Korea 15-16 AR IDM* at Comment 1; and *CWP from Korea 15-16 AR IDM* at Comment 1).

- Alternatively, Commerce should adopt the petitioners’ proposed alternative PMS adjustment methodology for the final results and make an upward adjustment to all of the respondents’ HRC input costs as determined by the petitioners’ regression analysis.⁷⁷
- The use of Korean hot-rolled subsidies alone, as a means of offsetting some portion of the distortive effects of the PMS, may not address the depth of the distortion and the impact of global excess capacity on the Korean market.⁷⁸
- Commerce should adopt a methodology based on global steel excess capacity to best adjust for an “overcapacity-driven” PMS.⁷⁹
- Import average unit values (AUVs) best reflect the prevailing trade flows and overall dynamics at the national level and are the best measure of the distortive impact of global excess capacity as transmitted to an individual market.⁸⁰
- Further, a fixed effects regression model best measures the impact of global excess capacity at the national level because it: 1) focuses on intra-country variation rather than inter-country variation, which eliminates the potential of omitting variables; 2) is used to determine the impact of global excess steel capacity on a given country by exploring the relationship between the explanatory and outcome variables within an entity.⁸¹
- The comparison contained in the petitioners’ case brief among various alternative specifications of the regression model illustrates that the effect of global excess capacity on the Korean import AUV will be overstated if the fixed effects parameter is not included.
- The underlying assumptions to the regression analysis are technically sound, reasonable, and appropriate. However, if Commerce considers modifications to the proposed methodology, the record contains all the programming and data necessary to modify the model.⁸²

Other Alternative Adjustments

- As an additional alternative, Commerce could make the adjustment to Korean HRC purchases based on the subsidy rates in *Hot-Rolled Steel from Korea*, and make additional and separate adjustments to account for non-Korean HRC purchases including:
 - apply an upward adjustment to HRC purchases from non-Korean suppliers based on the PMS-adjusted prices for Korean-sourced HRC;

⁷⁷ See Petitioners’ Case Brief at 9-25.

⁷⁸ *Id.* at 10.

⁷⁹ *Id.* at 12-15.

⁸⁰ *Id.* at 15-18.

⁸¹ *Id.* at 18-22.

⁸² *Id.* at 22.

- make the adjustment for HRC purchased from Chinese suppliers using the subsidy rates determined in a recent CVD final determination by the European Union on hot-rolled flat products from China or, alternatively, the CVD rates found in *Cold-Rolled Steel Flat Products from China*;⁸³
- make the adjustment for HRC purchased from Japanese suppliers on, e.g., the dumping rates calculated in *Hot-Rolled Steel Flat Products from Japan*;⁸⁴ or
- make a separate adjustment based on data regarding Mexican imports of HRC.⁸⁵
- Commerce should account for the distortion created by strategic alliances between Korean pipe producers and HRC suppliers by increasing the costs of HRC purchased from allied suppliers. In order to do this, Commerce should collect additional information from the respondents.
- Commerce should adjust the respondents' reported energy costs associated with converting HRC into HWR to account for the market distortion created by the Korean government's involvement in the Korean electricity market by using industrial sector electricity rates from New Zealand or Italy.

DOSCO's Rebuttal Brief

- Commerce should reject the petitioners' argument that Commerce should revise the *Preliminary Results* PMS adjustment for all non-POSCO and non-Korean HRC purchases by averaging all subsidy rates from *Hot-Rolled Steel from Korea* because: 1) *Hot-Rolled Steel from Korea* should not be used to quantify any PMS adjustment, especially with respect to the AFA rate assigned to POSCO for all the reasons already stated in DOSCO's brief, as noted above; and 2) the petitioners have provided no logical argument for why Commerce should apply POSCO's AFA rate, in whole or in part, to purchases of HRC from suppliers unrelated to POSCO.⁸⁶
- Commerce should reject the petitioners' regression model and arguments for the following reasons:

⁸³ *Id.* at 26-27 (citing *Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Partial Affirmative Critical Circumstances Determination*, 81 FR 32729 (May 24, 2016) (*Cold-Rolled Steel Flat Products from China*) and accompanying IDM).

⁸⁴ *Id.* at 27; see also *Certain Hot-Rolled Steel Flat Products from Japan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 53409 (August 12, 2016) and accompanying IDM (*Hot-Rolled Steel Flat Products from Japan*).

⁸⁵ *Id.* (citing Petitioners' PMS Allegation at 45).

⁸⁶ See DOSCO Rebuttal Brief at 5. DOSCO contends that no basis exists to penalize it because of alleged non-cooperation by another company two years ago in a different proceeding over which DOSCO had no control and for an investigation that predates the current POR by more than two years, citing *SKF USA v. United States*.

- The petitioners have provided no meaningful evidence that DOSCO's costs are distorted by HRC sourced from China (or elsewhere) or that DOSCO's HRC purchase prices are inconsistent with world or regional prices.
- The petitioners have provided no evidence to show that the Korean or global market would support the "Predicted Korea AUV" from the regression analysis in the PMS allegation. Further, the Predicted Korea AUV is aberrational.
- The petitioners have not explained whether their regression methodology was prepared by an independent expert or by the petitioners themselves, which raises concerns as to the objectivity and transparency of the regression. Therefore, the regression is unreliable for any PMS adjustments.
- The regression model fails to consider other variables that influence HRC market prices during the POR, *e.g.*, production levels, raw material costs, international shipping costs, energy costs, global economic growth, and foreign barriers to trade.
- The petitioners assume that the target global capacity utilization for crude steel is 85 percent, but they provide no evidence that this is a reasonable target. Further, the global excess capacity values for crude steel are not an accurate reflection of the purported excess capacity for HRC consumed in the manufacture of HWR.
- The petitioners' claim that Korean HRC prices are influenced by global excess capacity suggests that no PMS exists, as there are no factors that are "particular" to a specific "market." Also, the claim that global prices would be higher with less global production is the consequence of normal supply and demand.
- The petitioners provide no indication of how Commerce should apply their adjustment.
- The petitioners claim that there is a positive correlation between global overcapacity and Korean steel prices, but there is nothing to indicate that one variable explains the other.
- Commerce should reject the petitioners' alternate proposed adjustments for non-Korean HRC purchases for all the reasons already stated in DOSCO's brief, as noted above.
- Further, Commerce should find it inappropriate to apply the petitioners' alternative PMS adjustments for non-Korean HRC purchases (*e.g.*, based on the CVD rates from *Cold-Rolled Steel Flat Products from China*, *Hot-Rolled Steel Flat Products from Japan*, Mexican imports of HRC, etc.) because the petitioners failed to explain how such adjustments are quantifiable or how DOSCO specifically benefitted (or could have) from Chinese or Japanese subsidies to HRC, nor did they provide any calculation or legal justification to support such adjustments.

- Commerce should reject the petitioners’ assertion that an adjustment be made for strategic alliances. There is no basis in the record to conclude that strategic alliances exist between Korean HRC producers and Korean HWR producers, and the CIT has rejected the notion of strategic alliances in the context of PMS claims concerning the Korean steel pipe industry.
- Commerce should also reject the petitioners’ contention that an adjustment be made for electricity costs. Commerce has consistently found that no countervailable subsidies exist regarding Korean electricity that confers benefits to Korean steel producers; therefore, it would be unreasonable for Commerce to quantify an upward PMS adjustment that treats unsubsidized electricity as a market-distorting factor.
- Using surrogate electricity costs from Italy or New Zealand would violate Commerce’s CVD regulations which express a preference for benchmarks within “the country in question” or, alternatively, a “world market price.”⁸⁷
- The petitioners failed to demonstrate that electricity production in Italy or New Zealand are comparable to that in Korea.

HiSteel’s Rebuttal Brief

- Commerce cannot logically apply the subsidy rates from *Hot-Rolled Steel from Korea* to HiSteel’s purchases of HRC from non-Korean suppliers because those companies did not receive any subsidies from the Korean government.⁸⁸
- Commerce should reject the petitioners’ argument that Commerce should revise the *Preliminary Results* PMS adjustment for all non-POSCO and non-Korean HRC purchases by averaging all subsidy rates from *Hot-Rolled Steel from Korea*.
- The petitioners’ regression analysis is illogical and fundamentally insufficient as a matter of law due to the following reasons:
 - An analysis of the effects of alleged global excess steel capacity does not describe a market situation particular to Korea, and, even if it did, the Act does not permit any PMS adjustment to COP for purposes of the sales-below-cost test but, rather, only permits an adjustment to CV.
 - The petitioners’ regression analysis includes a wide range of products within their calculated AUVs and the petitioners have not, for example, explained how “excess” global steel capacity to produce wire rod might affect prices for HRC.
 - The petitioners’ regression analysis would require jettisoning nearly all basic economic theory. For example, the petitioners have not explained why annual averages are a meaningful tool when prices and production vary continuously,

⁸⁷ See DOSCO Rebuttal Brief at 13-15.

⁸⁸ See HiSteel Rebuttal Brief at 13.

and the figures for January of each year are highly correlated with figures from the previous December, but not with figures 11 months later at the end of the same year.

- The petitioners' proposed regression analysis, *i.e.*, an "ordinary least squares" regression, identifies correlation, not causation, and therefore cannot be used to project outcomes outside the range of data analyzed in the manner petitioners propose.
 - The petitioners' proposed model is contrary to basic economic principles that quantities respond to prices and that prices are set by the interplay of supply and demand.⁸⁹
- Regarding the petitioners' arguments that Commerce adjust costs in this proceeding for alleged strategic alliances or electricity costs in Korea, HiSteel reiterates its arguments presented in its case brief.
 - Commerce should find it inappropriate to apply the petitioners' alternative PMS adjustments for non-Korean HRC purchases. Commerce has determined that there is insufficient information to support using individual country data, like Mexico, as a substitute to world prices when analyzing the impact on the COP of HRC.⁹⁰
 - The petitioners' argument that Commerce should adjust HiSteel's purchases of Chinese HRC based on the European Union's subsidy investigation on hot-rolled steel from China is inapposite because: (1) Commerce cannot rely on foreign governments' decisions;⁹¹ (2) the Chinese producers did not necessarily pass subsidy benefits along to their customers in the form of lower prices; (3) the European Union's investigation covered the 2015 calendar year, and does not overlap with any of the POR; and (4) HiSteel was not a party to that investigation, which raises the issue of due process.
 - In the *Preliminary Results*, Commerce correctly found that HRC purchased from Chinese suppliers and the effect of Chinese HRC prices on Japanese HRC that is, in turn, imported into Korea could not be quantified based on the information on the record.

Commerce Position:

After consideration of interested parties' comments regarding the application of additional adjustments, we continue to find that the subsidy rates from *Hot-Rolled Steel from Korea* are the best information available on the record with which to make an adjustment, and that the record of this review does not contain appropriate data with which to make further adjustments.

We disagree with HiSteel that the *Preliminary Results* for HiSteel contain an error because we unintentionally applied the all-others' rate from *Hot-Rolled Steel from Korea* to HiSteel's

⁸⁹ *Id.* at 9-11.

⁹⁰ *Id.* at 13 (citing *WLP from Korea 15-16 AR IDM* at Comment 1).

⁹¹ *Id.* (citing *WLP from Korea 15-16 AR IDM* at Comment 2).

purchases of HRC from non-Korean suppliers. Rather, our application of a PMS adjustment to all purchases of HRC by the respondents during the POR was intentional. In the PDM, we stated.

In this administrative review, we preliminarily determine to apply an upward adjustment to DOSCO's and HiSteel's reported costs for their HRC inputs on the basis that a PMS exists.⁹²

Further, in the preliminary calculation memorandum for HiSteel, we stated:

We adjusted HiSteel's reported hot-rolled coil (HRC) costs to reflect the particular market situation (PMS). We identified the Korean suppliers and suppliers of imported hot-rolled coil purchased by HiSteel and applied the corresponding countervailing duty rates or the all others countervailing duty rate to all purchases of HRC. As a result of this adjustment, the HRC costs (DIRMAT) for CONNUMs should be increased by {BPI omitted} percent.⁹³

With respect to the petitioners' arguments that we should integrate the POSCO rate from *Hot-Rolled Steel from Korea* for the PMS adjustment to all reported non-POSCO HRC purchases, we disagree. We find that it would be inappropriate to make an adjustment to the respondents' purchases of HRC from non-POSCO companies using the company-specific subsidy rate assigned to POSCO. This is analogous to our treatment of CVD offsets to AD margins which we apply on a company-specific basis.

We find that it would not be appropriate to make an adjustment for HRC purchased from suppliers in China as proposed by the petitioner, based on a subsidy determination by another administering authority (*i.e.*, the European Union). Although findings by foreign administering authorities may be considered by Commerce, we are not required to accept their levels of dumping or subsidization. We seek to make an accurate adjustment that would correct distortions in costs and, thus, are reluctant to incorporate a margin or subsidies rate that is based on specific calculations and methodologies of a foreign investigating authority. Also, we find that it would not be appropriate to make an adjustment based on Commerce's CVD determination on cold-rolled steel from China because cold-rolled steel is not an input used in HWR production.

Additionally, Commerce finds that strategic alliances could not be used to quantify the impact of the PMS because the limited data on the record of this review do not enable to Commerce to quantify the impact of such alliances on the costs of HRC during this POR. Nonetheless, we continue to find that such alliances tend to impact the way customer-supplier relationships are structured and contribute to the existence of a PMS.

⁹² See *Preliminary Results* and accompanying PDM at 13.

⁹³ See Memorandum entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – HiSteel Co., Ltd.," dated October 3, 2018.

Furthermore, Commerce is unable to quantify the effect of the electricity market on the PMS. In particular, we find that the information on the record is insufficient for determining the impact of government intervention with respect to electricity on the cost to produce HWR. That being said, and as discussed above, the record evidence does support a finding that, at minimum, the Korean government's involvement in the electricity market contributed to the existence of a PMS. Nonetheless, we find that it would not be appropriate to make an adjustment based on electricity rates from another country (*i.e.*, New Zealand or Italy) because electricity from New Zealand or Italy would not likely be available in Korea.

Finally, Commerce notes that excess steel-production capacity has created market distortions across the globe. Excess steel-production capacity causes serious market distortions and contributes to the downturn in global steel markets, including significant price suppression, displaced markets, unsustainable capacity utilization, negative financial performance, shutdowns, and lay-offs. The deterioration in steel demand, along with continued capacity expansions, are likely to place further pressure on country-specific steel markets and create incentives for government interventions which will further distort the production costs and prices for a wide range of steel products.

While we agree with the petitioners that the use of Korean HRC subsidies alone, as a means of offsetting some portion of the distortive effects of the PMS, does not address the depth of the distortion and the impact of global excess capacity on the Korean market, the regression analysis that the petitioners have put forth falls short in several key respects, as discussed below. Therefore, for these final results, we have continued to adjust HRC costs only for subsidies. We will continue to refine our analysis going forward.

We agree with the petitioners that “the global crude steel capacity overhang is {} related to price changes for HRC and plate...”⁹⁴ and that global excess capacity is largely driven by excess capacity in China. We also agree that a PMS adjustment is necessary to account for HRS price distortions in Korea. However, reasonable quantification of the price effect, including specification of the relevant economic variables and the relationships between them, is necessary to calculate an adjustment to account for the PMS.

With respect to the regression model submitted by the petitioners, we did not utilize this model for the final results of review, as the model does not provide a sufficient basis for a PMS adjustment that would account for the impact of global excess capacity on the price of HRS inputs. The petitioners submitted a substantially identical regression model in the investigations of LDWP from Korea and Turkey.⁹⁵ In *LDWP from Korea Final Determination*, Commerce explained, in detail, why the regression analysis did not provide an accurate basis for such an adjustment, despite Commerce's affirmative PMS decision. That analysis applies equally to this case. Among other technical insufficiencies of the model, we find, for instance, that the model specifies only one predictor variable, global excess capacity, which is not country-specific, and thereby omits other country-specific variables that affect import AUVs, such as GDP growth, demand growth in key downstream sectors and industries, and the currency exchange rate. While the fixed effects component of the petitioners' model accounts for time-

⁹⁴ See Petitioners' Case Brief at 24.

⁹⁵ See *LDWP from Korea Final Determination* and accompanying IDM at Comment 2.

invariant variables that differ across countries, it does not account for *time-variant* variables such as those that are noted above. Therefore, although Commerce agrees with the petitioners' qualitative assessment of the PMS in the Korean steel market, the purpose of a regression analysis in this case is to reasonably *quantify* price effects for purposes of a PMS adjustment. We, therefore, find that the petitioners' regression analysis does not accomplish the quantifying aspect of a PMS adjustment.

Comment 3: Home Market Viability Allegation

In February 2018, the petitioners alleged that DOSCO's and HiSteel' home markets may not be viable due to the existence of a PMS for HRC, and that Commerce should rely on CV for normal value.⁹⁶ In the *Preliminary Results*, we found that the petitioners' allegation lacked sufficient record support to conclude a link between the home market viability issue and the cost-based PMS allegation. Therefore, we used home market sales as the basis for NV for DOSCO and HiSteel.

Petitioners' Case Brief

- Commerce should find that DOSCO and HiSteel do not have viable home markets, within the meaning of 19 CFR 351.404, due to the existence of a PMS in Korea related to the cost of HRC (the primary input into HWR). The PMS renders both the sales prices of HWR and its major input costs unreliable. Consequently, Commerce should rely on CV as the basis for NV for both companies in the final results.
- In *Biodiesel from Argentina and Biodiesel from Indonesia*, Commerce found that a PMS rendered HM sales prices outside the ordinary course of trade.⁹⁷ Specifically, in *Biodiesel from Indonesia*, Commerce found that distortions in the input prices for a primary raw material was “a further indication that the prices of ... home market sales are distorted.”⁹⁸
- Commerce's preliminary finding that the petitioners' market viability allegation lacked sufficient record support is inconsistent with Commerce's finding in *Biodiesel from Indonesia* and other cases where Commerce found that distortions in primary raw material

⁹⁶ See Petitioners' Letter re: Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Market Viability Allegations as to DOSCO and HiSteel, dated February 22, 2018 (HM Viability Allegation).

⁹⁷ See Petitioners' Case Brief at 29 (citing *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) (*Biodiesel from Argentina*) and accompanying IDM at Comment 2; *Biodiesel from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 50379 (October 31, 2017) (*Biodiesel from Indonesia Preliminary Determination*) and accompanying PDM at 21-22; and *Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018) (*Biodiesel from Indonesia Final Determination*) and accompanying IDM at Comment 2 (collectively, *Biodiesel from Indonesia*)).

⁹⁸ *Id.* at 30 (citing *Biodiesel from Indonesia Preliminary Determination* and accompanying PDM at 21-22; and PMS Allegation at Exhibit 25).

input prices was a further indication that the prices of home market sales are distorted.⁹⁹ In this case, distortions in HRC are indicative of distorted home market prices of HWR in Korea.

- Commerce should base CV profit on information contained in the 2017 annual report and accounts for EVRAZ, submitted by the petitioners in their September 4, 2018, filing.

DOSCO's Rebuttal Brief

- Commerce correctly determined in the *Preliminary Results* that there is insufficient record support to conclude that there is a link between home market viability and the petitioners' cost-based PMS allegation. The record demonstrates that DOSCO's home market sales satisfy the five-percent market viability threshold.¹⁰⁰
- Commerce should disregard the petitioners' sales-based PMS allegation as untimely under 19 CFR 351.301(c)(2)(i) because it: 1) was filed more than two weeks before the respondents' home market sales responses;¹⁰¹ and 2) contains no "supporting factual information," contrary to the requirement under Commerce's viability regulation.¹⁰²

HiSteel's Rebuttal Brief

- The deadline for a home market viability allegation under 19 CFR 351.301(d)(1) and 351.404(d) was March 19, 2018 (*i.e.*, 10 days after the submission of HiSteel's home market sales response); instead, the petitioners' allegation untimely relied on its August 31, 2018, cost-based PMS allegation.¹⁰³
- The petitioners failed to provide evidence that prices for pipe products themselves were distorted, instead focusing on potential distortions in the costs of HRC.
- The Act requires that Commerce request information necessary to calculate CV from all parties; thus the unsolicited CV information submitted by the petitioners is unusable.¹⁰⁴ The CV data is further unusable because: 1) there is no evidence that EVRAZ produces HWR or that it produces or sells any pipe in Korea; 2) EVRAZ's financial ratios are distorted by the inclusion of the company's coal mining operations; 3) EVRAZ's financial statements provide only a single figure for "selling and distribution costs," without separately

⁹⁹ See *Biodiesel from Indonesia Preliminary Determination* and accompanying PDM at 21-22; and PMS Allegation at Exhibit 25.

¹⁰⁰ See DOSCO Rebuttal Brief at 16 (citing DOSCO's February 12, 2018, Section A Questionnaire Response (DOSCO's February 12, 2018 AQR) at Exhibit A-1)).

¹⁰¹ *Id.* at 17.

¹⁰² *Id.* DOSCO notes that the Petitioners' August 31, 2018, cost-based PMS allegation was filed more than five months after the 10-day regulatory deadline for home market viability allegations.

¹⁰³ See HiSteel Rebuttal Brief at 15.

¹⁰⁴ *Id.* at 17 (citing to section 773(b)(2)(A)(ii) of the Act).

identifying the movement expenses; and 4) EVRAZ's profit must be capped in accordance with section 773(e)(2)(B)(iii) of the Act.

- The petitioners' reliance on *Biodiesel from Indonesia* is misplaced, given that in that case, unlike here, Commerce found the existence of a sales-based PMS because the government of Indonesia required biodiesel producers to provide biodiesel to it at set prices and quantities.¹⁰⁵

Commerce Position:

We continue to use the respondents' home market sales in the analysis for the final results. Commerce's viability regulation is found at 19 CFR 351.404. Subsections (a) and (b) of this regulation state:

Although in most circumstances sales of the foreign like product in the home market are the most appropriate basis for determining normal value, section 773 of the Act also permits use of sales to a third country or constructed value as the basis for normal value. This section clarifies the rules for determining the basis for normal value.

The Secretary will consider the exporting country or a third country as constituting a viable market if the Secretary is satisfied that sales of the foreign like product in that country are of sufficient quantity to form the basis of normal value.

In this case, both DOSCO and HiSteel sold HWR in their home markets in aggregate volumes which were sufficient to permit a proper comparison with U.S. sales of the subject merchandise. Therefore, absent a reason to do otherwise, Commerce's normal practice would be to use home market sales as the basis for NV for DOSCO and HiSteel, in accordance with section 773(a)(1)(B)(i) of the Act.¹⁰⁶

Commerce's regulations at 19 CFR 351.404(d) permit interested parties to allege that a given company's home market is not viable, and, as a result, that it should not be used as the basis for NV. Specifically, this regulation states:

In an antidumping investigation or review, allegations regarding market viability or the exceptions in paragraph (c)(2) of this section, must be filed, with all supporting factual information, in accordance with § 351.301(d)(1).

¹⁰⁵ *Id.* at 20 (citing *Biodiesel from Indonesia Preliminary Determination* and accompanying PDM at 21-22).

HiSteel maintains that Commerce's finding in *Biodiesel from Indonesia* is consistent with the SAA, which states that a PMS "might exist where a single sale in the home market constitutes five percent of sales to the United States or where there is government control over pricing to such an extent that home market prices cannot be considered to be competitively set. See SAA at 822 (emphasis added).

¹⁰⁶ See *Preliminary Results* and accompanying PDM at 13-14.

In light of the language in 19 CFR 351.404(d), we find the petitioners' home market viability allegation to be insufficient. Contrary to the clear requirement of this regulation, the HM Viability Allegation contained no analysis related to the respondents' home market sales of HWR, nor did it contain any supporting factual information that the respondents' home market prices of HWR during the POR were distorted as a result of a PMS.

We disagree with the petitioners that the facts in this case are analogous to those in *Biodiesel from Argentina* and *Biodiesel from Indonesia*. Rather, in those cases, Commerce found the existence of a PMS with respect to the domestic biodiesel markets in Argentina and Indonesia as a result of government price control or intervention in those markets. Specifically, based on the records of those cases, Commerce determined that: 1) the Government of Indonesia requires biodiesel producers to fulfill a mandate to provide biodiesel to it at set prices and quantities;¹⁰⁷ and 2) the price and quantity of all domestic biodiesel sales in Argentina are set by the government and assigned to producers based on non-market factors.¹⁰⁸ This stands in clear contrast to the facts here, where the petitioners' PMS allegation established a link between the cost to produce HWR, but not the price at which it was sold in the marketplace. Absent this direct link, we find no basis to reject out of hand the prices charged by the respondents during the POR to their home market customers, especially when those prices are above a COP which has been adjusted to remove any PMS-related distortion to input costs.

Based on the foregoing, we have continued to rely on DOSCO's and HiSteel's reported home market prices for purposes of the final results.

DOSCO-Specific Issues

Comment 4: Weight Basis for DOSCO's Comparison Methodology

DOSCO reported both the theoretical weight of its finished products, as well as a calculated "actual theoretical" weight based on the dimensions of the coil used to produce them. In the *Preliminary Results*, we based the sales and production quantity used in our analysis on theoretical weight, in accordance with our practice.

DOSCO's Case Brief

- Commerce's use of theoretical weight as the basis for the preliminary calculations led to distorted price comparisons and resulted in inaccurate margin calculations. Using the calculated "actual" weight is the most reasonable and accurate method to measure and compare prices, expenses, and costs in the two markets.

¹⁰⁷ See *Biodiesel from Indonesia* IDM at Comment 2.

¹⁰⁸ See *Biodiesel from Argentina* IDM at Comment 2.

- The Act’s mandate is to ensure a fair comparison between U.S. price and NV.¹⁰⁹ In this case, making fair comparisons means ensuring that all prices, expenses, and production costs are stated and compared on the same weight basis. Commerce has departed from the weights shown on the U.S. invoice in other cases in order to achieve a consistent comparison, and it should follow that practice here.¹¹⁰
- Commerce does not have a preference for theoretical weight-based calculations but instead it seeks to ensure that all data are stated on the same weight basis, with no established preference for theoretical weight or actual weight.¹¹¹
- Both “theoretical actual” and theoretical weights are calculated using the same standard industry formula, with the only difference being the value used for the “thickness” component.¹¹²
- Because there are different established tolerances for HWR thickness (used in the calculation of theoretical weight) between the U.S. and foreign markets, Commerce’s reliance on prices, expenses, and costs based on theoretical weight, rather than on

¹⁰⁹ See DOSCO Case Brief at 21 (citing section 773(a) of the Act; *Smith-Corona Group v. United States*, 713 F.2d 1568, 1578 (CAFC 1983); *Television Receiving Sets, Monochrome and Color from Japan: Final Results of Administrative review of Antidumping Finding*, 50 FR 24278 (June 10, 1985) at Comment 1 (stating that one of the goals of the Act is to guarantee that the administering authority makes fair value comparisons on a fair basis - comparing apples with apples); and *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 76 FR 59999 (September 28, 2011) and accompanying IDM at Comment 5).

¹¹⁰ *Id.* at 29-31 (citing *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 76 FR 40881 (July 12, 2011) and accompanying IDM at Comment. 6; *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 India*, 69 FR 76916 (December 23, 2004) and accompanying IDM at Comment 13; *Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 46584 (August 11, 2008) and accompanying IDM at Comment 11 (where Commerce considered whether to value respondent Fischer’s sales on a pounds solid basis or on a gallon basis)).

¹¹¹ *Id.* at 31-33 (citing *Certain Cut-to-Length Carbon-Quality Steel Plate Products from Italy: Final Results of Antidumping Duty Administrative Review*, 75 FR 47777 (August 9, 2010) and accompanying IDM (where Commerce converted the U.S. sales data from a theoretical weight basis to an actual weight basis to be consistent with the home market sales data and cost of production data); *Certain Oil Country Tubular Goods from Ukraine: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 79 FR 41969 (July 18, 2014) and accompanying IDM (where Commerce agreed that the home market and U.S. market weights should all be reported on the same basis, whether that be theoretical or actual); *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 67 FR 6490 (February 12, 2002) and accompanying IDM at Comment 18 (where Commerce converted the respondent’s sales data from a theoretical weight basis to an actual weight basis); and *Light-Walled Rectangular Pipe and Tube from Mexico: Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53677 (September 2, 2004) and accompanying IDM at Comment 16 (where Commerce converted home market prices to a theoretical basis to be on the same basis as costs and U.S. sales)).

¹¹² *Id.* at 22-23. DOSCO notes that the calculation for weight as stated in the specifications for HWR is: $0.0157 \times \text{Thickness} \times (\text{Perimeter} - 3.287 \times \text{Thickness})$, citing DOSCO’s February 12, 2018 AQR at A-32 – A-33.

“theoretical actual” weight in the *Preliminary Results* led to distorted price comparisons and resulted in inaccurate margin calculations.¹¹³

- The calculated “theoretical actual” weight more closely approximates the real weight of the HWR because that weight is based on the actual wall thickness of the input coil.¹¹⁴ The thickness of the input coil is in fact the actual measured thickness of the coil because DOSCO does not possess equipment to either press the HRC or make the output thinner than the input, thus demonstrating that the actual thickness of the coil remains intact throughout the process of slitting the coil into skelp and forming of the finished pipe.¹¹⁵
- DOSCO follows its established operating standards to produce HWR which specify the actual coil thickness required to produce a given theoretical wall thickness.¹¹⁶
- The customer will always receive HWR with an actual wall thickness that is less than the nominal thickness and, thus, the calculated “theoretical actual” weight is less than the theoretical weight.¹¹⁷ Most customers are aware of this practice and order HWR accordingly. Further, DOSCO considers the calculated “theoretical actual” weight when it negotiates selling prices with its customers and, therefore, this weight better reflects the basis on which DOSCO and DOSCO’s U.S. affiliate, DOSCO America, set prices with their customers.
- Theoretical weight is not a consistent unit of measure and will introduce distortions because there are different established tolerances for HWR thickness (used in the calculation of theoretical weight) between the U.S. and home markets.¹¹⁸ As such, the calculated “theoretical actual” weight is the most reasonable and consistent unit of measure because: 1) DOSCO calculates “theoretical actual” weight in the same manner for all sales regardless of the market; and 2) the calculated “theoretical actual” weights are found in DOSCO’s production records.

Petitioners’ Rebuttal Brief

- Commerce should continue to base prices, expenses, and costs for DOSCO on theoretical weights for the final results. Record evidence demonstrates that DOSCO’s claimed

¹¹³ See DOSCO Case Brief at 25-29. As support for its assertion that theoretical weight based prices, expenses, and costs led to distortions, DOSCO provides an analysis using reported data for a particular CONNUM.

¹¹⁴ *Id.* at 23. DOSCO maintains that nothing on the record of this review suggests that DOSCO’s HRC purchases are subject to tolerance, and DOSCO must know the actual measured thickness of the HRC for many practical reasons (*i.e.*, to calculate actual weight, but also to know that the finished pipe product will be within the stated tolerance).

¹¹⁵ *Id.* According to DOSCO, its forming machinery can only handle skelp up to a certain actual thickness; if DOSCO does not know the actual measured thickness of the merchandise it inputs into its forming line, then the equipment may become damaged if the input coil exceeds the equipment’s maximum acceptable thickness.

¹¹⁶ *Id.* at 23 (citing DOSCO’s March 12, 2018 BCDQR at Exhibit B-8).

¹¹⁷ *Id.* at 24.

¹¹⁸ *Id.* at 22-24 (citing DOSCO’s February 12, 2018 AQR at A-32 - A-33).

“theoretical actual” weights are not actual measured weights, but instead are an alternative calculated measurement based on an industry standard formula according to the theoretical density of the steel based on standard pipe specifications.¹¹⁹

- DOSCO’s assertion that basing the antidumping duty calculations on theoretical weight leads to distorted price comparisons is not supported by record evidence, given that DOSCO has not provided any real, actual weights on the record and DOSCO fails to demonstrate why one formula-based weight measurement is more accurate than any other.¹²⁰
- Because HWR is sold on a theoretical weight basis in both markets, as identified on DOSCO’s invoices and sales documentation in the normal course of business, reporting both home market and U.S. sales on this same basis cannot result in a distortion.¹²¹
- DOSCO’s claim that it considers “theoretical actual” weight when negotiating prices with its customers is questionable, considering the facts demonstrate that such information is not readily available in DOSCO America’s accounting records.¹²²
- Using DOSCO’s theoretical weight information is consistent with Commerce’s practice in this case. Commerce developed this practice in part to correct a mismatch between the weights used to calculate the per-unit prices and those used to construct the control number (CONNUM).¹²³
- Commerce has stated that it is Commerce’s “prerogative to choose between two methods so long as it articulates a rationale that is based on substantial record evidence,” and that Commerce “has based price comparisons on theoretical or actual weight” in prior pipe cases, “depending on the particular facts of each case.”¹²⁴ Indeed in *HWR Korea LTFV Final*, Commerce determined that reliance on theoretical weight was warranted.¹²⁵
- Thus, for the above reasons, and because DOSCO has provided no new facts or evidence in this review to support reliance on DOSCO’s “theoretical actual” weights, Commerce should continue to base the sales and cost data for the final results for DOSCO on theoretical weight.

¹¹⁹ See Petitioners’ Rebuttal Brief at 34 (citing DOSCO’s March 12, 2018 BCDQR at B-21 and C-21-C-22).

¹²⁰ *Id.* at 35.

¹²¹ *Id.* at 35-36 (citing DOSCO’s March 12, 2018 BCDQR at B-20 and C-21).

¹²² *Id.* (citing DOSCO’s March 12, 2018 BCDQR at C-22).

¹²³ See Petitioners’ Rebuttal Brief at 36 (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 Korea LTFV Final*) and accompanying IDM at Comment 2).

¹²⁴ *Id.* at 37 (citing *HWR Korea LTFV Final* IDM at Comment 2, citing *Hynix Semiconductor Inc. v. United States*, 391 F.Supp.2d 1337, 1342 (CIT 2005) (*Hynix Semiconductor v. United States*); *Certain Welded Stainless Steel Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 57 FR 53693 (November 12, 1992) (*Welded Steel Pipe from Korea*); and *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 57 FR 17885 (April 28, 1992)).

¹²⁵ *Id.* at 37 (citing *HWR Korea LTFV Final* IDM at Comment 2).

Commerce's Position:

We continue to base DOSCO's antidumping duty margin on theoretical weight for the final results. In this case, DOSCO does not weigh its products either after production or prior to shipment, and thus it is not able to report the actual measured weight. Rather, DOSCO calculates both the theoretical and "theoretical actual" weights based on the same standard industry formula; the only difference between the weight calculations is the value that is used for the "thickness" component. Theoretical weight, referenced on the invoices, is based on the thickness of the final HWR product and "theoretical actual" weight uses the thickness of the input steel coil used to produce the HWR. Based on the reasoning set forth below, Commerce finds the use of theoretical weight, as opposed to "theoretical actual" weight, to be the appropriate basis for our antidumping calculation.

As an initial note, it is within Commerce's prerogative to choose between two methods so long as it articulates a rationale that is based on substantial record evidence.¹²⁶ There are several bases which form Commerce's rationale for electing to use theoretical weight in this investigation. In previous pipe cases, including in the less-than-fair-value (LTFV) investigation in this case, Commerce based price comparisons on theoretical weight.^{127,128} After consideration of the facts in this case, we find that theoretical weight continues to be the more appropriate basis for price comparisons for several reasons. First, we are able to compare sales and costs on a consistent weight basis for DOSCO, as it provided theoretical weight data for its home market and U.S. sales, and cost databases based upon those theoretical weights.¹²⁹ Second, DOSCO's U.S. customers order products based on nominal dimensions, and are invoiced on a theoretical weight basis (not a "theoretical actual" weight basis).¹³⁰ Third, the CONNUM, which is used to match sales in the home and U.S. markets, is created from the nominal product dimensions as reported by DOSCO in its responses to Commerce's questionnaire, and theoretical weight is derived from nominal dimensions.¹³¹ Accordingly, there is a correspondence between the product CONNUM, *i.e.*, the basis for market comparisons, and theoretical weight. This correspondence does not exist between the product CONNUM and "theoretical actual" weight. Finally, Commerce's methodology in this case has

¹²⁶ See *Hynix Semiconductor v. United States*, which states: "[T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence."

¹²⁷ For instances in which we have used theoretical weight, see *e.g.*, *HWR Korea LTFV Final IDM* at Comment 2; *Certain Welded Stainless Steel Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 57 FR 53693 (November 12, 1992) at Comment 3, and *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 57 FR 17,885 (April 28, 1992).

¹²⁸ Commerce can find no precedent for the use of "theoretical actual" weight, and none of the interested parties have provided any such precedent.

¹²⁹ While we note that DOSCO also reported "theoretical actual" weight sales and cost data, and thus we could in theory use these data in our margin calculations, we find that they are not preferable for the reasons explained below.

¹³⁰ See DOSCO's February 12, 2018 AQR at A-32; and DOSCO's March 12, 2018 BCDQR at B-20 and C-21.

¹³¹ See DOSCO's March 12, 2018 BCDQR at B-12, B-13, C-11, and C-12.

been upheld by the CIT.¹³² We note that no party has argued that the facts underlying *DOSCO* have changed during this POR.

We disagree with DOSCO that “theoretical actual” weights are preferable in this case. As noted above, DOSCO does not use these weights on its invoices to its customers in either the United States or home market. Further, we also note that the theoretical actual method, as advocated by DOSCO, results in different thicknesses of input coil being used in the weight calculation for COP, U.S. price, and home market price for the same CONNUM. As a result, the calculated per-unit COP uses a different conversion factor from that used to compute the per-unit sales prices, for the same CONNUM. Accordingly, we disagree with DOSCO that it is less distortive to use the “theoretical actual” weights.

Further, DOSCO’s assertion that basing the antidumping duty calculations on theoretical weight leads to distorted price comparisons is not supported by record evidence. DOSCO fails to demonstrate why one formula-based weight measurement is more accurate than any other. Instead, DOSCO merely contends that a difference exists when one calculated weight is applied over the other.

Further, we find unconvincing DOSCO’s claim that DOSCO America considers “theoretical actual” weights when negotiating the selling prices with its customers, given that the facts on the record demonstrate that such information is not readily available in DOSCO America’s accounting records.¹³³ Similarly, with respect to DOSCO’s claim that the calculated “theoretical actual” weight more closely approximates the real weight of the HWR because that weight is based on the actual wall thickness of the input coil, DOSCO provided no record evidence to support this claim.¹³⁴

For the foregoing reasons, and consistent with Commerce’s practice, we continue to find that theoretical weight is the appropriate basis upon which to calculate DOSCO’s final dumping margin. Therefore, we have relied on these data for purposes of the final results.

Comment 5: DOSCO’s CEP Offset Claim

In the *Preliminary Results*, we analyzed the selling functions DOSCO performed to make sales in the home market and to its U.S. affiliate, DOSCO America. Based on this analysis, we determined that DOSCO’s sales to the U.S. and home markets were at the same level of trade

¹³² See *Dong-A-Steel Company, et al. v. United States*, 337 F. Supp. 3d 1356, 1373 (CIT 2018) (*DOSCO*), where the Court stated:

The court finds that Commerce reasonably determined that theoretical weight is based on a nominal value, and it was reasonable for Commerce to determine that utilizing theoretical weight would not decrease any distortions in the calculation compared to actual weight. The court concludes that Commerce’s choice to use theoretical weight rather than actual weight is reasonable and supported by evidence.

¹³³ See DOSCO’s February 12, 2018 AQR at A-33; and DOSCO’s March 12, 2018 BCDQR at C-22.

¹³⁴ Indeed, DOSCO made a similar claim in the LTFV investigation, which it similarly could not support. See *HWR LTFV Final IDM* at Comment 2; and *DOSCO*.

(LOT) during the POR. Therefore, we did not grant DOSCO a CEP offset for the *Preliminary Results*.¹³⁵

DOSCO's Case Brief

- DOSCO's home market LOT is more advanced than its CEP LOT and, thus, it is entitled to a CEP offset.
- Commerce grants CEP offsets when it determines that the home market LOT is more advanced based on the number of selling activities performed to support sales at each marketing stage and the intensity of those activities. DOSCO's selling functions chart submitted on the record which shows that it performed 12 selling activities to sell in the home market, while it performed only four selling activities for sales to DOSCO America.¹³⁶
- DOSCO reported a "high" level of direct sales personnel in the home market and a "low" level for CEP sales because: 1) during the POR, it employed a single sales person to manage sales to DOSCO America, whereas it had various home market sales personnel dedicated solely to home market sales; and 2) DOSCO is responsible for soliciting and receiving orders from home market customers, whereas it only receives, and processes orders placed by DOSCO America.
- DOSCO's sales employees perform a wide range of strategic/economic planning and sales forecasting activities in the home market,¹³⁷ whereas DOSCO America performs the core selling functions, strategic/economic planning, and sales forecasting activities for U.S. sales.¹³⁸ The "sales and marketing" selling activities performed for DOSCO's home market sales in the aggregate are substantially different and at a greater level of intensity than the activities that DOSCO performs for sales to DOSCO America.¹³⁹
- DOSCO performed the selling function of inventory maintenance for its home market sales and not for its U.S. sales, and this alone is sufficient to find a difference in marketing stage between the two markets.

¹³⁵ See *Preliminary Results* and accompanying PDM at 17.

¹³⁶ See DOSCO Case Brief at 34-35 (citing DOSCO's February 12, 2018 AQR at Exhibit A-7).

¹³⁷ See DOSCO Case Brief at 36-38. Specifically, DOSCO states that its domestic sales personnel perform the following activities: monitoring pricing and demand trends, preparing an annual business plan, recruiting and training of new employees, generating order sheets and collecting payments, using stock ledgers and brochures to advertise and promote sales, and performing warehouse management.

¹³⁸ *Id.* (citing DOSCO's June 7, 2018, Sections A-B Supplemental Questionnaire Response Part II (DOSCO's June 7, 2018 SABQR) at Exhibit SAB2-2).

¹³⁹ *Id.* at 38-39.

Petitioners' Rebuttal Brief

- Commerce should continue to deny DOSCO's CEP offset claim for the final results because DOSCO did not provide sufficient evidence to support its claim, thus failing to meet its burden of demonstrating different LOTs between markets.
- DOSCO itself recognizes that the level of intensity at which it reports it performed various selling functions is a "subjective assessment."¹⁴⁰ Further, while DOSCO reported certain additional activities supporting the home market (*e.g.*, annual sales forecasting, using stock ledgers and making order sheets, and providing an existing brochure to home market customers), Commerce found that these additional functions are not substantial or significant.¹⁴¹
- Further, DOSCO failed to provide evidence to support the reported level of intensity for a given activity or for the claimed activity at all. For example, while DOSCO reported a "high" level of intensity for "Direct Sales Personnel" for the home market LOT, it provided little evidence to support the nature of the activities performed or the level of intensity, stating "{n}o document exists for the direct sales personnel."¹⁴² Also, while DOSCO claims that the process to prepare annual business and sales plans is extremely time-consuming and resource-intensive, it provided no evidence to support its assertion.¹⁴³
- With respect to personnel training, not only did DOSCO fail to substantiate its claimed level of intensity for this activity in the home market, but it also failed to demonstrate that this (or a similar) activity does not exist for the staff selling HWR to DOSCO America. Similarly, DOSCO provided no evidence to support its claimed level of intensity for market research activities in the home market, asserting that most market research is "not documented."¹⁴⁴
- Further, while DOSCO claimed its activities related to market research, sales and marketing support, and sales promotion and advertising in the home market were significant, such activities, including online monitoring or discussions by telephone or in person with home market customers, are common minor sales activities. Thus, these activities are not significant enough to demonstrate that home market sales were at a more advanced stage of distribution than sales to the United States.¹⁴⁵
- Finally, contrary to DOSCO's assertion that it performed the "critical additional core selling function" of inventory maintenance in the home market that it did not perform for its CEP sales, the record of this segment of the proceeding shows that DOSCO incurred no warehousing expenses on its home market sales during the POR.¹⁴⁶

¹⁴⁰ See Petitioner Rebuttal Brief at 40 (citing DOSCO's June 7, 2018 SABQR at 7).

¹⁴¹ *Id.* at 44 (citing *Preliminary Results* and accompanying PDM at 17).

¹⁴² *Id.* at 40-41 (citing DOSCO's June 7, 2018 SABQR at 7).

¹⁴³ *Id.* at 41. The petitioners further note that, given the reports are only prepared annually, it is unclear how the related activities demonstrate a significant difference between the home and U.S. markets.

¹⁴⁴ *Id.* at 42 (citing DOSCO's June 7, 2018 SABQR at 8-9).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 42-43 (citing DOSCO's March 12, 2018 BCDQR at B-28).

- Consequently, in this segment of the proceeding, DOSCO failed to meet the burden of demonstrating its entitlement to a CEP offset adjustment, as was the case in the original investigation, and, therefore, Commerce should continue to deny DOSCO's CEP offset claim for the final results.

Commerce's Position:

We continue to find that a CEP offset is not warranted for DOSCO for the final results. Section 773(a)(7)(B) of the Act requires an adjustment to NV in the form of a CEP offset if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability. Commerce's regulations at 19 CFR 351.412(c)(2) outline Commerce's policy regarding differences in the LOTs as follows:

The Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing.¹⁴⁷

In the *Preliminary Results*, we analyzed DOSCO's U.S. and home market selling functions, and we organized them into the following four categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. For DOSCO's U.S. sales we found that:

DOSCO reported that it performed the following selling functions in Korea for both its CEP and EP sales: order input/processing; employment of direct sales personnel; packing; and handling of freight and delivery arrangements. Based on these selling function categories, we find that DOSCO performed sales and marketing and freight and delivery services for all of its U.S. sales. Because the selling functions performed by DOSCO in Korea for U.S. sales do not differ significantly between channels, we also determine that there is one LOT in the U.S. market.¹⁴⁸

In addition, in the home market we found that:

According to DOSCO, it performed the following selling functions for sales to all home market customers: order input/processing; employment of direct sales personnel; sales/marketing support; market research; sales forecasting; strategic/economic planning; personnel training/exchange; advertising; sales promotion; packing; inventory maintenance; and handling of freight and delivery arrangements. . . . Based on these selling function categories, we find that DOSCO performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for its home market sales. Because we

¹⁴⁷ See 19 CFR 351.412(c)(2) (emphasis added).

¹⁴⁸ See *Preliminary Results* and accompanying PDM at 16.

find that there were no differences in selling activities performed by DOSCO to sell to its home market customers, we determine that there is one LOT in the home market for DOSCO.¹⁴⁹

We addressed DOSCO's claim in our *Preliminary Results* as follows:

Finally, we compared the U.S. LOT to the home market LOT. In its responses, DOSCO claimed that it performed additional sales activities (*e.g.*, annual sales forecasting, annual strategic/economic planning, training of new employees, using stock ledgers and brochures to advertise and promote sales, monitoring raw material prices and exchange rate trends, and making order sheets), in the home market to support domestic sales and that these additional selling activities constitute a higher LOT than the U.S. LOT. While we acknowledge that the selling functions performed for home market customers may have entailed additional activities, we disagree that these activities were substantial or so significant that they constitute a different marketing stage.

In its original response, DOSCO provided a list of supporting documents (and samples of the documents) related to specific activities that it performed as part of these additional selling functions. We requested that DOSCO indicate how often it performed each of these activities and provide documentation supporting the level of intensity at which it performed the activities in Korea related to its home market sales. In response, DOSCO provided an updated chart that listed the documents that DOSCO uses to support specific selling activities and how frequently it performed the activity.

With respect to the specific activities highlighted by DOSCO, we disagree that the record demonstrates significant differences between markets. In particular, DOSCO's sales forecasting and strategic/economic planning activities consist of the preparation of an annual business plan and sales forecasting report, neither of which pertained exclusively to the home market (*e.g.*, they included general planning information such as basic high-level annual sales strategies). Further, DOSCO's review of its inventory (including the use of stock ledgers) and its creation of home market order sheets appear to be basic administrative functions which involved little actual selling activity. Similarly, DOSCO's home market "advertising" during the POR consisted of providing an existing product brochure to home market customers, while its "market research" activities involved: 1) undocumented online monitoring of trends in raw material prices and exchange rates (both of which appear to be equally relevant to U.S. sales); and 2) preparing reports not limited to home market sales of HWR pipes and tubes. Finally, DOSCO's personnel training consisted of providing a single course to two new salespeople on topics unrelated to sales.

Consequently, when DOSCO's selling activities are viewed as a whole, we find that the differences between those activities performed for home market and U.S. sales do not rise to the level of a "substantial difference in selling activities," or that DOSCO's U.S. and home market sales were at different stages of marketing (or their equivalent). The record shows that DOSCO's additional home market selling functions did not result in

¹⁴⁹ *Id.* at 15-16.

sales at a different marketing stage, as required by Commerce's regulations. Therefore, we preliminarily determine that sales to the home market during the POR were made at the same LOT as sales to the United States. Because DOSCO's home market LOT is not at a more advanced stage of distribution than DOSCO's U.S. LOT, a CEP offset is not warranted.¹⁵⁰

Given the foregoing, we disagree with DOSCO that record evidence demonstrates that DOSCO's home market is at an LOT which is more advanced than the LOT of its sales to the United States. In essence, DOSCO's claim is limited to the following: 1) more employees take orders from home market customers than for its affiliate, and those employees solicit those sales in some manner; 2) DOSCO's sales employees perform strategic/economic planning and sales forecasting activities in the home market, which they do not perform for sales to DOSCO America; 3) DOSCO recruits and trains its employees using a "systematic education system"; DOSCO creates, updates, and distributes product brochures; and 5) DOSCO sells from inventory in the home market sales but produces U.S. sales to order.

While we acknowledge that the selling functions performed for home market and U.S. sales are not identical, we disagree that the activities performed to make home market sales were so significant that they constituted a different marketing stage, within the meaning of 19 CFR 351.412(c)(2). With respect to the specific activities highlighted by DOSCO, the record demonstrates no significant differences between markets. In particular:

- While DOSCO claims that its salesmen in the home market "devote substantial time to developing (targeting) potential customers and making additional sales to customers in the home market,"¹⁵¹ DOSCO provided little to no documentary evidence supporting this claim. Instead, it merely stated that discussions with customers were "typically done through in-person meetings and telephone conversations." With respect to its sales promotion activities carried out by these employees, DOSCO merely provided a single email – which was incompletely translated – demonstrating that it transmitted its product brochure to a customer.
- DOSCO similarly provided little evidence to support its claim that it performed substantial strategic/economic planning and sales forecasting activities in the home market. As noted in the *Preliminary Results*, DOSCO's activities were limited to the preparation of an annual business plan and sales forecasting report, neither of which pertained exclusively to the home market (*e.g.*, they included general planning information such as basic high-level annual sales strategies).¹⁵²
- DOSCO failed to demonstrate that it had a "systematic education system" in place to train home market sales employees during the POR. Rather, DOSCO stated that its personnel training consisted of providing a single course to two new salespeople on

¹⁵⁰ *Id.* at 16-18 (footnotes omitted).

¹⁵¹ See DOSCO's Case Brief at 36.

¹⁵² See DOSCO's February 12, 2018 AQR at Exhibit A-7b; and DOSCO's June 7, 2018 SABQR at 7-8.

topics unrelated to sales.¹⁵³ Thus, the record demonstrates that the training provided was sporadic in nature, of short duration, limited to less than a handful of employees, and not directly related to selling activities. Further, DOSCO did not demonstrate that staff associated with home market sales receive training that is greater than the training received by staff making U.S. sales.

- DOSCO failed to demonstrate that it created any product brochures for home market customers during the POR. Indeed, DOSCO affirmatively stated that, during the POR, it “did not update or prepare a new product brochure.”¹⁵⁴ Therefore, it is unclear how this supports DOSCO’s claim.
- With respect to inventory maintenance, we do not dispute that DOSCO sold home market products from inventory and made U.S. products to order. However, DOSCO failed to demonstrate that maintaining home market inventory required significant resources, or indeed, any resources beyond placing products in its own storage area at the factory and then removing them once it sold the products.

Consequently, when DOSCO’s selling activities are viewed as a whole, we find that the differences between those activities performed for home market and U.S. sales do not rise to the level of a “substantial difference in selling activities,” or that DOSCO’s U.S. and home market sales were at different stages of marketing (or their equivalent). As noted above, Commerce examines the extent of the activities performed and their significance to the company’s selling operations. Thus, it is immaterial that DOSCO possibly had additional home market selling function activity. The record shows that DOSCO’s additional home market selling functions did not result in sales at a different marketing stage, as required by Commerce’s regulations. Therefore, we do not find that DOSCO’s home market was at a more advanced LOT, a precondition for the granting of a CEP offset.¹⁵⁵

Whether DOSCO is entitled to a CEP offset is a fact-intensive and case-specific inquiry. Here, we find that the information provided by DOSCO in support of its claim does not demonstrate that there were significant differences between the selling functions performed for its home market sales and sales to DOSCO America. Finally, Commerce’s analysis and denial of a CEP offset to DOSCO in the LTFV investigation in this case has been upheld by the CIT based on similar facts.¹⁵⁶

¹⁵³ See DOSCO’s February 12, 2018 AQR at Exhibit A-7b; and DOSCO’s June 7, 2018 SABQR at 14 and Exhibit SAB2-5.

¹⁵⁴ See DOSCO’s June 7, 2018 SABQR at 10.

¹⁵⁵ See 19 CFR 351.412(c)(2).

¹⁵⁶ See *DOSCO*, 337 F. Supp. 3d at 1374-75 (finding that Commerce acted reasonably in evaluating the record evidence).

Comment 6: Cost Differences Unrelated to the Defined Physical Characteristics

Petitioners' Case Brief

- DOSCO has reported significantly different coil costs for similar CONNUMs.¹⁵⁷
- Even when production timing difference is taken into consideration, vis-à-vis quarterly cost reporting, there continue to exist significant and unexplained differences in the coil costs for similar CONNUMs.¹⁵⁸
- The underlying causes of differences, even if explainable, require that Commerce correct the distortion.¹⁵⁹

DOSCO's Rebuttal Brief

- Of the four pairs of similar CONNUMs referenced by the petitioners, the cost differences for two are so minor that they require no explanation, the third can be explained by the fact that the CONNUM with the higher raw materials cost was routed through a new forming mill (resulting in higher conversion costs due to trial runs and very low production quantity), and the fourth resulted from differences in production time and quantity.¹⁶⁰

Commerce's Position:

We agree with the petitioners, and for the final results, we adjusted DOSCO's reported raw materials costs. Specifically, we adjusted the reported CONNUMs that are identical in all of Commerce's physical characteristics except for painting (*i.e.*, steel input type, quality, metallic coating, perimeter, wall thickness, scarfing, and, shape) to reflect the same HRC cost.

When Commerce evaluates a respondent's submitted costs, section 773(f)(1)(A) of the Act provides that "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles {GAAP} of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise." Accordingly, Commerce 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 home country GAAP; and, 2) the books reasonably reflect the cost to produce and sell the merchandise. Here, DOSCO's books meet the first criterion; thus, the question is whether the per-unit costs from DOSCO's normal books reasonably reflect the cost to produce and sell the merchandise under consideration.

¹⁵⁷ See Petitioners' Case Brief at 34.

¹⁵⁸ *Id.* at 35.

¹⁵⁹ *Id.* at 37-38.

¹⁶⁰ See DOSCO Rebuttal Brief at 18 (citing DOSCO's May 22, 2018 SDQR at Exhibit SD-22).

At the outset of a case, Commerce identifies the physical characteristics that are the most significant in differentiating between products. These are the physical characteristics that define unique products, *i.e.*, the CONNUMs, for sales comparison purposes. The level of detail within each physical characteristic (*e.g.*, the multiple different sizes of a product) reflect the importance that Commerce places on establishing NVs based on the comparison market sales of identical, or the most similar, foreign like product. Thus, under sections 773(f)(1)(A) and 773(a)(6)(c)(ii) of the Act, a respondent's reported product costs should reflect meaningful cost differences attributable to these different physical characteristics. This ensures that the product-specific costs we use for the sales-below-cost test, CV, and the difference-in-merchandise adjustment accurately reflect the distinct physical characteristics of the products whose sales prices are used in Commerce's dumping calculation.

The physical characteristics identified in this case are steel input type, quality, metal coating, painting, perimeter, wall thickness, scarfing, and shape.¹⁶¹ Based on our analysis of DOSCO's reported cost data, Commerce finds that the large fluctuation in costs between CONNUMs cannot be explained by the physical characteristics of those CONNUMs. Rather, the differences are linked to production time and quantities, and trial runs in some instances.¹⁶²

DOSCO does not dispute these facts. Instead, these facts underpin DOSCO's argument for accepting the cost changes between CONNUMs that differ only in whether they have been painted or not. However, we disagree that such rationale supports that the reported costs are not distorted. Rather, we find that variations in raw materials costs for CONNUMs with the same physical characteristics except for painting create distortive cost differences that are unrelated to the physical characteristics outlined by Commerce.

Commerce faced similar situations where a CONNUM's costs were highly dependent on either specific production runs or on the timing of the main raw material purchases. For example, in *UK Bar*, Commerce found that the respondent's costs from its normal books and records were distortive.¹⁶³ In that case, the respondent assigned a specific billet purchase price to each job order within a CONNUM, and because it produced and sold each product only a limited number of times during the cost reporting period, the specific billet costs did not represent the unit cost normally experienced by the company to produce the product during that time period. Similarly, in *CWP from Korea 11-12 AR*, Commerce reallocated the respondent's costs from its normal books and records because the product-specific cost differences were related to timing differences rather than differences in physical characteristics.¹⁶⁴ In fact, the CIT upheld our reallocation of costs where a respondent's reported costs reflect cost differences due to factors other than physical characteristics.¹⁶⁵

¹⁶¹ See, *e.g.*, Commerce's January 16, 2018 section B questionnaire at B-10 through B-13.

¹⁶² See DOSCO Rebuttal Brief at pages 18-19.

¹⁶³ See *Stainless Steel Bar from the United Kingdom: Final Results of Antidumping Duty Administrative Review*, 72 FR 43598 (August 6, 2007) (*UK Bar*) and accompanying IDM at Comment 1.

¹⁶⁴ 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) (*CWP from Korea 11-12 AR*) and accompanying IDM at Comment 1.

¹⁶⁵ See *Thai Plastic Bag Indus. Co., Ltd. v. United States*, 751 F. Supp. 2d 1316, 1324-25 (CIT 2010); and *DOSCO*, 337 F. Supp. 3d at 1371.

Based on the foregoing discussion, Commerce finds that DOSCO's methodology results in arbitrary cost differences between nearly identical CONNUMs which are independent of the physical characteristics identified by Commerce. Therefore, for the final results, we have adjusted DOSCO's reported costs for CONNUMs that are identical in all of Commerce's physical characteristics except for painting (*i.e.*, steel input type, quality, metallic coating, perimeter, wall thickness, scarfing, and, shape) to reflect the same HRC cost.

Comment 7: Services Sourced from Affiliated Parties

Petitioners' Case Brief

- DOSCO failed to provide purchase volumes associated with tolling fees for services and, as a result, Commerce cannot calculate average prices necessary for the transactions disregarded analysis.¹⁶⁶
- Commerce gave DOSCO multiple opportunities to provide the missing information but DOSCO repeatedly failed to provide this information.¹⁶⁷
- The evidence on the record indicates that DOSCO likely has a record of the volumes tolled by its affiliated and unaffiliated tollers, or at the very least the data necessary to derive a methodology to execute an affiliated and unaffiliated comparison on a per-weight basis specific to each type of service provided.¹⁶⁸
- DOSCO's failure to provide the required information regarding its costs for services sourced from its affiliates for the transactions disregarded analysis, even after repeated requests from Commerce, indicates that it failed to act to the "best of its ability."¹⁶⁹

DOSCO's Rebuttal Brief

- The affiliation with the two companies referenced by the petitioners ended on December 31, 2016, which means that DOSCO was not affiliated with these companies for the last half of the POR. After the affiliation ended, the cost calculation for the tolling service fee did not change.¹⁷⁰
- In the normal course of business, DOSCO does not maintain production quantity data that segregates production between affiliated and unaffiliated service providers. The affiliated tolling companies invoice DOSCO based on the number of employees used.¹⁷¹

¹⁶⁶ See Petitioners' Case Brief at 39.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 41.

¹⁶⁹ *Id.* at 42.

¹⁷⁰ See DOSCO's Rebuttal Brief at 19.

¹⁷¹ *Id.* at 20.

- DOSCO demonstrated that the outsourcing costs (rates) paid to two affiliates did not change after the affiliation ended on December 31, 2016.¹⁷²
- DOSCO provided complete and accurate information that was available to the company and cooperated to the maximum extent.

Commerce's Position:

We disagree with the petitioners that the application of partial AFA is warranted with regard to DOSCO's reported transfer price for services from its affiliates. Specifically, DOSCO provided the information requested and necessary to apply the transactions disregarded rule. Under section 773(f)(2) of the Act, transactions between affiliated parties may be disregarded if the transfer price does not fairly reflect the amount usually reflected in the market under consideration. In applying the Act, Commerce normally compares the transfer price paid by the respondent to affiliated parties for production inputs or services to the price paid to unaffiliated suppliers, or, if this is unavailable, to the price at which the affiliated parties sold the input to unaffiliated purchasers in the market under consideration. If the affiliated supplier made no such sales during the POR, we may use the supplier's COP as a surrogate market price.

In the instant case, the record demonstrates that DOSCO does not maintain production data that segregates production quantity between affiliated and unaffiliated service providers in the normal course of business.¹⁷³ Likewise, the record shows that the affiliated service providers invoice DOSCO based on the number of employees used, not based on the production quantities. As such, the record evidence shows that the data are not available to allow Commerce to make a comparison between the affiliated and unaffiliated transactions on a per-weight basis as proposed by the petitioners. However, as an alternative for testing the arms-length nature of the affiliated party transactions, because the affiliated service providers only provided services to DOSCO, we reviewed the affiliated service providers' financial statements to ensure they fully recovered their costs during the POR. We found through this review that the affiliated service providers had fully recovered their costs because the results on the profit and loss statements were net profits.¹⁷⁴ Therefore, consistent with section 773(f)(2) of the Act, we determined that no adjustment is required under the transaction disregarded rule.

HiSteel-Specific Issues

Comment 8: Differential Pricing

In the *Preliminary Results*, we found that 79.31 percent of DOSCO's U.S. sales passed the Cohen's *d* test, which confirmed the existence of a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. Further,

¹⁷² *Id.*

¹⁷³ See DOSCO's March 12, 2018 BCDQR at D-9-D-10; DOSCO's May 22, 2018 SDQR at 11; and DOSCO's July 5, 2018 SDQR at SD3-3-SD3-4 and Exhibit SD3-3.

¹⁷⁴ See DOSCO's February 12, 2018 AQR at Exhibit A-12b and A12-C.

Commerce also preliminarily determined that there was no meaningful difference between the weighted-average dumping margin calculation using the average-to-average (A-to-A) method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction (A-to-T) method to all U.S. sales. Thus, for these preliminary results, Commerce applied the A-to-A method for all U.S. sales to calculate the weighted-average dumping margin for DOSCO.¹⁷⁵

Commerce also preliminarily found that 56.13 percent of HiSteel's U.S. sales passed the Cohen's *d* test, which confirmed the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determined that the A-to-A method cannot account for such differences because there is a 25 percent relative change between the weighted-average dumping margin calculated using the A-to-A method and the weighted-average dumping calculated using an alternative comparison method based on applying the A-to-T method to those U.S. sales which passed the Cohen's *d* test and the A-to-A method to those sales which did not pass the Cohen's *d* test. Thus, Commerce applied the A-to-T method to those U.S. sales which passed the Cohen's *d* test and the A-to-A method to those sales which did not pass the Cohen's *d* test to calculate the weighted-average dumping margin for HiSteel.¹⁷⁶

HiSteel's Arguments

- Commerce may adopt a rule that establishes numerical cut-offs that follows the notice and comment requirements of the Administrative Procedure Act (APA), but it has not done so in this case. If Commerce applies the differential pricing analysis as a numerical cut-off on a case-by-case basis, it must provide evidence and analysis demonstrating why the cut-offs for the Cohen's *d* test and ratio test are suitable in this case, in keeping with the CIT's and CAFC's past rulings that Commerce must provide substantial evidence to establish such bright-line thresholds.¹⁷⁷
- Commerce cannot rely on an allegedly "widely adopted" statistical test when it is not using that test in the context for which it was proposed and is appropriately applied.
 - Although Commerce claims that the "T-Test for Means" is irrelevant to Commerce's differential pricing analysis, the "T-Test for Means" was very relevant to Professor Cohen's development and presentation of his *d* statistic and the various cut-offs he proposed for establishing whether *d* is small, medium or large.¹⁷⁸

¹⁷⁵ See *Preliminary Results* and accompanying PDM at 8.

¹⁷⁶ *Id.*

¹⁷⁷ HiSteel Case Brief at 10-12 (citing *Carlisle Tire v. United States*, 634 F. Supp. 419, 423 (CIT 1986); and *Washington Red Raspberry Commn. v. United States*, 859 F.2d 898, 903-904 (Fed. Cir. 1988)).

¹⁷⁸ *Id.* at 13-14 (citing *Final Results of the Antidumping Duty Administrative Review: Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea; 2013-2014*, 81 FR 46647 (July 18, 2016) and accompanying IDM at 15; *OCTG from Korea 14-15 AR* IDM at 22; and Cohen, *STATISTICAL POWER ANALYSIS FOR THE BEHAVIORAL SCIENCES* (2nd ed. 1988) (STATISTICAL POWER) at 19-20).

- Despite Commerce’s acknowledgment that the subject of Professor Cohen’s book is “statistical power analysis,” Commerce argues that it does not intend to be conducting a “power analysis” in its differential pricing analysis. However, this argument is not convincing.¹⁷⁹
- Commerce has applied a statistical tool in its differential pricing analysis in situations that are inconsistent with the limitations described by Professor Cohen. It is relying on the cut-offs that Professor Cohen used for situations that are statistically different from price distributions in a competitive market. Commerce’s assertions regarding its use of the Cohen’s test are mathematically untenable, as a respondent’s U.S. sales do not have the mathematical characteristics of normal distributions.¹⁸⁰
- Commerce has not cited any evidence on the record that supports its novel assertion that a parametric test designed for the analysis of two normally-distributed data sets with roughly equal number of data points can be used when none of those conditions exist. HiSteel has cited a number of academic analysis that show Cohen’s test is not a useful measure of effect sizes outside the above conditions.¹⁸¹
- Despite Commerce’s assertion, Dr. Paul Ellis’ book does not support Commerce’s use of the Cohen’s *d* statistic.¹⁸²
- Commerce never explained or provided support as to why 33 and 66 percent should be the thresholds for this test, or why a ratio between 33 and 66 percent or over 66 percent calls for consideration of a methodology other than the A-to-A comparison method. Without justification, these thresholds are arbitrary and improper. In previous determinations, Commerce used circular reasoning to explain that the thresholds are reasonable.¹⁸³

¹⁷⁹ *Id.* at 15 (citing *OCTG from Korea 14-15 AR IDM* at 23, 28-39; *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015) and accompanying IDM at Section VI.B.1 and Comment 1; and *Preliminary Results* and accompanying PDM at 6).

¹⁸⁰ *Id.* at 16-18 (citing *OCTG from Korea 14-15 AR IDM* at 28-39; E. Hunt, HUMAN INTELLIGENCE (2011) at 5; Cohen, STATISTICAL POWER at 19-20; and Memorandum, “Calculations for HiSteel Co., Ltd. (HiSteel) for the Preliminary Results,” dated October 3, 2018 at Attachment I, Log at 321).

¹⁸¹ *Id.* at 18-19 (citing Cohen, STATISTICAL POWER at 19-26).

¹⁸² *Id.* at 19-20 (citing Coe, “It’s The Effect Size, Stupid: What “Effect Size” Is and Why it Is Important,” 2002 Annual Conference of the British Education Research Association; R. Girssom and J. Kim, Effect Sizes for Research: Univariate and Multivariate Applications (2d ed. 2012) at 66; P. Ellis, THE ESSENTIAL GUIDE TO EFFECT SIZES at 10, 28 n. 13, 42; and *OCTG from Korea 14-15 AR IDM* at 21).

¹⁸³ *Id.* at 21-23 (citing *Preliminary Results* and accompanying PDM at 5-7; *Differential Pricing Analysis; Request for Comments*, 79 FR 26720, 26722-23 (May 9, 2014); *OCTG from Korea 14-15 AR IDM* at 25; *Welded Line Pipe from Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015) and accompanying IDM at Comment 1; *Final Results of the Antidumping Duty Administrative Review: Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea; 2013-2014*, 81 FR 46647 (July 18, 2016) and accompanying IDM at Comment 4; *Carlisle Tire v. United States*, 634 F. Supp. 419,423 (CIT 1986); *Washington Red Raspberry Comm’n v. United States*, 859 F.2d 898, 903 (CAFC 1988); and *IPSCO v. United States*, 687 F. Supp. 614, 630-31 (CIT 1988)).

- Commerce has failed to satisfy the statutory requirements that permits Commerce to depart from the normal A-to-A comparison to account for targeting dumping only if it “explains why such differences cannot be taking into account using” an A-to-A or transaction-to-transaction (T-to-T) methodology. There is no reason to believe that price differences support a finding of “targeted dumping” that would necessitate the use of comparison methodologies. Rather, the different results are primarily a function of the different treatment of negative dumping margins under Commerce’s standard methodology. Further, Commerce provided no support for its assertion that the difference in weighted-average dumping margins is “meaningful” when there is at least a 25 percent change in margin between the A-to-A and alternative calculation method and, therefore, the use of a 25 percent measure is arbitrary and improper.¹⁸⁴
- In general, the Act does not permit Commerce to compare an average normal value to U.S. prices for individual transactions in an investigation. While the statute provides an exception, it only applies when: 1) there is a pattern of EPs or CEPs for comparable merchandise that differs significantly among purchasers, regions, or periods of time; and 2) Commerce explains why such differences cannot be taking into account using section 777A(d)(1)(A)(i) and (ii). Those conditions are not satisfied in this case, so the exception set forth in the Act does not apply.¹⁸⁵

Petitioners’ Rebuttal Brief

- HiSteel challenges the numerical thresholds relied on by Commerce in its differential pricing analysis, specifically the thresholds used in the Cohen’s *d* test and the ratio test. However, Commerce has rejected the same claims raised by HiSteel and other respondents in prior cases and explained that the numerical thresholds in the differential pricing analysis are reasonable and consistent with the requirements of the statute.¹⁸⁶
 - In the investigation, as well as other cases, Commerce has explained it is entitled to make changes and adopt a new approach in the context of its proceedings, provided it explains the basis for the change and the change is a reasonable interpretation of the statute.¹⁸⁷
 - In past proceedings, Commerce has similarly dismissed arguments that Professor Cohen did not intend his test used for this purpose and that U.S. sales data does not meet the cut-off requirements of his test. It explained that the Cohen’s *d* test

¹⁸⁴ *Id.* at 23-24 (citing section 777A(d)(1)(B) of the Act; and *Preliminary Determination* and accompanying PDM at 7).

¹⁸⁵ *Id.* at 24-26 (citing sections 777A(d)(1)(A) and (B) of the Act).

¹⁸⁶ See Petitioners’ Rebuttal Brief at 25-26 (citing HiSteel Case Brief at 9-26).

¹⁸⁷ *Id.* at 26-27 (citing *HWR Korea LTFV Final IDM* at 17-19; *OCTG from Korea 15-16 IDM* at Comment 8 and 66-67; *OCTG from Korea 14-15 AR IDM* at Comment 2; *WLP from Korea 15-16 AR IDM* at Comment 4; and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China: Final Results of Changed Circumstances Review and Reinstatement of Shanghai General Bearing Co., Ltd. in the Antidumping Duty Order*, 82 FR 4853 (January 17, 2017) (*TRBs from China 14-15*) and accompanying IDM at 28).

is a recognized measure to gauge the extent of the differences between the means of two groups and a simple way of quantifying those differences. Commerce has previously explained that HiSteel's reliance on Professor Cohen's statement about when proposed cut-offs can be used is misplaced, as it was made in the context of "the statistical significance of the difference in the means for two sampled sets of data, and is not relevant when considering whether this difference has a practical difference."¹⁸⁸

- HiSteel has not provided any meaningful new arguments regarding the use of the Cohen's *d* test that would warrant a different decision from previous cases.¹⁸⁹
- While HiSteel claims Commerce has never explained why the thresholds should be 33 percent and 66 percent, Commerce has already directly responded to these claims in other cases, including in the *HWR Korea LTFV Final*.¹⁹⁰
- Commerce has already considered and dismissed the arguments by HiSteel that Commerce has not explained why any patterns of priced difference cannot be taken into account using A-to-A or T-to-T calculation methodology or that Commerce has not provided support for its assertion that the difference in the weighted-average dumping margins is meaningful when there is at least 25 percent change in the margin between the A-to-A and the alternative calculation methodology. Further, the CAFC has upheld Commerce's decision on this issue.¹⁹¹
- HiSteel appears to argue that the A-to-T comparison methodology is only an exception to the normal calculation methodology and is not appropriate here. However, as Commerce has explained in other proceedings, this argument is meritless as Commerce's differential pricing analysis complies with the statutory criteria.¹⁹²

¹⁸⁸ *Id.* at 27-29 (citing HiSteel Case Brief at 13-18; *OCTG from Korea 15-16 AR* IDM at Comment 8 and 67-71; *OCTG from Korea 14-15 AR* IDM at 20-21 and 23-24; *Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea*, 82 FR 22970 (May 19, 2017) (*Welded Pipe from Korea 14-15*) and accompanying IDM at Comment 4 and 15-19; *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2014-2015*, 81 FR 62717 (September 12, 2016) (*Shrimp from Vietnam*) and accompanying IDM at 16-17).

¹⁸⁹ *Id.* at 28-29 (citing *OCTG from Korea 15-16 AR* IDM at Comment 8 and 70-71; *OCTG from Korea 14-15 AR* IDM at 23-24; and *Welded Pipe from Korea 14-15* IDM at 18-19).

¹⁹⁰ *Id.* at 29-30 (citing HiSteel Case Brief at 21; *OCTG from Korea 15-16 AR* IDM at 72; and *HWR Korea LTFV Final* IDM at 18-19).

¹⁹¹ *Id.* at 30-31 (citing HiSteel Case Brief at 23-24; *HWR Korea LTFV Final* IDM at 17-19 and 34-40; *OCTG from Korea 15-16 AR* IDM at 73-76; *OCTG from Korea 14-15 AR* IDM at 26-29; and *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1322, 1330-1331 (Fed. Cir. 2017) (*Apex*)).

¹⁹² *Id.* at 31-33 (citing HiSteel Case Brief at 24-26; *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 2013-2014*, 81 FR 39908 (June 20, 2016) and accompanying IDM at Comment 1; *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 2012-2013*, 79 FR 54264 (September 11, 2014) and accompanying IDM at Comment 1; *Certain Steel Nails from the People's Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014) (*Steel Nails from*

Commerce's Position:

As an initial matter, we note that there is nothing in section 777A(d) of the Act that mandates how Commerce measures whether there is a pattern of prices that differs significantly or explains why the A-to-A method or the T-to-T method cannot account for such differences. On the contrary, carrying out the purpose of the statute¹⁹³ here is a gap filling exercise properly conducted by Commerce.¹⁹⁴ As explained in the *Preliminary Results*, as well as in various other proceedings,¹⁹⁵ Commerce's differential pricing analysis is reasonable, including the use of the Cohen's *d* test as a component in this analysis, and it is in no way contrary to the law.

We note that the CAFC has upheld key aspects of Commerce's differential pricing analysis, including: the application of the "meaningful difference" standard, which compares the calculated weighted-average dumping margins using the A-to-A method without zeroing and an alternative comparison method based on the A-to-T method with zeroing; the reasonableness of Commerce's comparison method in fulfilling the relevant statute's aim; Commerce's use of a "benchmark" to illustrate a meaningful difference; Commerce's justification for applying the A-to-T method to all U.S. sales; Commerce's use of zeroing in applying the A-to-T method; that Congress did not dictate how Commerce should determine if the A-to-A method accounts for "targeted" or masked dumping; that the "meaningful difference" test is reasonable; and that Commerce may consider all sales in its "meaningful difference" analysis and consider all sales when calculating a final rate using the A-to-T method.¹⁹⁶

A. APA Rulemaking Is Not Required

Commerce disagrees with HiSteel that it is obligated to follow the APA in establishing the differential pricing methodology. The notice and comment requirements of the APA do not apply "to interpretative rules, general statements of policy, or rules of agency organization,

China 11-12) and accompanying IDM at Comment 7; section 777A(d)(1)(B) of the Act; and *Preliminary Results* and accompanying PDM at 7-8).

¹⁹³ See *Koyo Seiko Co., Ltd. v. United States*, 20 F. 3d 1156, 1159 (CAFC 1994) ("The purpose of the antidumping statute is to protect domestic manufacturing against foreign manufacturers who sell at less than fair market value. Averaging U.S. prices defeats this purpose by allowing foreign manufacturers to offset sales made at less-than-fair value with higher priced sales. Commerce refers to this practice as 'masked dumping.' By using individual U.S. prices in calculating dumping margins, Commerce is able to identify a merchant who dumps the product intermittently—sometimes selling below the foreign market value and sometimes selling above it. We cannot say that this is an unfair or unreasonable result." (internal citations omitted)).

¹⁹⁴ See *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984) (recognizing deference where a statute is ambiguous, and an agency's interpretation is reasonable); see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286, 1302 (CIT 2014) (applying *Chevron* deference in the context of Commerce's interpretation of section 777A(d)(1) of the Act).

¹⁹⁵ See, e.g., *OCTG from Korea 15-16 AR* IDM at Comment 8; *Welded Line Pipe from Korea*, IDM at Comment 1; *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32937 (June 10, 2015) and accompanying IDM at Comments 1 and 2; and *Stainless Steel Pipe from Korea* IDM at Comment 4.

¹⁹⁶ See *Apex*; and *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1337 (Fed. Cir. 2017) (*Apex I*).

procedure, or practice.”¹⁹⁷ Further, Commerce normally makes these types of changes in practice (e.g., the change from the targeted dumping analysis to the current differential pricing analysis) in the context of its proceedings, on a case-by-case basis.¹⁹⁸ As the CAFC has recognized, Commerce is entitled to make changes and adopt a new approach in the context of its proceedings, provided it explains the basis for the change, and the change is a reasonable interpretation of the statute.¹⁹⁹ The CAFC has also held that Commerce’s meaningful difference analysis was reasonable.²⁰⁰ Moreover, the CIT in *Apex II* recently held that Commerce’s change in practice (from targeted dumping to its differential pricing analysis) was exempt from the APA’s rule making requirements, stating:

Commerce explained that it continues to develop its approach with respect to the use of {A-to-T} “as it gains greater experience with addressing potentially hidden or masked dumping that can occur when {Commerce} determines weighted-average dumping margins using the {A-to-A} comparison method. Commerce additionally explained that the new approach is “a more precise characterization of the purpose and application of {19 U.S.C. § 1677f-1(d)(1)(B)}” and is the product of Commerce’s “experience over the last several years . . . further research, analysis and consideration of the numerous comments and suggestions on what guidelines, thresholds, and tests should be used in determining whether to apply an alternative comparison method based on the {A-to-T} method.” Commerce developed its approach over time, while gaining experience and obtaining input. Under the standard described above, Commerce’s explanation is sufficient. Therefore, Commerce’s adoption of the differential pricing analysis was not arbitrary.²⁰¹

Moreover, as we noted previously, the CIT acknowledged in *Apex II* that as Commerce “gains greater experience with addressing potentially hidden or masked dumping that can occur when {Commerce} determines weighted-average dumping margins using the average-to-average comparison method, {Commerce} expects to continue to develop its approach with respect to the use of an alternative comparison method.”²⁰² Further developments and changes, along with further refinements, are expected in the context of our proceedings based upon an examination of the facts and the parties’ comments in each case.

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

¹⁹⁷ See 5 U.S.C. § 553(b)(3)(A).

¹⁹⁸ See *Differential Pricing Analysis; Request for Comments*, 79 FR 26720, 26722 (May 9, 2014) (*Differential Pricing Comment Request*).

¹⁹⁹ See *Saha Thai Steel Pipe Company v. United States*, 635 F.3d 1335, 1341 (Fed. Cir. 2011); *Washington Raspberry*, 859 F. 2d at 902-03; see also *Carlisle Tire*, 634 F. Supp. at 423 (discussing exceptions to the notice and comment requirements of the APA).

²⁰⁰ See *Apex I*, 862 F.3d 1337, 1347-1351.

²⁰¹ See *Apex Frozen Foods Private Ltd. v. United States*, 144 F. Supp. 3d 1308, 1322 (Ct. Int’l Trade 2016) (*Apex II*).

²⁰² *Id.*

As stated in the *Preliminary Results*, the purpose of the Cohen's *d* test is to evaluate "the extent to which the prices to a particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise."²⁰³ The Cohen's *d* coefficient is a recognized measure which gauges the extent (or "effect size") of the difference between the means of two groups and provides "a simple way of quantifying the difference between two groups and has many advantages over the use of tests of statistical significance alone."²⁰⁴ "Effect size quantifies the size of the difference between two groups, and may therefore be said to be a true measure of *the significance of the difference*."²⁰⁵ As stated in the *OCTG from Korea 15-16 AR*, Commerce relies on the Cohen's *d* test to measure whether a difference is significant, as required by the Act.²⁰⁶

Further, in describing "effect size" and the distinction between effect size and statistical significance, Commerce stated in *Shrimp from Vietnam*:²⁰⁷

Dr. Paul Ellis, in his publication *The Essential Guide to Effect Sizes*, introduces effect size by asking a question: "So what? Why do this study? What does it mean for the man on the street?" Dr. Ellis continues:

A statistically significant result is one that is unlikely to be the result of chance. But a practically significant result is meaningful in the real world. It is quite possible, and unfortunately quite common, for a result to be statistically significant and trivial. It is also possible for a result to be statistically nonsignificant and important. Yet scholars, from PhD candidates to old professors, rarely distinguish between the statistical and the practical significance of their results.

In order to evaluate whether such a practically significant result is meaningful, Dr. Ellis states that this "implies an estimation of one or more effect sizes."

An effect size refers to the magnitude of the result as it occurs, or would be found, in the population. Although effects can be observed in the artificial setting of a laboratory or sample, effect sizes exist in the real world.

Commerce further stated in *Shrimp from Vietnam*:²⁰⁸

As recognized by Dr. Ellis in the quotation above, the results of an analysis may have statistical and/or practical significance, and that these two distinct measures of

²⁰³ See *Preliminary Results* and accompanying PDM at 6.

²⁰⁴ See *OCTG from Korea 15-16 AR* IDM at 68 (quoting Coe, Robert, "It's the Effect Size, Stupid: What effect size is and why it is important," (September 2002) (Coe's Paper)).

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ See *Shrimp from Vietnam* IDM at 16 – 17 (quoting Ellis, Paul D., *The Essential Guide to Effect Sizes*; Cambridge University Press (2010) (Ellis) at 3-5); see also *OCTG from Korea 15-16 AR* IDM at 67 – 72.

²⁰⁸ See *Shrimp from Vietnam* IDM at 16 – 17; see also *OCTG from Korea 15-16 AR* IDM at 67 – 72.

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

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

Dr. Ellis also states in his publication that the “best way to measure an effect is to conduct a census of an entire population but this is seldom feasible in practice.”²⁰⁹

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

The second measurement is whether there is a practical significance of the difference between the means of the two sets of data, as measured by an “effect size” such as Cohen’s *d* coefficient. As noted above, this quantifies the real-world relevance of this difference “and may therefore be said to be a true measure of the significance of the difference.”²¹⁰ This is the basis for Commerce’s determination whether prices in a test group differ significantly from prices in a comparison group.

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

²⁰⁹ See *Shrimp from Vietnam* at 17 (quoting Ellis); see also *OCTG from Korea 15-16 AR* IDM at 67 – 72.

²¹⁰ See *OCTG from Korea 15-16 AR* IDM at 69 (citing Coe’s Paper).

could only appropriately be applied in specific circumstances – where ‘samples, each of n cases, have been randomly and independently drawn from normal populations,’ and where the two samples do not have ‘substantially unequal variances’ or ‘substantially unequal sample sizes (whether small or large).’²¹¹

HiSteel’s claim is misplaced. HiSteel’s quotation is from section 2.1 of Dr. Cohen’s text, “Introduction and Use” of “The T Test for Means.”²¹² As described above, this concerns the statistical significance of the difference in the means for two sampled sets of data and is not relevant when considering whether this difference has a practical difference. This is not to say that sample size and sample distribution have no impact on the description of “effect size” for sampled data,²¹³ but that is not the basis for Commerce’s analysis of HiSteel’s U.S. sale price data.

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

The arithmetic mean is by far the most frequently used measure of location by behavioral scientists, and hypotheses about means the most frequently tested. The tables have been designed to render very simple the procedure for *power analysis* in the case where two samples, each of n cases, have been randomly and independently drawn from normal populations, and the investigator wishes to test the null hypothesis that their respective population means are equal...²¹⁴

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

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

²¹¹ See HiSteel Case Brief at 13 (citing *OCTG from Korea 14-15 AR IDM* (quoting Cohen, Jacob, *Statistical Power Analysis for the Behavioral Sciences*, Second Edition (1988) (Cohen) at 19-20)).

²¹² *Id.*

²¹³ See *OCTG from Korea 15-16 AR IDM* at 69 (citing, for example, Cohen at 21-23, section 2.2.1).

²¹⁴ *Id.* (quoting Cohen at 19 (emphasis in italics, HiSteel’s quotation underlined)).

Deosen's claim that the Cohen's *d* test's thresholds of "small," "medium," and "large" are arbitrary is misplaced. In "Difference Between Two Means," the author states that "there is no objective answer" to the question of what constitutes a large effect. Although Deosen focuses on this excerpt for the proposition that the "guidelines are somewhat arbitrary," the author also notes that the guidelines suggested by Cohen as to what constitutes a small effect size, medium effect size, and large effect size "have been widely adopted." The author further explains that Cohen's *d* is a "commonly used measure" to "consider the difference between means in standardized units." At best, the article may indicate that although the Cohen's *d* test is not perfect, it has been widely adopted. And certainly, the article does not support a finding, as Deosen contends, that the Cohen's *d* test is not a reasonable tool for use as part of an analysis to determine whether a pattern of prices differ significantly.²¹⁵

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

... can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.²¹⁶

Commerce has relied on the most conservative of these three thresholds to determine whether the difference in prices is significant. Dr. Cohen further provided examples which demonstrate "real world" understanding of the small, medium and large thresholds where a "large" difference "is represented by the mean IQ difference estimated between holders of the Ph.D. degree and typical college freshmen, or between college graduates and persons with only a 50-50 chance of passing an academic high school curriculum. These seem like grossly perceptible and therefore large differences, as does the mean difference in height between 13- and 18-year-old girls...."²¹⁷ In other words, Dr. Cohen was stating that it is obvious on its face that there are

²¹⁵ See *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) (*Xanthan Gum from China*) and accompanying IDM at Comment 3 (quoting Dave Lane *et al.*, Chapter 19 "Effect Size," Section 2 "Difference Between Two Means"); see also *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013) and accompanying IDM at Comment 4; *Steel Nails from China 11-12* IDM at Comment 7; and *OCTG from Korea 15-16 AR* IDM at 67-72.

²¹⁶ See *Preliminary Results* and accompanying PDM at 6-7. Nonetheless, these thresholds, as with the approach incorporated in the differential pricing analysis itself, may be modified given factual information and argument on the record of a proceeding. See, *e.g.*, *Preliminary Results* and accompanying PDM at 14-15.

²¹⁷ See *OCTG from Korea 15-16 AR* at 71 (citing Cohen at 27).

differences in intelligence between highly educated individuals and struggling high school students, and between the height of younger and older teenage girls. Likewise, the “large” threshold is a reasonable yardstick to determine whether prices differ significantly.

Therefore, Commerce disagrees with HiSteel’s arguments that its application of the Cohen’s *d* test in this investigation is improper. As a general matter, Commerce finds that the U.S. sales data which HiSteel has reported to Commerce constitutes a complete population. As such, sample size, sample distribution, and the statistical significance of the sample are not relevant to Commerce’s analysis.²¹⁸ Furthermore, Commerce finds that Dr. Cohen’s thresholds are reasonable, and the use of the “large” threshold is reasonable and consistent with the requirements of section 777A(d)(1)(B) of the Act.²¹⁹

Finally, we note that, in the PDM, we requested that interested parties “present arguments and justifications in relation to the above-described differential pricing approach used in the preliminary results, including arguments for modifying the group definitions used in this proceeding.”²²⁰ HiSteel has submitted no factual evidence or argument that these thresholds should be modified or that any other aspects of the differential pricing analysis should be changed for HiSteel in this investigation. Accordingly, HiSteel’s arguments at this late stage of the investigation are unsupported by the record and appear only to convey HiSteel’s disagreement with the results of Commerce’s application of a differential pricing analysis in this investigation, rather than to truly identify some aspect of this approach which is unreasonable or inconsistent with the statute.

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

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

In the differential pricing analysis, {Commerce} reasonably established a 33 percent threshold to establish whether there exists a pattern of prices that differ significantly. {Commerce} finds that when a third or less of a respondent’s U.S. sales are not at prices that differ significantly, then these significantly different prices are not extensive enough to satisfy the first requirement of the statute...

Likewise, {Commerce} finds reasonable, given its growing experience of applying section 777A(d)(1)(B) of the Act and the application of the A-to-T method as an alternative to the A-to-A method, that when two thirds or more of a respondent’s sales are at prices that differ significantly, then the extent of these

²¹⁸ See, e.g., *Xi’an Metals & Materials Imp. & Exp. Co. v. United States*, 256 F. Supp. 3d 1346, 1364-65 (CIT 2017) (“‘statistical significance’ is irrelevant where, as here, the agency has a complete set of data to consider . . . {I}f Congress wanted ITA to measure ‘statistical significance,’ it would have included the word ‘statistical’ {when it drafted the statute}”); and *Stanley Works Langfang Fastening Sys. Co. v. United States*, 333 F. Supp. 3d 1329, 1346 (CIT 2018) (similar).

²¹⁹ See *Stanley Works*, 333 F. Supp. 3d at 1346-46 (“Commerce lawfully used these thresholds to help it determine which sales ‘pass’ its Cohen’s *d* test”).

²²⁰ See *Preliminary Results* and accompanying PDM at 7.

sales is so pervasive that it would not permit {Commerce} to separate the effect of the sales where prices differ significantly from those where prices do not differ significantly. Accordingly, {Commerce} considered whether, as an appropriate alternative comparison method, the A-to-T method should be applied to all U.S. sales. Finally, when {Commerce} finds that between one third and two thirds of U.S. sales are at prices that differ significantly, then there exists a pattern of prices that differ significantly, and that the effect of this pattern can reasonably be separated from the sales whose prices do not differ significantly. Accordingly, in this situation, {Commerce} finds that it is appropriate to address the concern of masked dumping by considering the application of the A-to-T method as an alternative to the A-to-A method for only those sales which constitute the pattern of prices that differ significantly.²²¹

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

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

We disagree, in part, with HiSteel that "the mere existence of different results is plainly insufficient, by itself, to satisfy the statutory requirements"²²² of whether the A-to-A method can account for significant price differences which are imbedded in HiSteel's pricing behavior in the U.S. market. We do agree with HiSteel that this difference is due to zeroing, because weighted-average dumping margins calculated using the A-to-A method without zeroing and the A-to-T method without zeroing will always yield the identical results. This is evidenced above with the calculation results for HiSteel in this final determination.²²³

²²¹ See *Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods from India*, 79 FR 41981 (July 18, 2014) (*OCTG from India*) and accompanying IDM at Comment 1.

²²² See HiSteel Case Brief at 23.

²²³ See HiSteel Final Margin Calculation Memorandum, at Attachment 2 (pages 188-189 of the SAS output), where the calculation results of the A-to-A method, the A-to-T method and the "mixed" method are summarized. The sum of the "Positive Comparison Results" and the "Negative Comparison Results" for each of the three comparison methods are identical, *i.e.*, with offsets for all non-dumped sales (*i.e.*, negative comparison results); the amount of dumping is identical. As such, the difference between the calculated results of these comparison methods is whether negative comparison results are used as offsets or set to zero (*i.e.*, zeroing).

The difference in the calculated results specifically reveals the extent of the masked dumping which is being concealed when applying the A-to-A method.²²⁴ The difference in these two results is caused by higher U.S. prices offsetting lower U.S. prices where the dumping, which may be found on lower-priced U.S. sales, is hidden or masked by higher U.S. prices,²²⁵ such that the A-to-A method would be unable to account for such differences.²²⁶ Such masking or offsetting of lower prices with higher prices may occur implicitly within the averaging groups or explicitly when aggregating the A-to-A comparison results. Therefore, in order to understand the impact of the unmasked dumping, Commerce finds that the comparison of each of the calculated weighted-average dumping margins using the standard and alternative comparison methodologies exactly quantifies the extent of the unmasked dumping.

The simple comparison of the two calculated results belies the complexities in calculating and aggregating individual dumping margins (*i.e.*, individual results from comparing export prices, or constructed export prices, with normal values). It is the interaction of these many comparisons of export prices or constructed export prices with normal values, and the aggregation of these comparison results, which determine whether there is a meaningful difference in these two calculated weighted-average dumping margins. When using the A-to-A method, lower-priced U.S. sales (*i.e.*, sales which may be dumped) are offset by higher-priced U.S. sales. Congress was concerned about offsetting and that concern is reflected in the SAA which states that so-called “targeted dumping” is a situation where “an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions.”²²⁷ The comparison of a weighted-average dumping margin based on comparisons of weighted-average U.S. prices that also reflects offsets for non-dumped sales, with a weighted-average dumping margin based on comparisons of individual U.S. prices without such offsets (*i.e.*, with zeroing) precisely examines the impact on the amount of dumping which is hidden or masked by the A-to-A method. Both the weighted-average U.S. price and the individual U.S. prices are compared to a normal value that is independent from the type of U.S. price used for comparison, and the basis for normal value will be constant because the characteristics of the individual U.S. sales²²⁸ remain constant whether weighted-average U.S. prices or individual U.S. prices are used in the analysis.

²²⁴ See *Koyo Seiko Co., Ltd. v. United States*, 20 F.3d 1156, 1159 (Fed. Cir. 1994) (“The purpose of the antidumping statute is to protect domestic manufacturing against foreign manufacturers who sell at less than fair market value. Averaging U.S. prices defeats this purpose by allowing foreign manufacturers to offset sales made at less-than-fair value with higher priced sales. Commerce refers to this practice as ‘masked dumping.’ By using individual U.S. prices in calculating dumping margins, Commerce is able to identify a merchant who dumps the product intermittently—sometimes selling below the foreign market value and sometimes selling above it. We cannot say that this is an unfair or unreasonable result.” (internal citations omitted)).

²²⁵ See SAA at 842.

²²⁶ See *Union Steel v. United States*, 713 F.3d 1101, 1108 (Fed. Cir. 2013) (“{the A-to-A} comparison methodology masks individual transaction prices below normal value with other above normal value prices within the same averaging group.”).

²²⁷ See SAA at 842.

²²⁸ These characteristics include items such as product, level-of-trade, time period, and whether the product is considered as prime- or second-quality merchandise.

Consider the simple situation where there is a single, weighted-average U.S. price, and this average is made up of a number of individual U.S. sales which exhibit different prices, and the two comparison methods under consideration are the A-to-A method with offsets (*i.e.*, without zeroing) and the A-to-T method with zeroing.²²⁹ The normal value used to calculate a weighted-average dumping margin for these sales will fall into one of five scenarios with respect to the range of these different, individual U.S. sale prices:

- 1) the normal value is less than all U.S. prices and there is no dumping;
- 2) the normal value is greater than all U.S. prices and all sales are dumped;
- 3) the normal value is nominally greater than the lowest U.S. prices such that there is a minimal amount of dumping and a significant amount of offsets from non-dumped sales;²³⁰
- 4) the normal value is nominally less than the highest U.S. prices such that there is a significant amount of dumping and a minimal amount of offsets generated from non-dumped sales;
- 5) the normal value is in the middle of the range of individual U.S. prices such that there is both a significant amount of dumping and a significant amount of offsets generated from non-dumped sales.

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

²²⁹ The calculated results using the A-to-A method with offsets (*i.e.*, no zeroing) and the calculated results using the A-to-T method with offsets (*i.e.*, no zeroing) will be identical. Accordingly, this discussion is effectively between the A-to-T method with offsets and the A-to-T method with zeroing. See n.28, which identifies the specific calculation results for SeAH in these final results.

²³⁰ As discussed further below, please note that scenarios 3, 4 and 5 imply that there is a wide enough spread between the lowest and highest U.S. prices so that the differences between the U.S. prices and normal value can result in a significant amount of dumping and/or offsets, both of which are measured relative to the U.S. prices.

Only under scenarios (3), (4) and (5) are the granting or denial of offsets relevant to whether dumping is being masked, as there are both dumped and non-dumped sales. Under scenario (3), there is only a *de minimis* amount of dumping such that the extent of available offsets will only make this *de minimis* amount of dumping even smaller and have no impact on the outcome. Under scenario (4), there exists an above-*de minimis* amount of dumping, and the offsets are not sufficient to meaningfully change the results. Only with scenario (5) is there an above-*de minimis* amount of dumping with a sufficient amount of offsets such that the weighted-average dumping margin will be meaningfully different under the A-to-T method with zeroing as compared to the A-to-A / A-to-T method with offsets. This difference in the calculated results is meaningful in that a non-*de minimis* amount of dumping is now masked or hidden to the extent where the dumping is found to be zero or *de minimis* or to have decreased by 25 percent of the amount of the dumping with the applied offsets.

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

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

Therefore, Commerce finds that the meaningful difference test reasonably fills the gap in the statute to consider why, or why not, the A-to-A method (or T-to-T method) cannot account for the significant price differences in HiSteel’s pricing behavior in the U.S. market. Congress’s intent of addressing so-called “targeted dumping,” when the requirements of section 777A(d)(1)(B) of the Act are satisfied,²³¹ would be thwarted if the A-to-T method without zeroing were applied because this will always produce the identical results when the standard A-to-A method without zeroing is applied. Under that scenario, both methods would inherently mask dumping. It is for this reason that Commerce finds that the A-to-A method cannot take

²³¹ See SAA at 842-843.

into account the pattern of prices that differ significantly for HiSteel, *i.e.*, Commerce identified conditions where “targeted” or masked dumping “may be occurring” in satisfying the pattern requirement, and Commerce demonstrated that the A-to-A method could not account for the significant price differences, as exemplified by the pattern of prices that differ significantly. Thus, Commerce continues to find that application of the A-to-T method, with zeroing, is an appropriate tool to address masked “targeted dumping,”²³² and has applied an alternative comparison method based on the A-to-A method for sales not passing the Cohen’s *d* test and the A-to-T method for sales passing the Cohen’s *d* test to calculate the weighted-average dumping margin for HiSteel in this final determination.

E. Application of the A-to-T Method Is Supported by Record Evidence and Commerce’s Analysis

Commerce disagrees with HiSteel that it has failed to satisfy the statutory requirements of section 777A(d)(1)(B) of the Act and considers the application of an alternative comparison method based on the A-to-T method appropriate. As set forth in the *Preliminary Results*,²³³ Commerce’s differential pricing analysis for HiSteel in this investigation is both lawful, reasonable, and completely within Commerce’s discretion in executing the trade statute.

V. RECOMMENDATION

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

☒

Agree

☐

Disagree

X

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

²³² See *Apex II*, 37 F. Supp. 3d at 1296.

²³³ See *Preliminary Results* and accompanying PDM at 5-7.