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May 30, 2019

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 Circular Welded Non-Alloy Steel Pipe from the Republic of
Korea

I. SUMMARY

The Department of Commerce (Commerce) has analyzed the comments submitted by the interested parties in the administrative review of the antidumping duty (AD) order on circular welded non-alloy steel pipe (CWP) from the Republic of Korea (Korea) for the period of review (POR) November 1, 2016, through October 31, 2017.

Based upon our analysis of the comments received, we made certain changes from the *Preliminary Results*.¹ We revised the margin calculation for the two mandatory respondents, Husteel Co., Ltd. (Husteel) and Hyundai Steel Company (Hyundai) and continue to find that Husteel and Hyundai sold the subject merchandise in the United States at prices below normal value (NV). We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

Below is a complete list of the issues for which we have received comments and rebuttal comments from interested parties:

Comment 1: Particular Market Situation

Comment 1-A: Cost-Based Particular Market Situation Allegation

Comment 1-B: Evidence of a Particular Market Situation

Comment 1-C: Particular Market Situation Adjustment

Comment 2: Differential Pricing

¹ See *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 63619 (December 11, 2018) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

II. BACKGROUND

On December 3, 2018, Commerce published the *Preliminary Results* of this administrative review.² In accordance with 19 CFR 351.309(c), we invited interested parties to comment on the *Preliminary Results*.³ On February 19, 2019, Husteel, Hyundai, and SeAH Steel Corporation (SeAH) submitted case briefs.⁴ On February 25, Wheatland Tube (the petitioner) submitted a rebuttal brief.⁵

On January 10, 2019, and February 19, 2019, respectively, Husteel and Hyundai filed a request for a hearing.⁶ On February 26, 2019, Commerce held a public hearing.⁷

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.⁸ On May 13, 2019, we extended the deadline for the final results.⁹ The revised deadline for the final results is now May 30, 2019. On May 20, 2019, Husteel requested that Commerce extend the final results.¹⁰

Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

III. SCOPE OF THE ORDER

The merchandise subject to the order is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall

² See *Preliminary Results*.

³ *Id.*

⁴ See, Letter from Husteel, “Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, 11/1/2016 - 12/31/2017 Administrative Review, Case No. A-580-809: Case Brief,” dated February 19, 2019 (Husteel Case Brief); Letter from Hyundai, “Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Case Brief,” dated February 19, 2019 (Hyundai Case Brief); Letter from SeAH, “Administrative Review of the Antidumping Order on Circular Welded Non-Alloy Steel Pipe from Korea - Case Brief of SeAH Steel Corporation,” dated February 19, 2019 (SeAH Case Brief).

⁵ See Letter from Petitioner, “Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Rebuttal Brief of Wheatland Tube Company,” dated February 25, 2019 (Petitioner’s Rebuttal Brief).

⁶ See Letter from Husteel, “Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, Case No. A-580-809: Hearing Request,” dated January 10, 2019; see also Letter from Hyundai, “Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Request for Hearing,” dated February 19, 2019.

⁷ See Letter from Commerce, “Administrative Review of Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Hearing Schedule,” dated February 22, 2019; see also Hearing Transcript, dated March 19, 2019.

⁸ See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Partial Shutdown of the Federal Government,” dated January 28, 2019. All deadlines in this segment of the proceeding affected by the partial federal government closure have been extended by 40 days.

⁹ See Memorandum, “Antidumping Duty Administrative Review of Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Extension of Deadline for Final Results of 2016-2017 Antidumping Duty Administrative Review,” dated May 13, 2019.

¹⁰ See Letter from Husteel, “Circular Welded Non-Alloy Steel Pipe from Korea, Case No. A-580-809: Request to Extend the Final Results Deadline,” dated May 22, 2019.

thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in the order.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of the order except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit.¹¹

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

IV. MARGIN CALCULATION

For the final results of review, Commerce based the margin calculations for each mandatory respondent on constructed export price (CEP), export price (EP), and constructed value (CV), where appropriate, for Husteel and Hyundai. We used the same methodology as stated in the *Preliminary Results*, with the exception of the following changes:

Husteel

1. We modified the particular market situation (PMS) adjustment rate in accordance with Commerce's November 13, 2018 remand redetermination,¹² sustained pursuant to the Court of International Trade (CIT) May 1, 2019 Order.¹³
2. We modified language in the Home Market Program to correct errors found in the log regarding missing values.¹⁴

¹¹ See *Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the Republic of Korea, Mexico, and Venezuela*, 61 FR 11608 (March 21, 1996). In accordance with this determination, pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A-53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines, is outside of the scope of the AD order.

¹² See *POSCO v. United States*, Consol. Court No. 16-00227, Slip Op. 18-117 (CIT Sept. 11, 2018) (*POSCO Remand Order*); see also *Final Results of Redetermination Pursuant to Court Remand* (dated November 13, 2018) (*POSCO Redetermination*) at 24.

¹³ See *POSCO v. United States*, Consol. Court No. 16-00227, Slip Op. 19-52 (CIT May 1, 2019); see also Comment 1, *infra*.

¹⁴ See Memorandum, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Analysis Memorandum for Husteel Co., Ltd.," dated concurrently with this memorandum.

Hyundai

1. We modified the PMS adjustment rate, in accordance with the *POSCO Redetermination*.

V. RATE FOR NON-EXAMINED COMPANIES

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}."

For these final results, we calculated weighted-average dumping margins that are not zero, *de minimis*, or determined entirely on the basis of facts available for Husteel and Hyundai. We cannot apply our normal methodology of calculating a weighted-average margin using the actual net U.S. sales values and dumping margins for Husteel and Hyundai because doing so could indirectly disclose business-proprietary information to both of these companies. Alternatively, we have previously applied the simple average of the dumping margins we determined for the selected companies.¹⁵ In order to strike a balance between our duty to safeguard parties' business proprietary information and our attempt to adhere to the guidance set forth in section 735(c)(5)(A) of the Act, we calculated a weighted-average margin for non-selected respondents using the publicly available, ranged total U.S. sales values of the selected respondents, compared the resulting public, weighted-average margin to the simple average of the antidumping duty margins, and used the amount which is closer to the actual weighted-average margin of the selected respondents as the margin for the non-selected respondents.¹⁶ Accordingly, for the final results of this review, we are assigning the simple average of these two companies' dumping margins to companies not selected as mandatory respondents.¹⁷

¹⁵ See, e.g., *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008).

¹⁶ See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53662 (September 1, 2010), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

¹⁷ See Memorandum, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Calculation of the Margin for Respondents Not Selected for Individual Examination," dated concurrently with this memorandum.

VI. DISCUSSION OF THE ISSUES

Comment 1: Particular Market Situation

Background: In the *Preliminary Results*, Commerce determined that a PMS existed in Korea which distorted the cost of production (COP) of CWP, based on the cumulative effects of: (1) Korean subsidies on hot-rolled steel coil (HRC) inputs; (2) Korean imports of HRC from China; (3) strategic alliances between Korean HRC and CWP producers; and (4) distortions in the Korean electricity market. In the *Preliminary Results*, we quantified the impact of the PMS in Korea by making an upward adjustment to the respondents' reported HRC costs, basing that adjustment on the subsidy rates, net of export subsidies, from the countervailing duty (CVD) investigation in *HRS from Korea*.¹⁸

Comment 1-A: Cost-Based Particular Market Situation Allegation

Respondents' Comments:

- Hyundai, Husteel and SeAH argue that Section 504 of the Trade Preferences Extension Act (TPEA) permits Commerce to adjust the respondents' cost of production (COP) based on a PMS allegation for the purpose of calculating constructed value, but not for the purposes of analyzing sales below cost.¹⁹
- Hyundai and SeAH argue that even if the TPEA allowed Commerce to make an adjustment for the purposes of analyzing sales below cost, Commerce failed to demonstrate that the respondents' input costs were outside of the ordinary course of trade, as required by the statute.²⁰
- Hyundai argues that because Commerce has, for many years and across multiple proceedings, determined that a PMS in Korea distorts the acquisition costs of HRC, Commerce can no longer consider the situation in Korea to be outside the ordinary course of trade.²¹

Petitioner's Rebuttal Comments:

- The Act contemplates that if there is a PMS with respect to the cost of materials and fabrication then Commerce may use another calculation methodology; these adjusted rates are "constructed."²²

¹⁸ See *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016) (*HRS from Korea Final Determination*) 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) (collectively, *HRS from Korea*).

¹⁹ See Hyundai Case Brief at 2-6; Husteel Case Brief at 26-27; and, SeAH Case Brief at 2-3.

²⁰ See Hyundai Case Brief at 21-23; see also SeAH Case Brief at 2-3.

²¹ See Hyundai Case Brief at 6-7.

²² See Petitioner's Rebuttal Brief at 3.

- The TPEA’s definition of PMS is broader and now includes language about the costs of production. This change signaled Congress’ intent that the new interpretation of PMS now includes an analysis of costs.²³
- The duration of factors that distort a market does not ameliorate the distortion.²⁴

Commerce Position: For the final results of review, we continue to find that a PMS exists in Korea that distorts the COP of CWP and thus, we have made an adjustment to the costs of HRC inputs. Section 504 of the TPEA added the concept of PMS in the definition of the term “ordinary course of trade,” for purposes of constructed value under section 773(e), and through these provisions for purposes of the COP under section 773(b)(3). Section 773(e) of the TPEA states that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under the subtitle or any other calculation methodology.” Thus, under section 504 of the TPEA, Congress has given Commerce the authority to determine whether a PMS exists within the foreign market from which the subject merchandise is sourced and to determine whether the cost of materials, fabrication, or processing of such merchandise fail to accurately reflect the COP in the ordinary course of trade.²⁵

In the instant review, the petitioner alleged that a PMS exists in Korea which distorts CWP costs of production based on the following four factors as discussed below: (1) Korean subsidies on the HRC inputs; (2) Korean imports of HRC from China; (3) strategic alliances between Korean HRC and CWP producers; and (4) distortions in the Korean electricity market. Section 504 of the TPEA does not specify whether to consider these allegations individually or collectively. In *CWP from Korea AR15/16*, the petitioner alleged that a PMS existed in Korea based on the same four factors and, upon analyzing the four allegations as a whole, Commerce found that a PMS existed in Korea during that POR.²⁶ The CIT concluded, in *Nexteel* that this approach of considering a totality of the circumstances in the market (including these four factors) is reasonable.²⁷

In this review, as in the previous administrative review, Commerce considered, as a whole, the four factors of the PMS allegation based on their cumulative effect on the Korean CWP market through the COP for CWP and its inputs.²⁸ Based on the totality of the circumstances in the Korean market, Commerce continues to find that the allegations represent facets of a single PMS, as explained in further detail in Comment 1-B.

²³ *Id.* at 5.

²⁴ *Id.* at 4

²⁵ See Section 773(e) of the Act.

²⁶ See *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 AR15/16*), and accompanying IDM at Comment 1.

²⁷ See *Nexteel Co. v. United States*, 355 F. Supp. 3d 1336, 1349 (CIT 2019) (*Nexteel*) (discussing legislative history and finding that Commerce’s approach was reasonable).

²⁸ See Letter from Petitioner, “Certain Circular Welded Non-Alloy Steel Pipe from Korea: Re-Allegation of a Particular Market Situation,” dated August 27, 2018 (PMS Allegation).

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. The respondents 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.

As Commerce has previously explained in *Large Diameter Welded Pipe from Korea*, we disagree with the respondent's interpretation of the Act.²⁹ 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 of the foreign like product because it distorts 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 it would when normal value is based on CV. The claim that an examination of a PMS for purposes of the sales-below-cost test goes beyond the plain language of the Act fails to consider that the provision at issue, section 773(e) of the Act, specifically includes the term "ordinary course of trade." Thus, the definition of that term, again, found in section 771(15) of the Act, is integral to that PMS provision. Accordingly, we disagree with the argument that Commerce cannot analyze a PMS claim in determining whether a company's comparison-market sale prices were below cost, and therefore, are outside the "ordinary course of trade." Indeed, we find that this interpretation would defeat the very purpose of an "ordinary course of trade" analysis under the PMS provision, which is to ensure that the distortions caused by a PMS do not prevent fair comparisons of normal value with U.S. price.

Additionally, as Commerce recently explained in *OCTG from Korea AR16/17*, the legislative history of TPEA indicates that, through the PMS provision, Congress intended to provide Commerce with the ability to address price and cost distortions resulting from subsidization.³⁰ The legislative history of the TPEA states that Commerce can disregard prices or costs of inputs that foreign producers purchase if Commerce has reason to believe or suspect that the inputs in question have been subsidized or dumped.³¹ Further, during the Senate debate on this bipartisan legislation, Senator Brown called the proposed legislation "one of the most important bills to come in front of the Senate" which would "guarantee that Americans can find a more level playing field as we compete in the world economy."³² He also identified the Korean steel industry as an example of an industry that does not play by the rules, specifically referencing unfair subsidization of Korean OCTG (which similar to CWP, is a downstream product of Korean HRC) by the Korean government:

²⁹ See *Large Diameter Welded Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 84 FR 6374 (February 27, 2019) (*Large Diameter Welded Pipe from Korea*), and accompanying IDM at Comment 1.

³⁰ See *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 24085 (May 24, 2019) (*OCTG from Korea AR16/17*), and accompanying IDM at Comment 1-A.

³¹ See Trade Facilitation and Trade Enforcement Act of 2015, S. Doc. No. 114-45 (2015) at 38.

³² See 114 Cong. Rec. S2900 (daily ed. May 14, 2015) (statement of Sen. Brown).

These {U.S. OCTG} producers increasingly lose business to foreign competitors that are not playing by the rules. Imports for OCTG {} have doubled since 2008. By some measures imports account for somewhat more than 50 percent of the pipes being used by companies drilling for oil and gas in the United States.

Korea has one of the world's largest steel industries, but get this, not one of these pipes that Korea now dumps in the United States – illegally subsidized - is ever used in Korea for drilling because Korea has no domestic oil or gas production. In other words, Korea has created this industry only for exports and has been successful because they are not playing fair. So their producers are exporting large volumes to the United States, the most open and attractive market in the world, at below-market prices. This is clear evidence that our workers and manufacturers are being cheated and it should be unacceptable to the Members of this body. It hurts our workers, our communities, and our country. It is time to stop it.³³

Accordingly, we find that the respondents' arguments are inconsistent with the intent of Congress in adding this provision to the Act, and we agree with the petitioner's argument that Commerce is granted the discretion to use "any other calculation methodology"³⁴ if costs are distorted by a PMS, including for the purposes of COP under section 773(b)(3) of the Act.

Consistent with previous determinations,³⁵ Commerce disagrees with Hyundai's and SeAH's arguments that input prices (*i.e.*, production costs) must be found to be outside the ordinary course of trade in order to find the existence of a PMS. To the contrary, a finding that a PMS exists results in a determination that the relevant input prices are outside of the ordinary course of trade.

We disagree with Hyundai's argument that because Commerce has determined that this particular market situation has existed in Korea since the POR at issue in *OCTG ARI* it should be treated as the market reality.³⁶ We agree with the petitioner that the length of time for which Commerce has determined that a particular market situation (and its underlying factors) has been in place does not change the fact that the market continues to be distorted and, as a result, the costs of production are outside of the ordinary course of trade.

³³ *Id.*

³⁴ See section 773(e) of the Act.

³⁵ See *Large Diameter Welded Pipe from Korea*, and accompanying IDM at Comment 1.

³⁶ See *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Administrative Review, 2014-15*, 82 FR 18105 (April 17, 2017) (*OCTG ARI*).

Comment 1-B: Evidence of a Particular Market Situation

Respondents' Comments:

- Husteel argues that it is Commerce's practice (citing to pre-TPEA cases *Cold-Rolled and CORE from Korea*,³⁷ *Furfuryl Alcohol from South Africa*,³⁸ *Certain Pasta from Italy*,³⁹ and *Frozen Warmwater Shrimp from Thailand*⁴⁰) that a PMS finding must be based on evidence that shows a direct cause and effect relationship between the PMS and the respondent's pricing and cannot be simply based on general market conditions.⁴¹
- Hyundai and Husteel argue that Commerce must conform to its recent practice in *Softwood Lumber from Canada*,⁴² *Rebar from Taiwan*,⁴³ and *Biodiesel from Argentina*⁴⁴ by evaluating whether a PMS exists based on a quantitative analysis using relevant reference prices to determine where there are actual cost distortions for particular producers in a particular market.⁴⁵
- Hyundai and Husteel argue that Commerce's cumulative analysis, which relies heavily on Commerce's analysis in *OCTG ARI*, is not based on substantial record evidence.
- Hyundai contends that Commerce determined in the *Preliminary Results* that the individual allegations that comprise the PMS allegation are individually insufficient to find a PMS.⁴⁶
- The mandatory respondents further argue that the CIT recently determined, in *Nexteel*,⁴⁷ that Commerce's analysis in *OCTG ARI* was not supported by substantial record evidence, and, because Commerce's determination in the *Preliminary Results* were largely based on the same insufficient record evidence, Commerce should reverse its determination in this review.⁴⁸

³⁷ See *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review*, 62 FR 18404 (April 15, 1997) (*Cold-Rolled and CORE from Korea*).

³⁸ See *Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol from the Republic of South Africa*, 62 FR 61804 (November 14, 1997) (*Furfuryl Alcohol from South Africa*).

³⁹ See *Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 72 FR 7011 (February 14, 2007) (*Certain Pasta from Italy*).

⁴⁰ See *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 76 FR 40881 (July 12, 2011) (*Frozen Warmwater Shrimp from Thailand*).

⁴¹ See Husteel Case Brief at 6-10.

⁴² See *Certain Softwood Lumber Products from Canada: Final Affirmative Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances*, 82 FR 51806 (November 8, 2017) (*Softwood Lumber from Canada*).

⁴³ See *Steel Concrete Reinforcing Bar from Taiwan: Final Determination of Sales at Less Than Fair Value*; 82 FR 34925 (July 27, 2017) (*Rebar from Taiwan*).

⁴⁴ See *Biodiesel from Argentina: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Determination of Critical Circumstances, in Part*; 82 FR 50394 (October 31, 2017).

⁴⁵ See Hyundai Case Brief at 10-13; see also Husteel Case Brief at 11-12.

⁴⁶ See Hyundai Case Brief at 23.

⁴⁷ See *Nexteel*, 355 F. Supp. 3d 1336, 1349 (CIT 2019).

⁴⁸ See Hyundai Case Brief at 23-24; see also Husteel Case Brief at 14-16.

- Both mandatory respondents and SeAH argue that there is not sufficient evidence on the record of this review to support the four factors cited in the *Preliminary Results*.⁴⁹
- In relation to the subsidization of Korean hot-rolled coil, Husteel contends that the evidence on the record shows that the Korean market is not distorted because Korean steel prices are in line with world and regional benchmarks, a sign of a normally functioning market.⁵⁰
- On the second aspect of the PMS allegation, the distortive impact of Chinese hot-rolled steel overcapacity, the record contains no evidence that Chinese and/or global overcapacity has had an impact on the direct material costs of CWP production in the POR.⁵¹
- Husteel argues that Commerce's preliminary analysis, in stating that there is no record evidence that Chinese overcapacity in steel production has ceased, has illegally shifted the burden to substantiate an allegation from the party making an allegation to the respondents.⁵² The record demonstrates that its purchases are in line with world market prices.⁵³
- The record does not support Commerce's conclusion that there are strategic alliances between Korean HRC suppliers and CWP producers, nor has Commerce conducted any kind of analysis demonstrating that such alliances exist.⁵⁴
- Hyundai also contends that CWP is distinguishable from OCTG and line pipe in this instance because the hot-rolled coil used to manufacture OCTG and line pipe is distinct from the hot-rolled coil used to manufacture CWP, and because the finished products are sold to different customers, at different grades, for different end uses, and at different price points.⁵⁵
- As for the fourth factor, Commerce has consistently determined that electricity in Korea is not provided for less than adequate remuneration and there is no record evidence that electricity prices during the POR were aberrant or that any Korean Government involvement in the domestic electricity market differs from any sovereign country's regulation of its own energy markets.⁵⁶

Petitioner's Rebuttal Comments:

- Commerce addressed the respondents' benchmarking argument in the previous review and that Commerce's analysis should remain the same.

⁴⁹ See Hyundai Case Brief at 15-21; see also Husteel Case Brief at 16-22; SeAH Case Brief at 3-4.

⁵⁰ See Husteel Case Brief at 17-18.

⁵¹ See Husteel Case Brief at 19-20; see also Hyundai Case Brief at 18.

⁵² See Husteel Case Brief at 19.

⁵³ *Id.*

⁵⁴ See Hyundai Case Brief at 19-20; see also Husteel Case Brief at 21-22.

⁵⁵ See Hyundai Case Brief at 19.

⁵⁶ See Hyundai at 20-21; see also Husteel Case Brief at 20-21.

- A “market price” for inputs cannot be a benchmark for determining if there is a particular market situation when the market itself has been distorted.⁵⁷
- With regard to the respondents’ arguments on the four factors that comprise the PMS allegation:
 - The respondents’ contention that Commerce should not use the AFA rate from another proceeding was addressed in the previous review and Commerce should continue to use what it determines to be the best rate available;⁵⁸
 - Commerce addressed arguments that there was no evidence of distortion from Chinese overcapacity in the previous review and should adopt a similar position in this review;⁵⁹
 - There has been no indication that anything has changed in relation to the claim of strategic alliances in the Korean market since the previous review period;⁶⁰ and
 - A determination of whether government support of electricity supply constitutes a countervailable subsidy is different from a determination of whether government support of electricity supply is a contributing factor to a PMS. Commerce also addressed this issue in the previous review.⁶¹
- Hyundai was incorrect in claiming that Commerce found the underlying allegations are individually insufficient to find a PMS in this review; Commerce made no such determination in the Preliminary Results.⁶²
- *Nesteel* concerns Commerce’s reversal of its preliminary PMS determination in OCTG AR1, while in this review, Commerce found in the *Preliminary Results* that a PMS existed, therefore, the *Nesteel* decision is not dispositive in this review.⁶³

Commerce’s Position: Hyundai argues that Commerce has made no new factual findings with regard to a PMS in the instant review, relying instead on previous determinations in prior reviews or in other cases. We disagree. We determined in the *Preliminary Results* that the record evidence in this review supports a finding that the circumstances present in the previous review (and in other reviews of Korean AD orders) have remained largely unchanged and, thus, made a preliminary finding that, due to the cumulative impact of those factors, a particular market situation exists in Korea which distorts the cost of production of CWP.⁶⁴

First, we disagree with Hyundai’s argument that Commerce determined in the *Preliminary Results* that the four factors that comprise the PMS allegation are individually insufficient to find a PMS. Commerce’s analysis for the *Preliminary Results* considered only the cumulative impact of the individual factors of the allegation and did not determine whether these factors were

⁵⁷ See Petitioner Rebuttal Brief at 6.

⁵⁸ *Id.* at 7-8.

⁵⁹ *Id.* at 9.

⁶⁰ *Id.* at 10.

⁶¹ *Id.* at 11-12.

⁶² *Id.* at 12-13.

⁶³ *Id.* at 12-13.

⁶⁴ See *Preliminary Results*, and accompanying PDM at 13.

individually sufficient to find that a PMS exists.⁶⁵ We continue to undertake a cumulative analysis for these final results.

We disagree with the respondents' arguments that the record evidence in this POR does not support a finding that a PMS exists. As detailed in the PDM,⁶⁶ record evidence shows that the Korean government provides subsidies for the production of hot-rolled steel, which includes the HRC used to produce CWP,⁶⁷ and that the mandatory respondents sourced HRC from Korean HRC producers that have been determined to have received subsidies from the Korea government.⁶⁸ Record evidence also shows that the assistance received by Korean hot-rolled steel producers was over 40 percent of the cost of hot-rolled steel, the primary input into CWP production,⁶⁹ and that HRC, as an input of CWP, constitutes a substantial proportion of the cost of CWP production.⁷⁰ Thus, distortions in the HRC market have a significant impact on production costs for CWP. 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.⁷¹ This, along with heavy subsidization by the Korean government of domestic steel production, distorts the Korean market prices of HRC, the main input in Korean OCTG production.

Husteel argues that Commerce's finding in the *Preliminary Results* that there was no "evidence on the record that Chinese {over}capacity in steel production...has ceased" has illegally shifted the burden to substantiate an allegation from the party making the allegation to the respondents.⁷² We disagree that Commerce has illegally shifted the burden to the respondents. Record information demonstrates that, as a result of Korean companies importing large volumes of steel

⁶⁵ *Id.*

⁶⁶ *Id.* at 13-14.

⁶⁷ See *HRS from Korea CVD*.

⁶⁸ *Id.*; see also Letter from Hyundai, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Response to the September 24th Supplemental Section D Questionnaire," dated October 10, 2018 (Hyundai SQR2) at Exhibit S2-3; Letter from Husteel, "Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Case No. A-580-809: Supplemental Section D Questionnaire Response," dated August 8, 2018 (Husteel SQR2) at Exhibit D-25.

⁶⁹ See *POSCO Remand Order*; see also *POSCO Redetermination* at 24.

⁷⁰ See Husteel SQR2 at Exhibit D-27; see also Letter from Hyundai, "Certain Circular Welded Non-Alloy Steel Pipe from Korea: Hyundai Steel Company's Sections B-D Questionnaire Response," dated April 17, 2018 (Hyundai BCDQR) at Exhibit D-3.

⁷¹ See PMS Allegation at Attachment A (Letter from Wheatland, "Certain Circular Welded Non-Alloy Steel Pipe from Korea: Allegation of a Particular Market Situation," dated October 16, 2017 (PMS Allegation CWP 2015-2016) at Attachment 14 (Letter from U.S. Steel, "Oil Country Tubular Goods from the Republic of Korea," dated August 7, 2017 (OCTG 2015-2016 U.S. Steel August 7 Factual Submission) at Exhibit 4 (*Posco Posts Smallest Ever Profit Amid Chinese Steel Deluge*, Bloomberg (Jan. 28, 2016))); PMS Allegation at Attachment A (PMS Allegation CWP 2015-2016 at Attachment 12 (Letter from Maverick, "Certain Oil Country Tubular Goods from the Republic of Korea: Submission of Factual Information relating to Particular Market Situation Allegation," dated August 7, 2017 (OCTG 2015-16 Maverick's August 7 Factual Submission) at Exhibit 5 ("Translation of Excerpts from Proposals for Strengthening the Competitiveness of the Steel Industry, September 30, 2016 from the Relevant ministries of the Government of Korea"))); PMS Allegation at Attachment A (PMS Allegation CWP 2015-2016 at Attachment 14 (OCTG 2015-2016 U.S. Steel August 7 Factual Submission at Exhibit 2 (*China's Steel Exports Reaching 100 Mt: What it Means to Asia and Beyond*, Asian Steel Watch))).

⁷² See Husteel Case Brief at 19.

from China,⁷³ the Korean steel market has been adversely impacted by the cheaper Chinese steel products, placing downward pressure on Korean domestic steel prices.⁷⁴ Record evidence shows that a significant volume of Chinese steel products continued to be imported into Korea during the POR.⁷⁵ As discussed in the *Preliminary Results*,⁷⁶ while we do not disagree with the respondents that the record reflects that some steel manufacturers in Korea have realized a profit over the POR⁷⁷ and that prices, overall, of imported steel into Korea have increased during the POR,⁷⁸ there is no data on the record which indicate that Chinese imported steel prices have increased to such an extent that market distortion or price suppression caused by Chinese overcapacity did not exist during the POR. Because a significant volume of Chinese steel products continue to be imported into Korea,⁷⁹ and those prices unquestionably have an effect on the domestic price of HRC in Korea, we continue to find that Chinese exports to Korea, along with the distortions caused by the other factors comprising the PMS allegation, distort the Korean market prices of HRC, and in turn distort the costs of Korean CWP production.

With respect to the allegation that certain Korean HRC suppliers and Korean CWP producers attempt to compete by engaging in strategic alliances, Commerce agrees that the record evidence supports that such strategic alliances exist in Korea and that these strategic alliances may have affected prices in the period covered by *HRS from Korea*.⁸⁰ Further, information on the record of this review points to collusion and price-fixing schemes engaged in by the Korean steel industry, including both mandatory respondents.⁸¹ Although the record does not contain specific evidence showing that strategic alliances directly created a distortion in HRC pricing in the current POR,

⁷³ See PMS Allegation at Attachment D.

⁷⁴ See, e.g., PMS Allegation at Attachment A (PMS Allegation CWP 2015-16) at Attachment 14 (OCTG 2015-16 U.S. Steel August 7 Factual Submission) at Exhibit 8 (*Korean Steel Industry Advised to Reduce Number of Steel Plate Plants by Half*, Business Korea, (September 19, 2016)); PMS Allegation at Attachment A (PMS Allegation CWP 2015-16) at Attachment 14 (OCTG 2015-16 U.S. Steel August 7 Factual Submission) at Exhibit 13 (*Five more companies to receive 'One Shot' funds*, Korea Joongang Daily (March 1, 2017)); PMS Allegation at Attachment A (PMS CWP 2015-16) at Attachment 13 (Letter from Maverick, “Certain Oil Country Tubular Goods from the Republic of Korea: Other Factual Information Submission for Valuing the Particular Market Situation in Korea,” dated May 4, 2017 (OCTG 2015-16 Maverick’s May 4 Factual Submission) at Exhibit 6 (Letter from Maverick, “Certain Oil Country Tubular Goods from the Republic of Korea: Particular Market Situations and Other Factual Information Submission,” dated September 7, 2016 at Exhibit 3 (POSCO 2016 Investors Forum Q&A (January 2016))).

⁷⁵ See PMS Allegation at Exhibit D.

⁷⁶ See *Preliminary Results*, and accompanying PDM at 14.

⁷⁷ See Letter from Husteel, “Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, Case No. A-580-809: Particular Market Situation Allegation Comments,” dated October 1, 2018 (Husteel PMS Comments) at Exhibit 3.

⁷⁸ See PMS Allegation at Attachment A (PMS Allegation CWP 2015-16 at Attachment 12 (OCTG 2015-16 Maverick’s August 7 Factual Submission) at Exhibit 7 (Translation of Steel Tubes and Pipes Committee of the Korea Iron & Steel Association, Monthly Report for the Second Week of February to the Second Week of March of 2017))) and at Attachment D.

⁷⁹ See PMS Allegation at Attachment D.

⁸⁰ See PMS Allegation at Attachment A (PMS Allegation CWP 2015-16) at Attachment 15.

⁸¹ See PMS Allegation at Attachment C at Exhibit 1 (“KFTC punishes six steel pipe manufacturers for rigging bids offered by Korea Gas Corporation,” dated December 21, 2017) and Exhibit 2 (*Steelmakers fined W92 bil. for bid rigging*, Korea Times (December 20, 2017)) and Exhibit 3: (KFTC’s Decision No. 2017-081 regarding the price-fixing scheme carried by certain Korea pipe producers, including Husteel and Hyundai) and Exhibit 4 (Translation of KFTC Decision No. 98-134) and Exhibit 5 (Translation of KFTC’s Decision No. 97-45).

Commerce nonetheless finds that these strategic alliances and price fixing schemes between certain Korean HRC suppliers and Korean CWP producers are relevant as an element of Commerce's analysis in that they may have created distortions in the prices of HRC in the past, and may continue to impact HRC pricing in a distortive manner during this POR and in the future.

Finally, regarding the allegation of distortion present in the electricity market, consistent with our previous determinations, we continue to find that the price of electricity is set by the Government of Korea (GOK) and that electricity in Korea functions as a tool of the government's industrial policy.⁸² The GOK has tight control over the electricity market, including supply and pricing.⁸³ Furthermore, the largest electricity supplier, KEPCO, is a government-controlled entity.⁸⁴ As a government-controlled entity, KEPCO is responsible for the transmission, distribution, and sale of electricity to customers.⁸⁵ Consistent with the SAA, a PMS may exist where there is government control over prices to such an extent that home-market prices cannot be considered to be competitively set.⁸⁶ Because of the distortion in this Korean utility, and the fact that such distortion places downward pressure on the pricing of electricity, we find this element contributes to the PMS. While the respondents argue that Commerce has determined that Korean electricity prices do not confer a subsidy benefit, even in the absence of a Commerce finding that the provision of electricity to industrial users in Korea constituted a countervailable subsidy, there can be market distortion in Korean electricity costs.

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

Regarding the parties' arguments concerning the decision by the CIT in *Nesteel*, we note that this decision is not yet final and conclusive. Moreover, the CIT in *Nesteel* affirmed as reasonable our

⁸² See *OCTG ARI*, and accompanying IDM at Comment 3.

⁸³ See PMS Allegation at Attachment A (PMS Allegation CWP 2015-16 at Attachment 13 (OCTG 2015-16 Maverick's May 4 Factual Submission) at Exhibit 5 (Letter from Maverick, "Certain Oil Country Tubular Goods from the Republic of Korea: Particular Market Situation Allegation on Electricity," dated February 4, 2016 (Maverick's Electricity Allegation)) at 13-14, and Exhibits 2 and 8 (for instance, Maverick states on page 14 at n.25 that, "in 2013, KEPCO's generation subsidiaries imported 79.4 million tons of coal and 84 percent of Korea's total 2013 imports of 94.8 million tons. KEPCO purchases all natural gas from the Korea Gas Corporation, a state-owned enterprise in which KEPCO owns a 24.5 percent equity interest, pursuant to supply contracts that are subject to GOK approval.")).

⁸⁴ See PMS Allegation at Attachment A (PMS Allegation CWP 2015-16 at Attachment 13 (OCTG 2015-16 Maverick's May 4 Factual Submission) at Exhibit 5 (Maverick's Electricity Allegation) at 13-14.))

⁸⁵ See PMS Allegation at Attachment A (PMS Allegation CWP 2015-16 at Attachment 13 (OCTG 2015-16 Maverick's May 4 Factual Submission at Exhibit 4 (e.g., GOK's Initial Questionnaire Response, at I-39 and Exhibit E-4) and Exhibit 9 (GOK's Electricity Supplemental Questionnaire Response at 11) and Exhibit 1 (U.S. Energy Information Administration, South Korea (April 1, 2014))).

⁸⁶ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, Vol. 1 (1994) at 822.

general approach to finding a PMS. To the extent that the CIT made evidentiary findings with respect to *OCTG AR1*, the record in this administrative review on the issue of PMS is more robust and contains numerous documents that were not on the record of *OCTG AR1*.

The PMS allegation in this review contains additional information in support of finding that a PMS exists in Korea.⁸⁷ New information on the record of this review includes POR data from ITA's December 2017 *Global Steel Trade Monitor Report*.⁸⁸ The ITA report demonstrates that China remained the largest source of Korean steel imports during the POR. This report also demonstrates that imports from Japan rank as second highest among imports from all other countries, accounting for approximately 30 percent of steel imports into South Korea. These data lend further credence to the contention that there continues to be a deluge of steel products, into South Korea, particularly from China. This review record also contains qualitative data that are distinct from the data submitted in prior segments of this review, including a Korean Fair Trade Commission decision from this POR regarding a bid collusion scheme carried out by six Korean pipe producers, including both mandatory respondents, and previous KFTC decisions relating to price fixing in the Korean steel industry.⁸⁹

Regarding Husteel's argument that it is Commerce's practice that a PMS finding must be based on evidence that shows a direct cause and effect relationship between the PMS and the respondent's pricing and SeAH's and Hyundai's arguments that there is no evidence that their specific purchases of HRS were outside the ordinary course of trade, we believe that no such analysis is necessary. As we explained in *Large Diameter Welded Pipe from Korea*⁹⁰ and *OCTG from Korea AR16/17*,⁹¹ the purpose of a PMS analysis is to identify whether there are distortions in the market as a whole. We disagree with the notion that a company-specific analysis is appropriate in a situation where 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. If a particular market is distorted as a whole, it would be illogical to conclude that one company operating in that particular market is insulated from the market distortions with respect to cost.

We disagree with Hyundai's and Husteel's arguments that Commerce's recent practice requires that a determination of whether a PMS exists must be based on an evaluation of quantitative analysis using relevant reference prices to determine where there are actual cost distortions. In *Biodiesel from Argentina Final*, Commerce stated that, "in certain contexts, an ordinary course of trade analysis may involve a comparison of specific sales and transactions to the general market," but also concluded that "a PMS analysis is, by definition, concerned with distortions in the overall market, rather than distortions in particular sales or transactions in relation to the general market."⁹² *Biodiesel from Argentina* also specifically acknowledged that Commerce's

⁸⁷ See PMS Allegation at Attachments B, C, and D.

⁸⁸ *Id.* at Attachment D.

⁸⁹ See PMS Allegation at Attachment C at Exhibit 3 (containing report by the KFTC, Decision No. 2017-081, dated December 21, 2017) and Exhibit 4 (KFTC, Decision No. 97-45, dated 1997) and Exhibit 5 (KFTC Decision No. 98-134, July 7, 1998).

⁹⁰ See *Large Diameter Welded Pipe from Korea*, and accompanying IDM at Comment 1.

⁹¹ See *OCTG from Korea AR16/17*, and accompanying IDM at Comment 1-B.

⁹² See *Biodiesel from Argentina: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1,

approach and conclusions in *OCTG AR1* were consistent with the final determination in *Biodiesel from Argentina*.⁹³ Consistent with the previous review,⁹⁴ where respondents made the same argument, we continue to find that the lack of appropriate data on the record with which to quantify an adjustment does not constitute evidence that the underlying condition does not exist. Rather, we continue to find that the record demonstrates distortions within the market, but that it does not contain reliable external benchmarks with which to quantify the adjustment.

Husteel submitted Steel Benchmarker Data detailing the average world export price for hot-rolled steel band during the POR,⁹⁵ COMTRADE data relating to Korean imports of HRC in 2016 and 2017,⁹⁶ and data relating to its own purchases of HRC consumed in the production of CWP during the POR.⁹⁷ Husteel argues that data demonstrates that the Korean market is not distorted because Korean prices are in line with world and regional benchmarks. As explained above, Husteel's comparison of average unit prices to its own costs does not address the purpose of the PMS analysis, which is to determine distortions in the overall market and not been particular sales or transaction in relation to the general market.⁹⁸ As for the Steel Benchmarker and COMTRADE data, Commerce has previously explained that companies compete in a market and have to adjust their pricing in response to market trends. If the market is distorted, companies have to either adjust their pricing to market distortions or leave the market.⁹⁹ Thus, Husteel's comparison of the average prices, by tariff code, for purchases from Chinese suppliers against world market prices, does not demonstrate that the prices within the Korean market are not distorted.

Comment 1-C: Particular Market Situation Adjustment

Respondents' Comments:

- Commerce should not adjust the COP data by using or applying a total AFA subsidy rate from another proceeding to cooperating respondents in this review.¹⁰⁰ POSCO's AFA rate from *HRS from Korea* is inappropriate; Commerce should use more contemporaneous

2018) (*Biodiesel from Argentina Final*), and accompanying IDM at Comment 3.

⁹³ *Id.*

⁹⁴ See *CWP from Korea AR15/16*, and accompanying IDM at Comment 1.

⁹⁵ See Letter from Husteel, "Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, Case No. A-580-809: Particular Market Situation Allegation Comments," dated September 28, 2019 (Husteel PMS Comments) at Exhibit 4.

⁹⁶ *Id.* at Exhibit 5.

⁹⁷ *Id.* at Exhibit 6.

⁹⁸ See *Biodiesel from Argentina Final*, and accompanying IDM at Comment 3.

⁹⁹ See *Certain Oil Country Tubular Goods From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 17146 (April 18, 2018) (*OCTG from Korea AR15/16*), and accompanying IDM at Comment 1.

¹⁰⁰ See Hyundai Case Brief at 16-17; see also Husteel Case Brief at 22-26.

subsidy rates¹⁰¹ including from *CTL Plate from Korea*¹⁰² or from the ongoing *HRS from Korea ARI Prelim.*¹⁰³

- Hyundai argues that Commerce should reverse its methodology from the *Preliminary Results* and should not apply a PMS adjustment to the cost of materials purchased from non-Korean suppliers.
- Husteel asserts that Commerce should not adjust the purchase prices of HRC from China because Commerce determined in the *Preliminary Results* that there is no basis to quantify an alleged distortion to HRC from China.¹⁰⁴
- Husteel argues that Commerce has no legal basis for relying on countervailable subsidies found in a separate proceeding in the calculation of the cost adjustment in this AD proceeding.¹⁰⁵
- SeAH argues that the evidence that led to the countervailable subsidy finding in *HRS from Korea* is not on the record of this review and that Commerce should place the entirety of *HRS from Korea* on the record of this review and allow parties to comment.¹⁰⁶ A finding related to a third party (POSCO) in a separate proceeding cannot be binding with respect to other companies that were not and could not have been interested parties in *HRS from Korea*.¹⁰⁷ Commerce's use of the subsidy rates from *HRS from Korea* would constitute a violation of the respondents' due process rights.¹⁰⁸

Petitioner's Rebuttal Comments:

- It would not be appropriate for Commerce to use a preliminary result from the ongoing *HRS from Korea CVD ARI* because that rate may change for the final results of that review. Moreover, the revised CVD rate from the remand redetermination of *HRS from Korea* is not yet final and should not be used until there is a final and conclusive Court decision. The respondents argue for using more contemporaneous final results involving POSCO from a proceeding other than *HRS from Korea* merely because they prefer the CVD rates found in other proceedings.¹⁰⁹

¹⁰¹ See Hyundai Case Brief at 16-17; see also Husteel Case Brief at 22-26.

¹⁰² See *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), and accompanying IDM (*CTL Plate from Korea*).

¹⁰³ See Hyundai Case Brief at 28-33; Husteel Case Brief at 3-4; see also *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review*, 2016, 83 FR 55517 (November 6, 2018) (*HRS from Korea CVD ARI Prelim.*).

¹⁰⁴ See Hyundai Case Brief at 20.

¹⁰⁵ See Husteel Case Brief at 28.

¹⁰⁶ See SeAH case Brief at 6-7.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 13-14.

- Commerce should continue to apply a PMS adjustment to the cost of materials purchased from non-Korean suppliers because all HRC purchased or produced by the respondents was affected by the PMS.¹¹⁰

Commerce's Position: In the *Preliminary Results*, we quantified the impact of the PMS in Korea by making an upward adjustment to the respondents' reported HRC costs, and we based that adjustment on the subsidy rates, net of export subsidies, from the CVD investigation in *HRS from Korea*.¹¹¹ For these final results, we have continued to make an adjustment for the PMS by adjusting upward the respondents' HRC costs using the subsidy rates from *HRS from Korea*. However, because we revised the subsidy rate in *HRS from Korea*, as a result of litigation, we have used the revised rate for the PMS adjustment in the margin calculation for each mandatory respondent in the final results of review.

The respondents argue that POSCO's subsidy rate from *HRS from Korea* is irrelevant to this review because it is not contemporaneous with this POR and it was based on AFA.¹¹² The fact that the rates from *HRS from Korea* precede the POR in this review is not a disqualifying factor. As explained above, we revised this rate pursuant to litigation.¹¹³ We continue to find it appropriate to use the subsidy rates from *HRS from Korea*, which concerns the input used to produce CWP.

Concerning the argument that Commerce may not rely on a subsidy finding that was based entirely on AFA, we disagree that this should discredit the use of such a rate in making a PMS adjustment. The AFA rate assigned to POSCO in *HRS from Korea* was imposed because the respondent failed to cooperate to the best of its abilities; however, this does not render the rate inaccurate or unreliable. In fact, this rate, as modified on remand, was recently affirmed by the CIT.¹¹⁴ We find that the CVD rate from *HRS from Korea* represents an appropriate measure of the subsidies being provided to producers of HRC.¹¹⁵ The use of the AFA rates as the basis of the PMS adjustment in this review is not a penalty being applied to respondents in this review, but is, rather, a reasonable basis to quantify the impact of the subsidies provided to the production of HRS on the COP of HRS.

Regarding the calculation of the PMS adjustment, interested parties suggest various alternatives to the PMS adjustment made by Commerce in the *Preliminary Results*. For instance, the respondents suggest that Commerce use the CVD rate calculated in the preliminary results of *HRS from Korea CVD ARI Prelim*.¹¹⁶ We find that we cannot rely on this rate, however, because this is a preliminary rate and is subject to change for the final results of that review.

The respondents also contend that more contemporaneous rates involving POSCO, specifically from *CTL Plate from Korea*, which included similar subsidy programs as *HRS from Korea*,

¹¹⁰ *Id.* at 15.

¹¹¹ See *HRS from Korea*.

¹¹² See Hyundai Case Brief at 28-33; Husteel Case Brief at 3-4.

¹¹³ See *POSCO Redetermination* at 24.

¹¹⁴ See *POSCO v. United States*, No. 16-00227, Slip. Op. 19-52, at 9 (CIT May 1, 2019).

¹¹⁵ See *HRS from Korea*, and accompanying IDM.

¹¹⁶ See Hyundai Case Brief at 28-33; Husteel Case Brief at 3-4.

demonstrate that the AFA rate used as the basis for the PMS adjustment in this review is inappropriate.¹¹⁷ We find, however, that the respondents' argument is misplaced, in that the PMS adjustment must take into account the HRC input consumed by the respondents in the production of the subject merchandise. As we explained in *OCTG from Korea AR16/17*, we do not consider it appropriate to use a rate from a case without considering whether the case is relevant to the input at issue.¹¹⁸ That is, the rate must be applicable to the input for the product subject to the order under review. Thus, we find that we cannot rely on the rates determined in *CTL Plate from Korea* as the basis for a PMS adjustment in this review, because CTL plate is not an input to CWP. In our view, the difference in the PORs of these determinations does not outweigh our consideration that one subsidy determination covered the input used to produce CWP, while the other did not. Accordingly, Commerce continues to find that the CVD rates from *HRS from Korea* are an appropriate basis for making a PMS adjustment in this review.

Husteel and Hyundai argue that Commerce should not apply a PMS adjustment, based on the *HRS from Korea* rate, to the acquisition cost of HRC the respondents imported into Korea because those purchases did not benefit from subsidies provided by the Korean government.¹¹⁹ While we recognize that those input purchases did not directly benefit from Korean government subsidies, we disagree with the respondents' contention that the subsidies on domestically produced HRC had no effect on the price of HRC imported into Korea. In a market economy, where goods are competitively priced, domestic and imported prices will converge at an equilibrium. This is particularly true with a common and fungible commodity such as HRC. Thus, because domestic subsidies lower the COP and the price of HRC in Korea, it is logical that the price of imported HRC will be adjusted to remain competitive with the domestically produced and subsidized HRC. In other words, domestic and imported prices of HRC converge to a lower market equilibrium price than if the domestically produced Korean HRC did not benefit from Korean government subsidies.¹²⁰

We continue to find that the subsidy rates from *HRS from Korea*, as revised on remand, are the best information available on the record with which to make a PMS adjustment, and that the record of this review does not contain appropriate data with which to make further adjustments. With respect to HRC purchased from Chinese suppliers, consistent *OCTG from Korea AR16/17*, we have continued to make an adjustment for those inputs for the final results of this review.¹²¹

With respect to Husteel's argument that the Act does not provide a basis for applying CVD rates from a separate proceeding as an upward adjustment to 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 discretion to use "any other calculation methodology" when calculating COP if costs are distorted by a PMS 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.

¹¹⁷ See Hyundai Case Brief at 16-17; Husteel Case Brief at 22-26.

¹¹⁸ See *OCTG from Korea AR16/17*, and accompanying IDM at Comment 1-C.

¹¹⁹ See Hyundai Case Brief at 33-34; Husteel Case Brief at 19-20.

¹²⁰ See *OCTG from Korea AR16/17*, and accompanying IDM at Comment 1-C.; see also *Large Diameter Welded Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 84 FR 6374 (February 27, 2019), and accompanying IDM at Comment 4.

¹²¹ See *OCTG from Korea AR16/17*, and accompanying IDM at Comment 1-C.

Finally, we reject SeAH's argument that Commerce is not providing the respondents due process by not incorporating into the record of this review the entirety of the record in *HRS from Korea*; the information regarding the subsidization of the production of HRS on which we relied for purposes of determining that there is a PMS and for calculating the PMS adjustment is available in Commerce's public, published decisions and the revisions thereto resulting from litigation. Commerce's reliance on *HRS from Korea* is entirely within the discretion afforded to Commerce by section 773(e) of the Act.

Comment 2: Differential Pricing

Respondents' Comments:

- Husteel argues that Commerce's application of the differential pricing methodology is contrary to the United States' WTO obligations due to WTO Appellate Body Ruling in *United States - Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea*.¹²²
- SeAH argues that Commerce's application of its differential pricing analysis to determine whether there was a pattern of prices for comparable merchandise that differed significantly among purchasers, regions, or time periods for the respondents' U.S. sales. is both mathematically and legally improper.¹²³
- According to SeAH, Commerce may adopt a rule that establishes arbitrary numerical cut-offs if it follows the notice-and-comment requirements of the Administrative Procedure Act (APA), but it has not done so in this case.¹²⁴ Instead, because Commerce applies the cut-offs used in the differential pricing analysis on a case-by-case basis, it must explain in each case why the application of the differential analysis is appropriate. This principle has been recognized by the CIT and the Court of Appeals for the Federal Circuit (CAFC) in cases addressing the *de minimis* standard applied by Commerce in investigations.¹²⁵ Under the principles recognized in *Carlisle Tire* and *Washington Raspberries*, Commerce's use of the differential pricing analysis can be sustained only if it provides both evidence and analysis showing why the 0.8 cut-off used for the Cohen's *d* test and the 33- and 66-percent cut-offs used for the ratio test are reasonable.¹²⁶
- SeAH contends that Commerce's previous arguments that its reliance on the Cohen's *d* test is appropriate because the cut-offs proposed by Professor Cohen "have been widely adopted"¹²⁷ is misleading because nothing in Professor Cohen's work can provide justification for

¹²² See Husteel Case Brief at 6.

¹²³ See SeAH Case Brief at 9-10.

¹²⁴ *Id.*

¹²⁵ *Id.* at 11 (citing *e.g.*, *Carlisle Tire v. United States*, 634 F. Supp. 419, 423 (CIT 1986) (*Carlisle Tire*); *Washington Red Raspberry Comm'n. v. United States*, 859 F.2d 898, 903 (Fed. Cir. 1988) (*Washington Raspberries*)).

¹²⁶ *Id.* at 12.

¹²⁷ *Id.* at 13 (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) (*A-312 Stainless Steel Pipe from Korea*), and accompanying IDM at 15).

Commerce's use of the d statistic in its differential pricing analysis in situations that are not consistent with the limitations that Professor Cohen described.¹²⁸ The d statistic can only be used 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 sample sizes.¹²⁹ The respondents' U.S. sales data do not meet these requirements, and, therefore, in such circumstances, the d statistic simply does not provide meaningful results.¹³⁰

- SeAH argues that Commerce's assertion that Professor Cohen's proposed cutoffs can be used whenever a complete population is being analyzed is completely unsupported by any evidence on the record.¹³¹ While Commerce has argued that the "best way to measure an effect is to conduct a census of an entire population but this is seldom feasible in practice," there is nothing in that statement that suggests that the Cohen's d statistic is a meaningful measure of effect size for an entire population when that population is not approximately normal and when the groups being compared do not have roughly equal variances or a sufficient and roughly equal number of data points.¹³²
- According to SeAH, Commerce has never explained why the thresholds used in the "ratio test" should be 33 and 66 percent, and not other numbers (such as 40 and 80 percent, 50 and 90 percent, or any two other numbers between 0 and 100), nor has it explained why a ratio between 33 and 66 percent calls for consideration of the transaction-to-average methodology only for the sales that "pass" the Cohen's d test, while a ratio of 66 percent or more calls for the application of the transaction-to-average methodology for all sales.¹³³ Because Commerce's numerical thresholds have not been established through notice-and-comment rulemaking, they can only be upheld if supported by substantial evidence on the record in each case in which they are applied.¹³⁴
- SeAH contends that the statute permits Commerce to depart from the normal A-to-A comparison to account for targeted dumping (in investigations) only if it "explains why such differences cannot be taken into account using" an A-to-A or transaction-to-transaction (T-

¹²⁸ *Id.* at 13-17.

¹²⁹ *Id.* at 17 (citing Cohen, *Statistical Power Analysis for the Behavioral Sciences* (2d ed. 1988) (*Statistical Power*), at 19-20).

¹³⁰ *Id.* at 17-18.

¹³¹ *Id.* at 18 (citing Robert Coe, *It's The Effect Size, Stupid: What "Effect Size" Is and Why It Is Important*, 2002 Annual Conference of the British Educational Research Association, University of Exeter, Exeter, Devon, England, September 12-14, 2002 (*Effect Size*); R. Grissom and J. Kim, *Effect Sizes for Research: Univariate And Multivariate Applications* (2d ed. 2012), at 66).

¹³² *Id.* at 18-19 (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 AR14-15*) and accompanying IDM at Comment 2, citing P. Ellis, *The Essential Guide to Effect Sizes (Guide to Effect Sizes)*. *Guide to Effect Sizes* specifically warns that test statistics (like Cohen's d) are problematic when the data is not normally distributed, and that Cohen's d cannot be used "[i]f the standard deviations of the two groups differ.").

¹³³ *Id.* at 20-21 (citing, e.g., *OCTG from Korea AR14-15*, and accompanying IDM at Comment 2; *Line Pipe from Korea* and accompanying IDM at Comment 1; and *A-312 Stainless Steel Pipe from Korea*, and accompanying IDM at Comment 4. In these cases, Commerce provided an explanation for its cut-offs using circular reasoning, i.e., that the cut-offs chosen are reasonable simply because Commerce has concluded that the cut-offs are reasonable).

¹³⁴ *Id.* at 22 (citing *Carlisle Tire*, 634 F. Supp. 419, 423; *Washington Raspberries*, 859 F.2d 898, 903).

to-T) calculation methodology.¹³⁵ Differences in dumping margins generated by the application of “zeroing” are not the same as differences in dumping margins caused by patterns of price differences by customer, region, or time period and Commerce has failed to explain why those patterns cannot be addressed using the normal comparison methodologies.¹³⁶

- In addition, SeAH contends that Commerce has not provided any 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.¹³⁷ Without a reasonable basis for that numerical threshold, Commerce’s use of a 25 percent measure to decide which margin calculation to apply is inherently arbitrary and improper.¹³⁸
- SeAH contends that as a general rule, the Act does not permit Commerce to compare an average NV to U.S. prices for individual transactions in an investigation.¹³⁹ However, the statute provides an exception to this general rule when targeted dumping is found to exist, but that exception, which might permit Commerce to calculate dumping margins by comparing an average NV to U.S. prices for individual transactions, applies only when there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and if the administering authority explains why such differences cannot be taken into account using a method described in section 777A (d)(1)(A)(i) or (ii) of the Act.¹⁴⁰ SeAH contends that the conditions permitting the use of an average-to-transaction (A-to-T) comparison methodology are not satisfied in this case.¹⁴¹

The petitioner did not comment on this issue.

Commerce’s Position: In the *Preliminary Results*, Commerce applied its differential pricing methodology (DPM) and determined a pattern of significant price differences for the respondents’ U.S. sales, with 79.89 percent of the value of Husteel’s U.S. sales and 83.08 percent of Hyundai’s U.S. Sales passing the Cohen’s *d* test.¹⁴² Commerce determined that the price differences were meaningful for each respondent because there was a 25 percent relative change between the weighted-average dumping margin calculated 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,

¹³⁵ *Id.* at 23 (citing section 777A(d)(1)(B) of the Act and 19 U.S.C. 1677f-1(d)(1)(B)).

¹³⁶ *Id.* at 24

¹³⁷ *Id.* (citing *Preliminary Results*, and accompanying PDM at 6).

¹³⁸ *Id.*

¹³⁹ *Id.* at 24

¹⁴⁰ *Id.* at 24-25 (citing section 777A(d)(1)(B) of the Act and 19 U.S.C. 1677f-1(d)(1)(B)). If those conditions are not met, Commerce is not permitted to depart from the A-to-A (or T-to-T) methodology that is normally required in investigations.

¹⁴¹ *Id.* at 25-26.

¹⁴² See *Preliminary Results*, and accompanying PDM at 7.

Commerce applied the A-to-T methodology to the respondents' U.S. sales.¹⁴³ We continue to apply the A-to-T methodology for both companies in the final results.¹⁴⁴

Commerce disagrees with Husteel that we did not provide an explanation of why the A-to-A methodology cannot account for pricing differences. As explained in the *Preliminary Results*, if the difference in the weighted-average dumping margins calculated using the A-to-A method and an appropriate alternative comparison method is meaningful, then this demonstrates that the A-to-A method cannot account for such differences and, therefore, an alternative comparison method would be appropriate.¹⁴⁵ Commerce determined that a difference in the weighted-average dumping margin is considered meaningful if there is a 25 percent relative change in the weighted-average dumping margin between the A-to-A method and the appropriate alternative method.¹⁴⁶ Using this method is reasonable because comparing the weighted-average dumping margins calculated using the two comparison methods allows Commerce to quantify the extent to which the A-to-A method cannot take into account different pricing behaviors exhibited by the exporter in the U.S. market. For these final results, Commerce continues to find that the A-to-A method cannot take into account the observed differences.¹⁴⁷

As previously noted in *Nails from China*,¹⁴⁸ we disagree that employing differential pricing methodology violates the Antidumping Agreement. As a general matter, the CAFC has held that WTO findings are without effect under U.S. law “unless and until such {a report} has been adopted pursuant to the specified statutory scheme.”¹⁴⁹ Indeed, the SAA noted that “WTO dispute settlement panels will not have any power to change U.S. law or order such a change. Only Congress and the Administration can decide whether to implement a WTO panel recommendation and, if so, how to implement it.”¹⁵⁰ Husteel’s reliance on *Washers from Korea*¹⁵¹ is unfounded because, to date, the WTO’s findings in that case have not been implemented under U.S. law. Commerce has not revised or changed its use of the differential pricing methodology, nor has the United States adopted changes to its methodology pursuant to the Uruguay Round Agreements Act’s implementation procedure. Accordingly, Husteel’s citation to the Appellate Body report in *Washers from Korea* is of no consequence to the differential pricing methodology as applied in this review.

¹⁴³ *Id.*

¹⁴⁴ See Memorandum, “Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Analysis Memorandum for Hyundai Steel Company, dated concurrently with this memorandum (Hyundai Final Calc Memo); see also Memorandum, “Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Analysis Memorandum for Husteel Co., Ltd.,” dated concurrently with this memorandum (Husteel Final Calc Memo).

¹⁴⁵ See *Preliminary Results* and accompanying PDM at 6.

¹⁴⁶ *Id.*

¹⁴⁷ See Hyundai Final Calc Memo and Husteel Final Calc Memo.

¹⁴⁸ See *Certain Steel Nails from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 11683 (March 16, 2018) (*Nails from China*), and accompanying IDM at Comment 3.

¹⁴⁹ See, e.g., *Corus Staal BV v. United States*, 395 F.3d 1343, 1349 (Fed. Cir. 2005).

¹⁵⁰ See SAA at 659.

¹⁵¹ See *Large Residential Washers from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2014-2015*, 81 FR 62715 (September 12, 2016) (*Washers from Korea*).

We disagree with SeAH that the differential pricing analysis, including the Cohen’s *d* test, is unreasonable, unlawful, or arbitrary. As an initial matter and to the contrary, 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 an A-to-T determined rate using zeroing with a non-zeroed A-to-A rate; 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 methodology to all sales, instead of just those targeted; Commerce’s use of zeroing in applying the A-to-T methodology to all transactions; that the statute does not directly apply to reviews; that Congress did not dictate how Commerce should determine if the A-to-A methodology accounts for targeted or masked dumping; the “meaningful difference” test is reasonable; Commerce may consider all sales in its “meaningful difference” analysis and consider all sales when calculating a final rate using the A-to-T methodology; and that it is acceptable to apply zeroing when using the A-to-T methodology.¹⁵² In *Nesteel*, the CIT rejected SeAH’s challenge to our differential pricing analysis and held that “the steps underlying the differential pricing analysis as applied by Commerce {are} reasonable.”¹⁵³ As explained in the *Preliminary Results*, Commerce continues to develop its approach pursuant to its authority to address potential masked dumping.¹⁵⁴ In carrying out this statutory objective, Commerce determines whether “there is a *pattern of export prices* (or constructed export prices) for comparable merchandise *that differs significantly* among purchasers, regions, or periods of time, and.... why such differences cannot be taken into account using {the A-to-A or T-to-T comparison method}.”¹⁵⁵ With the statutory language in mind, Commerce relied on the differential pricing analysis to determine whether these criteria are satisfied such that application of an alternative methodology may be appropriate.¹⁵⁶

Because the statute does not explicitly discuss how Commerce should conduct its determination of less than fair value in reviews,¹⁵⁷ carrying out the purpose of the statute, here, is a gap filling exercise properly conducted by Commerce.¹⁵⁸ Commerce finds that the purpose of section 777A(d)(1)(B) of the Act is to evaluate whether the A-to-A method is the appropriate measure to determine whether, and if so to what extent, a given respondent is dumping the merchandise at issue in the U.S. market.¹⁵⁹ While “targeting” and “targeted dumping” may be used as a general expression to denote this provision of the statute, these terms impose no additional requirements beyond those specified in the statute for Commerce to otherwise determine that the A-to-A method is not appropriate based upon a finding that the two statutory requirements have been

¹⁵² See *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1322 (Fed. Cir. 2017) (*Apex I*) (affirming 37 F. Supp. 3d 1286 (CIT 2014)(*CIT Apex I*); *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1337 (Fed. Cir. 2017) (*Apex II*) (affirming 144 F. Supp. 3d 1308 (CIT 2016)(*CIT Apex II*)).

¹⁵³ See *Nesteel*, 355 F. Supp. 3d 1336, 1355 (CIT 2019).

¹⁵⁴ See *Preliminary Results* and accompanying PDM at 5.

¹⁵⁵ See section 777A(d)(1)(B) of the Act (emphasis added); see also *Tri Union Frozen Prods. V. United States*, 163 F. Supp. 3d 1255, 1302 (CIT 2016)(“{h}ad Congress intended to impose upon Commerce a requirement to ensure statistical significance, Congress presumably would have used language more precise than ‘differ significantly’”).

¹⁵⁶ See 19 CFR 351.414(c)(1).

¹⁵⁷ See *Timken Co. v. United States*, 968 F. Supp. 2d 1279, 1286 n.7 (CIT 2014).

¹⁵⁸ See *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843-44 (1984).

¹⁵⁹ See 19 CFR 351.414(c)(1).

satisfied.¹⁶⁰ The CIT and the CAFC have upheld Commerce’s application of its differential pricing analysis to evaluate the statutory requirements.¹⁶¹

SeAH presents several arguments regarding Commerce’s differential pricing analysis in the *Preliminary Results*, the first of which is that Commerce should follow the Administrative Procedure Act (APA) to justify the numerical thresholds used in the differential pricing analysis, *i.e.*, the 0.8 cut-off used for the Cohen’s *d* test and the 33- and 66-percent cut-offs used for the ratio test. As explained in past cases, the notice and comment requirements of the APA do not apply “to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.”¹⁶² 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 our proceedings, on a case-by-case basis.¹⁶³ 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.¹⁶⁴ The CAFC has also held that Commerce’s meaningful difference analysis is reasonable.¹⁶⁵ Moreover, the CIT explained in *Apex v. United States*, which was affirmed in *Apex II*, 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.

¹⁶⁰ See, *e.g.*, *Samsung v. United States*, 72 F. Supp. 3d 1359, 1364 (CIT 2015) (“Commerce may apply the A-to-T methodology ‘if (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and (ii) the administering authority explains why such differences cannot be taken into account using the A-to-A or T-to-T methodologies. {Section 777A(d)(1)(B)}. Pricing that meets both conditions is known as ‘targeted dumping.’”).

¹⁶¹ See, *e.g.*, *JBK RAK LLC v. United States*, 790 F.3d 1358 (Fed. Cir. 2015).

¹⁶² See, *e.g.*, *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-16*, 83 FR 1146 (August 18, 2018), and accompanying IDM at Comment 8 (citing 5 U.S.C. 553(b)(3)(A)).

¹⁶³ See *Differential Pricing Analysis; Request for Comments*, 79 FR 26720, 26722 (May 9, 2014) (*Differential Pricing Comment Request*).

¹⁶⁴ See *Saha Thai Steel Pipe Company v. United States*, 635 F.3d 1335, 1341 (Fed. Cir. 2011); and *Washington Raspberries*, 859 F. 2d at 902-03; *Carlisle Tire*, 634 F. Supp., at 423 (discussing exceptions to the notice and comment requirements of the APA).

¹⁶⁵ See *Apex II*, 862 F.3d at 1347-1351.

Therefore, Commerce's adoption of the differential pricing analysis was not arbitrary.¹⁶⁶

It is worth noting that the CIT in the quote above cited Commerce's statement in its *Differential Pricing Comment Request* that "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} expects to continue to develop its approach with respect to the use of an alternative comparison method."¹⁶⁷ 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.

Regarding SeAH's arguments concerning our reliance on the Cohen's *d* test and on the 0.8 cut-off for determining whether an effect size is large, we disagree. 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."¹⁶⁸ 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."¹⁶⁹ In *OCTG AR 16/17*, Commerce notes that Robert Coe, in *Effect Size*, points out that "{e}ffect 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."¹⁷⁰ *Effect Size* points out that the precise purpose for which Commerce relies on the Cohen's *d* test to satisfy the statutory language, to measure whether a difference is significant.

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

Dr. Paul Ellis, in *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.

¹⁶⁶ See *CIT Apex II*, 144 F. Supp. 3d at 1322.

¹⁶⁷ See *Differential Pricing Comment Request*, 79 FR at 26722.

¹⁶⁸ See *Preliminary Results*, and accompanying PDM at 6.

¹⁶⁹ See *OCTG from Korea AR16/17*, and accompanying IDM at Comment 4.

¹⁷⁰ *Id.*

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.¹⁷¹

Commerce further stated in *Shrimp from Vietnam*:

As recognized by Dr. Ellis in the quotation above, the results of an analysis may have statistical and/or practical significance, and that these two distinct measures of significance are independent of one another. In its case brief, VASEP {Vietnam Association of Seafood Exporters} accedes to the distinction and meaning of “effect size” when it states “{w}hile 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.”¹⁷²

Lastly, in *Shrimp from Vietnam*, Commerce again pointed to Dr. Ellis, where he addresses populations of data, stating that, “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.”¹⁷³

There 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.

¹⁷¹ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2014-2015*, 81 FR 62717 (September 12, 2016) (*Shrimp from Vietnam*), and accompanying IDM at 16-17 (citing *Guide to Effect Sizes* at 3-5).

¹⁷² *Id.*

¹⁷³ See *Shrimp from Vietnam*, and accompanying IDM at 17 (citing *Guide to Effect Sizes*).

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 the Cohen’s *d* coefficient. As noted above, this measures the real-world relevance of this difference “and may therefore be said to be a true measure of the significance of the difference.”¹⁷⁴ This is the basis for Commerce’s determination of whether prices in a test group differ significantly from prices in a comparison group.

SeAH claims that Commerce’s use of Cohen’s stated thresholds to determine whether Cohen’s measurement of effect size is significant is not appropriate. SeAH states that:

Professor Cohen himself made clear that his proposed cut-offs 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).’¹⁷⁵

We find SeAH’s claim to be misplaced. SeAH’s quotation is from section 2.1 of Dr. Cohen’s text, “Introduction and Use” of “The T Test for Means.” 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,¹⁷⁶ but that is not the basis for Commerce’s analysis of the respondents’ U.S. sales price data.

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

The arithmetic mean is by far the most frequently used measure of location by behavioral scientists, and hypotheses about means the most frequently tested. The tables have been designed to render very simple the procedure for *power analysis* in the case where two samples, each of *n* cases, have been randomly and independently drawn from normal populations, and the investigator wishes to test the null hypothesis that their respective population means are equal...¹⁷⁷

¹⁷⁴ See *Effect Size*.

¹⁷⁵ See SeAH Case Brief at 13 (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 AR14-15) and accompanying IDM at Comment 2 (citing Cohen, *Statistical Power Analysis for the Behavioral Sciences* (2d ed. 1988) (*Statistical Power*) at 19-20)).

¹⁷⁶ See, e.g., *Statistical Power* at 21-23, section 2.2.1, where Dr. Cohen quantifies the “nonoverlap” of sampled sets of data. The calculation of the overlap must rely on certain assumptions, such as normal distributions and equal variances in order to determine the common or non-common overlap of the two datasets.

¹⁷⁷ See *Statistical Power* at 19 (emphasis in italics, SeAH’s quotation underlined).

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 the sampling technique, including sample size and potential sampling error, with the stipulated effect size. The Cohen’s *d* test and Dr. Cohen’s thresholds in these final results only measure 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 arbitrary. Commerce addressed the same argument by the respondent Deosen in *Xanthan Gum*, stating:

Deosen’s claim that the Cohen’s *d* test’s thresholds of “small,” “medium,” and “large” are arbitrary is misplaced. In “Difference Between Two Means,” the author states that “there is no objective answer” to the question of what 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.¹⁷⁸

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.¹⁷⁹

¹⁷⁸ See *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013), and accompanying IDM at Comment 3 (*quoting* Dave Lane, *et al.*, “Effect Size,” Section 2 “Difference Between Two Means”); *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 (*quoting* same); *Certain Steel Nails from the People’s Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014), and accompanying IDM at Comment 7 (*quoting* same).

¹⁷⁹ 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 PDM at 6.

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 the “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...”¹⁸⁰ In other words, Dr. Cohen was stating that it is obvious on its face that there are differences in intelligence between highly educated individuals and struggling high school students, and between the height of younger and older teenage girls. Likewise, the “large” threshold is a reasonable yardstick to determine whether prices differ significantly.

Therefore, Commerce disagrees with SeAH’s arguments that its application of the Cohen’s *d* test in this review is improper. As a general matter, Commerce finds that the U.S. sales data which the respondents reported to Commerce constitutes a population. As such, sample size, sample distribution, and the statistical significance of the sample are not relevant to Commerce’s analysis. 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.

Finally, we note that, in the *Preliminary Results*, we requested that interested parties “present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.”¹⁸¹ SeAH 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 in this review. Accordingly, SeAH’s arguments at this late stage of the review are unsupported by the record and appear only to convey SeAH’s disagreement with the results of Commerce’s application of a differential pricing analysis in this review, rather than to truly identify some aspect of this approach which is unreasonable or inconsistent with the statute.

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

In the differential pricing analysis, {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

¹⁸⁰ See *Statistical Power*, at 27.

¹⁸¹ See *Preliminary Results* and accompanying PDM at 6.

respondent's sales are at prices that differ significantly, then the extent of these 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.¹⁸²

Although the selection of these thresholds is subjective, Commerce's stated reasons behind the 33- and 66-percent thresholds does not render them arbitrary. In its case brief, SeAH suggests 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, SeAH has submitted no factual evidence or argument that these thresholds should be modified. Accordingly, SeAH's arguments at this late stage of the review are unsupported by the record and appear only to convey SeAH's disagreement with the results of Commerce's application of a differential pricing analysis in this review, rather than to truly identify some aspect of this approach which is unreasonable or inconsistent with the statute.

Commerce disagrees, in part, with SeAH that "the mere existence of different results is plainly insufficient, by itself, to satisfy the statutory requirements"¹⁸³ whether the A-to-A method can account for significant price differences which are imbedded in the respondents' pricing behavior in the U.S. market. Commerce does agree with SeAH that the use of zeroing and the non-use of zeroing have different results, but the alternative comparison will always be meaningless - weighted-average dumping margins calculated using the A-to-A method without zeroing and the A-to-T method without zeroing will always yield identical results. This is evidenced above with the calculation results for the respondents in these final results.¹⁸⁴

The differences in the calculated results specifically reveals the extent of the masked, or "targeted," dumping which is being concealed when applying the A-to-A method.¹⁸⁵ The

¹⁸² 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.

¹⁸³ See SeAH Case Brief at 23.

¹⁸⁴ See *Husteel Final Calc Memo* and *Hyundai Final Calc Memo*.

¹⁸⁵ 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

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,¹⁸⁶ such that the A-to-A method would be unable to account for such differences.¹⁸⁷ 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 “targeted 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 “targeted 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 EP, or CEP, with NV). It is the interaction of these many comparisons of EP or CEP with NV, 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 “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.”¹⁸⁸ 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 an NV that is independent from the type of U.S. price used for comparison, and the basis for NV will be constant because the characteristics of the individual U.S. sales¹⁸⁹ remain constant, whether weighted-average U.S. prices or individual U.S. prices are used in the analysis.

Consider the simple situation where there is a single, weighted-average U.S. price, and this average is made up of a number of individual U.S. sales which exhibit different prices, and the two comparison methods under consideration are the A-to-A method with offsets (*i.e.*, without zeroing) and the A-to-T method with zeroing.¹⁹⁰ The NV 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:

that this is an unfair or unreasonable result.” (internal citations omitted)).

¹⁸⁶ See SAA, at 842.

¹⁸⁷ 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.”).

¹⁸⁸ See SAA, at 842.

¹⁸⁹ These characteristics may include such items as product, level-of-trade, time period, and whether the product is considered as prime- or second-quality merchandise.

¹⁹⁰ 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.

- 1) the NV is less than all U.S. prices and there is no dumping;
- 2) the NV is greater than all U.S. prices and all sales are dumped;
- 3) the NV 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;¹⁹¹
- 4) the NV 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 NV is in the middle of the range of individual U.S. prices, such that there is both a significant amount of dumping and a significant amount of offsets generated from non-dumped sales.

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

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

¹⁹¹ 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.

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 NV 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, we find 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 the respondent’s pricing behavior in the U.S. market. Congress’s intent of addressing “targeted dumping,” when the requirements of section 777A(d)(1)(B) of the Act are satisfied,¹⁹² would be thwarted if the A-to-T method without zeroing were applied since 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 we find that the A-to-A method cannot take into account the pattern of prices that differ significantly for the respondents, *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, we continue to find that application of the A-to-T method, with zeroing, is an appropriate tool to address masked “targeted dumping,”¹⁹³ and has applied an alternative comparison methodology based on the A-to-T method to calculate the weighted-average dumping margin for the respondents in these final results.

¹⁹² See SAA, at 842-843.

¹⁹³ See *CIT Apex I*, 37 F. Supp. 3d. at 1296.

We disagree with SeAH that the statutory requirements of section 777A(d)(1)(B) of the Act do not apply and continue to apply an alternative comparison method based on the A-to-T method. As set forth in the *Preliminary Results*¹⁹⁴ and as further discussed in these final results, Commerce's differential pricing analysis for the respondents in this administrative review is lawful, reasonable, and completely within Commerce's discretion in executing the trade statute.

VII. RECOMMENDATION

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



Agree



Disagree

5/30/2019

X



Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

¹⁹⁴ See *Preliminary Results* and accompanying PDM at 10-12.