



A-580-880

Administrative Review

POR: 9/1/2017 – 8/31/2018

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November 6, 2019

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

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for the Preliminary Results of the 2017-  
2018 Administrative Review of the Antidumping Duty Order on  
Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes  
from the Republic of Korea

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on heavy walled rectangular welded carbon steel pipes and tubes (HWR pipe and tube) from the Republic of Korea (Korea). The period of review (POR) is September 1, 2017 through August 31, 2018. The review covers 21 producers and/or exporters of the subject merchandise. Commerce initially selected two respondents for individual examination, Dong-A Steel Company (DOSCO) and HiSteel Co., Ltd (HiSteel); however because DOSCO did not respond to Commerce's AD questionnaire, we also selected the next largest producer/exporter of the subject merchandise, Kukje Steel Co., Ltd. (Kukje Steel), as a mandatory respondent. We preliminarily determine that sales of the subject merchandise have been made at prices less than normal value (NV).

## II. BACKGROUND

In September 2016, Commerce published in the *Federal Register* an AD order on HWR pipe and tube from Korea.<sup>1</sup> Subsequently, on September 11, 2018, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the AD order on HWR pipe and tube from Korea for the period September 1, 2017 through August 31, 2018.<sup>2</sup>

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<sup>1</sup> See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey: Antidumping Duty Orders*, 81 FR 62865, 62866 (September 13, 2016).

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 45888 (September 11, 2018).



Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b)(1), in September and October 2018, Commerce received requests to conduct an administrative review of the AD order on HWR pipe and tube from Korea from certain domestic producers (collectively, the petitioners)<sup>3</sup> for 21 Korea producers/exporters. Commerce also received a request to conduct an administrative review from HiSteel. On November 15, 2018, based on these timely requests, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the AD order on HWR pipe and tube from Korea<sup>4</sup>

In the *Initiation Notice*, Commerce indicated that, in the event that we limited the respondents selected for individual examination in accordance with section 777A(c)(2) of the Act, we would select mandatory respondents for individual examination based upon U.S. Customs and Border Protection (CBP) entry data.<sup>5</sup> In December 2018, after considering the large number of potential producers/exporters involved in this administrative review, and the resources available to Commerce, we determined that it was not practicable to examine all exporters/producers of subject merchandise for which a review was requested.<sup>6</sup> As a result, pursuant to section 777A(c)(2)(B) of the Act, we determined that we could reasonably individually examine the two largest producers/exporters accounting for the largest volume of HWR pipe and tube from Korea during the POR (*i.e.*, DOSCO and HiSteel).<sup>7</sup> Accordingly, we issued the AD questionnaire to these companies. On December 14, 2018, DOSCO informed Commerce that it did not intend to respond to the questionnaire or participate as a mandatory respondent in this administrative review.<sup>8</sup> Therefore, on December 18, 2018, Commerce selected the next largest producer/exporter of the subject merchandise, Kukje Steel, as a mandatory respondent.

In February 2019, we received timely responses from HiSteel and Kukje Steel to section A (*i.e.*, the section relating to general information) of the questionnaire, and in February and March 2019, we received responses from these companies to the remaining sections of the questionnaire (*i.e.*, sections B, C, and D, the sections covering comparison market sales, U.S. sales, and cost of production (COP)/constructed value (CV), respectively). From April 2019 through August 2019, we issued supplemental sections A through D questionnaires to HiSteel and Kukje Steel. We received responses to these supplemental questionnaires during the same time period.

In April 2019, the petitioners submitted an allegation and supporting factual information that a particular market situation (PMS) exists in Korea.<sup>9</sup> Also in April 2019, Commerce established a

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<sup>3</sup> These companies are Independence Tube Corporation and Southland Tube, Incorporated, Nucor companies; Atlas Tube, a division of Zekelman Industries; and Searing Industries.

<sup>4</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 57411 (November 15, 2018) (*Initiation Notice*).

<sup>5</sup> See *Initiation Notice*, 83 FR at 57411.

<sup>6</sup> See Memorandum, “Selection of Respondents for Individual Review,” dated December 7, 2018, at 3.

<sup>7</sup> *Id.* at 4

<sup>8</sup> See DOSCO’s Letter, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea – Notification of Inability to Participate as Mandatory Respondent,” dated December 14, 2018.

<sup>9</sup> See Petitioners’ Letter, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Particular Market Situation Allegation and Supporting Information, dated April 2, 2019 (Petitioners’ PMS Allegation).

deadline for the submission of factual information rebutting, clarifying, or correcting the petitioners' allegation.<sup>10</sup> In May 2019, HiSteel and Kukje Steel submitted such rebuttal factual information.<sup>11</sup> On October 11, 2019, per Commerce's request,<sup>12</sup> the petitioners submitted the Regression Analysis operable in the SAS<sup>®</sup>/STAT software environment.<sup>13</sup>

### III. SCOPE OF THE ORDER

The merchandise subject to the order is certain heavy walled rectangular welded steel pipes and tubes of rectangular (including square) cross section, having a nominal wall thickness of not less than 4 mm. The merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A-500, grade B specifications, or comparable domestic or foreign specifications. Included products are those in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements below exceeds the quantity, by weight, respectively indicated:

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

The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item number 7306.61.1000. Subject merchandise may also be classified under 7306.61.3000. Although the HTSUS numbers and ASTM specification are provided for convenience and for customs purposes, the written product description remains dispositive.

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<sup>10</sup> See Memorandum, "Deadline for Submission of Factual Information Relating to Particular Market Situation Allegation," dated April 12, 2019 (PMS Rebuttal Factual Info Comments Memo).

<sup>11</sup> See HiSteel's Letter, "Administrative Review of the Antidumping Duty Order on Heavy Walled Rectangular Carbon Steel Pipes and Tubes from Korea – Response to the Department's April 12 Request for Comments on Particular Market Situation Allegations, dated May 10, 2019 (HiSteel PMS Allegation Rebuttal); *see also* Kukje Steel's Letter, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Rebuttal Factual Information Related to Alleged Particular Market Situation," dated May 10, 2019 (Kukje Steel PMS Allegation Rebuttal).

<sup>12</sup> See Commerce's Letter, dated October 7, 2019.

<sup>13</sup> See Petitioners' Letter, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Submission of SAS Database and Programming for Petitioners' PMS Adjustment Model," dated October 11, 2019 (PMS Adjustment Model SAS).

#### IV. COMPANIES NOT SELECTED FOR INDIVIDUAL EXAMINATION

Commerce did not select the following companies for individual examination: Ahshin Pipe & Tube Company; Bookook Steel Co., Ltd.; Dongbu Steel Co., Ltd.; Ganungol Industries Co. Ltd.; Hanjin Steel Pipe; Husteel Co., Ltd.; Hyosung Corporation; Hyundai Steel Co.; Hyundai Steel Pipe Company; K Steel Co. Ltd.; Miju Steel Manufacturing Co., Ltd., NEXTEEL Co., Ltd.; POSCO DAEWOO; Sam Kang Industrial Co., Ltd.; Sam Kang Industries Co., Ltd.; Samson Controls Ltd., Co.; SeAH Steel Corporation; and Yujin Steel Industry Co. Ltd. None of these companies: (1) were selected as a mandatory respondent; (2) were the subject of a withdrawal of request for review; (3) requested to participate as a voluntary respondent; or (4) submitted a claim of no shipments. As such, these companies remain non-selected respondents.

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 or *de minimis* margins, and any margins determined entirely {on the basis of facts available}."

In this review we have preliminarily calculated the rate for the companies not selected for individual examination using a weighted-average of the estimated weighted-average dumping margins calculated for HiSteel and Kukje Steel and each company's publicly-ranged U.S. sales data.<sup>14</sup>

#### V. DISCUSSION OF THE METHODOLOGY

##### Date of Sale

Section 351.401(i) of Commerce's regulations states that, "[i]n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business." The regulation provides further that Commerce may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>15</sup> Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.<sup>16</sup>

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<sup>14</sup> See section 735(c)(5)(A) of the Act.

<sup>15</sup> See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

<sup>16</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December

HiSteel reported the date of sale in the home market at the earlier of invoice date or factory shipment date.<sup>17</sup> In addition, HiSteel reported the U.S. date of sale as the shipment date.<sup>18</sup> Kukje Steel reported the earlier of invoice date or factory shipment date for all home market and U.S. sales.<sup>19</sup> We preliminarily followed Commerce's long-standing practice of basing the date of sale for all of HiSteel's and Kukje Steel's home market and U.S. sales on the earlier of the invoice date or the shipment date.<sup>20</sup>

### Normal Value Comparisons

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether HiSteel's and Kukje Steel's sales of HWR pipe and tube from Korea to the United States were made at less than NV, Commerce compared the export price (EP) to the NV, as described in the "Export Price" and "Normal Value" sections of this memorandum.

#### A) Determination of the Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EP or CEP (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value (LTFV) investigations, Commerce examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in LTFV investigations.<sup>21</sup>

In numerous AD investigations and reviews, Commerce has applied a "differential pricing" analysis for determining whether application of the average-to-average method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>22</sup>

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23, 2004) (*Shrimp from Thailand*), and accompanying Issues and Decision Memorandum (IDM) at Comment 10; *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002) (*Steel Beams from Germany*), and accompanying IDM at Comment 2.

<sup>17</sup> See HiSteel's February 27, 2019 Sections B and C Questionnaire Response (HiSteel's February 27, 2019 BCQR) at 11.

<sup>18</sup> See HiSteel's February 27, 2019 BCQR at 47.

<sup>19</sup> See Kukje Steel's March 6, 2019 Sections B-D Questionnaire Response (Kukje Steel's March 6, 2019 BCDQR) at B-16 and C-15.

<sup>20</sup> See *e.g.*, *Shrimp from Thailand* IDM at Comment 10; and *Steel Beams from Germany* IDM at Comment 2.

<sup>21</sup> See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying IDM at Comment 1; see also *JBF RAK LLC v. United States*, 790 F. 3d 1358, 1363-65 (Fed. Cir. 2015) ("{T}he fact that the statute is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties.") (citations omitted).

<sup>22</sup> See, *e.g.*, *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at*

Commerce finds that the differential pricing analysis used in investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

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

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

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the

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*Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

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

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

## B) Results of the Differential Pricing Analysis

### HiSteel

For HiSteel, based on the results of the differential pricing analysis, Commerce preliminarily finds that 94.85 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>23</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these

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<sup>23</sup> See Memorandum, "Calculations for HiSteel Co., Ltd. for the Preliminary Results," dated November 6, 2019 (HiSteel Preliminary Calculation Memo), at 2.

preliminary results, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for HiSteel.

### Kukje Steel

For Kukje Steel, based on the results of the differential pricing analysis, Commerce preliminarily finds that 77.00 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>24</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Kukje Steel.

### C) Product Comparisons

In accordance with section 771(16)(A) of the Act, we considered all products produced by HiSteel and Kukje Steel covered by the description in the "Scope of the Order" section, above, and sold in the home market during the POR to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(f), we compared HiSteel's U.S. sales of HWR pipe and tube to their sales of HWR pipe and tube made in the home market within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the month of the last U.S. sale.

Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(B) of the Act, we compared U.S. sales to sales of the most similar foreign-like product or CV, as appropriate. In making the product comparisons, we matched foreign like products based on the physical characteristics to the product sold in the United States. In the order of importance, these physical characteristics are as follows: steel input type, quality, metallic coating, painted, perimeter, wall thickness, scarfing, and shape.

For Kukje Steel, we made product comparisons using CV, as discussed in the "Calculation of NV Based on CV" section below.<sup>25</sup>

### D) Export Price

For all sales made by HiSteel and Kukje Steel, we used the EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was first sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the

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<sup>24</sup> See Memorandum, "Margin Calculations for Kukje Steel Co., Ltd. for the Preliminary Results," dated November 6, 2019 (Kukje Steel Preliminary Calculation Memo).

<sup>25</sup> See section 773(a)(4) of the Act.



United States prior to importation and the CEP methodology was not otherwise warranted based on the facts on the record.

### HiSteel

We based EP on packed prices to unaffiliated purchasers in the United States or to unaffiliated purchasers who shipped the merchandise to the United States. We made deductions from the starting price for movement expenses (*i.e.*, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. customs duties (including harbor maintenance fees), U.S. brokerage and handling, and U.S. inland freight from port to warehouse), in accordance with section 772(c)(2)(A) of the Act.

### Kukje Steel

We based EP on packed prices to unaffiliated purchasers in the United States. We made deductions from the starting price for movement expenses (*i.e.*, foreign inland freight, foreign brokerage and handling, international freight, and U.S. customs duties (including harbor maintenance fees)), in accordance with section 772(c)(2)(A) of the Act.

## E) Normal Value

### Particular Market Situation

#### Background

In the previous administrative review of HWR pipe and tube from Korea, Commerce found that a PMS existed in Korea which distorted the COP of HWR, based on our consideration of the cumulative effects of: (1) Korean subsidies on hot-rolled coil (HRC), the primary input for HWR; (2) the distortive pricing of unfairly traded HRC from China; (3) strategic alliances between Korean HRC suppliers and Korea HWR pipe and tube producers; and (4) distortive government control over electricity prices in Korea.<sup>26</sup> As noted above, in April 2019, the petitioners submitted factual information and a letter in which they argued that Commerce should find, based on these same four factors, that a PMS continues to exist in Korea in the instant POR, and that we should make corrective adjustments to the respondents' reported costs.<sup>27</sup> Also in April 2019, we invited interested parties to submit factual information rebut, clarify, or correct the factual information in the Particular Market Situation Allegation.<sup>28</sup> In May 2019, HiSteel and Kukje Steel submitted factual information and comments concerning the Particular Market Situation Allegation.<sup>29</sup>

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<sup>26</sup> See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 24471 (May 28, 2019) (*HWR from Korea 2016-2017 Final Results*), and accompanying IDM at Comment 1.

<sup>27</sup> See Petitioners' PMS Allegation.

<sup>28</sup> See PMS Rebuttal Factual Info Comments Memo.

<sup>29</sup> See HiSteel's Letter, "Administrative Review of the Antidumping Duty Order on Heavy Walled Rectangular Carbon Steel Pipes and Tubes from Korea – Response to the Department's April 12 Request for Comments on Particular Market Situation Allegations," dated May 10, 2019; *see also* Kukje Steel's Letter, "Heavy Walled

## The Petitioners' Allegation

The petitioners assert that the same four factors which led Commerce to find that a PMS existed in Korea in the prior administrative review of HWR pipe and tube from Korea are still present in the instant review. According to the petitioners, the record demonstrates that the Korean government heavily subsidizes HRC, which HiSteel and Kukje Steel purchased from Korean producers, including POSCO; overcapacity in Chinese steel production has resulted in the Korean market being flooded with cheap Chinese steel products, which exerts downward pressure on Korean domestic steel prices; Korean HRC producers and WLP producers engage in strategic alliances; and the Korean government distorts electricity prices. The petitioners contend that, during the POR, Korean companies continued to import significant volumes of Chinese HRC, and that the average unit value (AUV) of these imports was low compared to the AUV of imports from other countries into Korea and the AUV of Chinese HRC exports to other countries. In addition, the petitioners claim that competition from low-priced Chinese imports has caused Korean steel producers' prices, market share, and overall profitability to fall. The petitioners assert that, in addition to strategic alliances, Korean pipe producers participate in price-fixing schemes among themselves, citing decisions by the Korean Fair Trade Commission concerning Korean Gas Corporation bids from 2003 through 2013, steel pipe prices in 1997 and 1998, and Korea Water Resources Corporation bids in 1996.<sup>30</sup>

The petitioners assert that, as we did in the previous administrative review of this order and other recent administrative reviews of oil country tubular goods (OCTG), circular welded pipe (CWP), and welded line pipe (WLP) from Korea, as well as in the antidumping duty investigation of large diameter welded pipe (LDWP) from Korea,<sup>31</sup> we should continue to quantify the impact of the PMS on HRC by adjusting the respondents' costs using the countervailing duty (CVD) rates

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Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Rebuttal Factual Information Related to Alleged Particular Market Situation," dated May 10, 2019.

<sup>30</sup> See PMS Allegation.

<sup>31</sup> *Id.* at 36 (citing *HWR from Korea 2016-2017 Final Results* IDM at Comment 1; *Large Diameter Welded Pipe from the Republic of Korea: Final Determination of Sales at Less than Fair Value and Postponement of Final Determination*, 84 FR 6374 (February 27, 2019), and accompanying IDM at Comment 1; *Welded Line Pipe from Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 84 FR 4046 (February 14, 2019), and accompanying Preliminary Decision Memorandum (PDM) at 14-18; *Welded Line Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 33919 (July 18, 2018); *Certain Oil Country Tubular Goods from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 51442 (October 11, 2018), and accompanying PDM at 19-23; *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), and accompanying IDM at Comment 1; and *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), and accompanying IDM at Comment 3, amended in *Certain Oil Country Tubular Goods from the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Review: 2014-2015*, 82 FR 31750; *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), and accompanying PDM at 12-16; and *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), and accompanying IDM at Comment 1).

determined in *Hot-Rolled Steel from Korea*.<sup>32</sup> Further, the petitioners argue that we should make adjustments to account for the impact of HRC purchased from non-Korean suppliers, strategic alliances, and the Korean government's control of electricity. To account for the effect of Chinese overcapacity on the Korean steel market, the petitioners contend that Commerce either: (1) average all subsidy rates from *Hot-Rolled Steel from Korea*, including POSCO's rate, to adjust the cost of all non-POSCO and non-Korean HRC purchases; (2) replace the costs for any imported HRC with the domestic HRC prices, as adjusted using the subsidy rates in *Hot-Rolled Steel from Korea*;<sup>33</sup> or alternatively, they propose Commerce (3) increase the respondents' reported costs for all HRC purchases, from both Korean and non-Korean suppliers, using a global excess capacity-based regression analysis provided on the record that quantifies the impact of global steel excess capacity on the price of HRC in Korea, and derives a corresponding percentage adjustment factor that, when applied to the respondents' costs of HRC, accounts for the distortions inherent to an overcapacity-driven PMS.<sup>34</sup>

#### Alternative PMS Valuation Methodology

The petitioners argue that Chinese steel overcapacity, surging imports, and the resultant downward price pressure over the years affected imported steel pipe into Korea. According to the petitioners, as indicated by industry analysts, Korean steel producers, and other sources, the Chinese steel industry, like other steel industries that have contributed to the global steel overcapacity crisis led by the Chinese steel industry, has had an adverse effect on the Korean steel market across a range of steel products. The petitioners assert that they formulated an alternative PMS adjustment that recognizes the global overcapacity crisis as one of the fundamental drivers that links the various factors that collectively define a given PMS, and seeks to adjust for the overall distortion present in the market.<sup>35</sup>

#### Interested Parties' Rebuttal Comments Regarding the PMS Allegation

Kukje Steel argues that the statute does not permit an adjustment to the COP used to test whether Kukje Steel's home market sales were made at below COP based on an alleged PMS in Korea. Specifically, Kukje Steel maintains that Section 504 of the Trade Preferences Extension Act of 2015 (TPEA)<sup>36</sup> modified the definition of "ordinary course of trade" and the provisions concerning the calculation of "constructed value" to permit Commerce to adjust CV "if a {PMS} exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade;" however, it did not

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<sup>32</sup> See PMS Allegation at 36 (citing *2015-2016 Final Results*; and *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016), as amended in *Certain Hot-Rolled Steel Flat Products from Brazil and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders*, 81 FR 67960 (October 3, 2016) (collectively, *Hot-Rolled Steel from Korea*)).

<sup>33</sup> See PMS Allegation at 37-39.

<sup>34</sup> See PMS Allegation at 40-60 and Exhibits 1-6, generally, the Alternative PMS Valuation Calculation; *see also* PMS Adjustment Model SAS.

<sup>35</sup> *Id.* at 43; and Alternative PMS Valuation Calculation.

<sup>36</sup> See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).

change the statutory provisions regarding the calculation of COP or application of the sales-below-cost test.<sup>37</sup>

Kukje Steel contends that the petitioners have not provided sufficient evidence to demonstrate that a PMS existed during the instant POR that distorted the production costs of HWR pipe and tube. Kukje Steel argues that Commerce has consistently found no countervailable subsidies exist regarding Korean electricity that confer benefits to Korean steel producers.<sup>38</sup> Moreover, Kukje Steel argues that record evidence contemporaneous with the instant POR shows that Korean electricity rates reflected market principles.<sup>39</sup> Regarding the subsidy rate for POSCO from *Hot-Rolled Steel from Korea*, which was based entirely on adverse facts available (AFA) and is outdated, Kukje Steel contends that the U.S. Court of International Trade (CIT) remanded to Commerce the CVD AFA rate applied in *Hot-Rolled Steel from Korea*,<sup>40</sup> which followed the CIT's earlier decision concerning the parallel investigation of *Cold-Rolled Steel from Korea*, based on virtually identical facts.<sup>41</sup> In light of these facts, Kukje Steel argues that Commerce should not rely on POSCO's AFA rate from *Hot-Rolled Steel from Korea* to quantify a PMS adjustment in this administrative review.<sup>42</sup> Kukje Steel asserts that, if Commerce makes a PMS adjustment for subsidies on HRC, it should base the adjustment in this case on the first CVD administrative review of the CVD order on hot-rolled steel from Korea because it covers August 12, 2016, through December 31, 2016, which is more contemporaneous with the POR of the current administrative review than *Hot-Rolled Steel from Korea*.<sup>43</sup>

Kukje Steel contends that it is unreasonable to impute the existence of strategic alliances in this case based on findings made for other companies involved in OCTG, CWP, or WLP, especially

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<sup>37</sup> See Kukje Steel PMS Allegation Rebuttal at 2-6.

<sup>38</sup> *Id.* at 7 (citing *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49946 (July 29, 2016), and accompanying IDM at Comment 2; *Hot-Rolled Steel—Korea CVD IDM* at Comment 2; *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015); and *Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 82 FR 16341 (April 4, 2017) (*CTL Plate Korea CVD Final Determination*)).

<sup>39</sup> *Id.* at Attachment B.

<sup>40</sup> *Id.* at 8 and Attachment C.1; *POSCO et al. v. United States*, Consol. Court No. 16-00227, Slip Op. 18-117 (CIT Sept. 11, 2018).

<sup>41</sup> *Id.* at Attachment C.3; *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49946 (July 29, 2016); *POSCO et al. v. United States*, Consol. Court No. 16-00225, Slip Op. 18-18 (CIT March 8, 2018); and *Final Results of Redetermination Pursuant to Court Remand*, June 6, 2018, following *POSCO v. United States*, 296 F. Supp. 3d 1320. Kukje Steel notes that in the redetermination of *Cold-Rolled Steel from Korea*, Commerce revised its selection of the AFA rate for POSCO, thereby reducing it. *Id.* at 8.

<sup>42</sup> *Id.* Further, Kukje Steel argues that if Commerce adjusts Kukje Steel's costs based on *Hot-Rolled Steel from Korea*, it should demonstrate how much of these subsidy benefits passed through Kukje Steel's downstream HWR manufacturing (if at all).

<sup>43</sup> *Id.* at 11 and Attachments J.1 and J.2 (citing *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, 2016*, 83 FR 55517, 55518 (November 6, 2018)). Kukje Steel contends that it is inappropriate to make an adjustment using the subsidy rates from *Hot-Rolled Steel from Korea*, as discussed above, and more recent determinations are more reflective of the POR for this administrative review and are actual calculated rates, not based on the application of AFA, or the domestic subsidies that POSCO has received (e.g., *CTL Plate Korea CVD Final Determination*). *Id.* at 11-13 and Attachments K.1, K.2, K.3, K.4, and L).

given that the HRC used to manufacture OCTG, CWP, and WLP is distinct from HRC used to manufacture HWR pipe and tube, and the finished products are sold to different customers, for different grades, for different end uses, and at different price points.<sup>44</sup> Finally, Kukje Steel argues that, contrary to the petitioners' assertion that "flooding" of Chinese steel imports into the Korean market and decreases in HRC prices are collective factors causing distortions in the global steel market, the evidence demonstrates that there was, in fact, decreasing capacity, decreasing exports, and increasing prices during the POR.<sup>45</sup>

Kukje Steel argues that the petitioners base much of their PMS allegation on articles allegedly obtained from various sources and that Commerce cannot rely on such articles in the absence of corroboration.<sup>46</sup> Kukje Steel further contends that the petitioners link their PMS allegation in this case to the PMS allegation made in *OCTG from Korea 14-15 AR*, which was invalidated by the CIT finding that a PMS was unsupported by substantial evidence.<sup>47</sup> According to Kukje Steel, the petitioners fail to demonstrate how the information submitted in support of the PMS allegation is relevant to the present POR.

Regarding the regression analysis submitted by the petitioners, Kukje Steel argues that the petitioners' analysis is based on a series of assumptions and cherry-picked criteria that constitute an unreliable methodology.<sup>48</sup> Kukje Steel further asserts that various outlier issues, fixed effects bias, and panel data bias exist in the petitioners' regression analysis that call into question the reliability and accuracy of the overall methodology and conclusions.<sup>49</sup>

HiSteel argues that the petitioners link their PMS allegation in this case to the PMS allegations made in previous reviews of the antidumping duty order of OCTG from Korea. However, in *OCTG from Korea 14-15 AR*, HiSteel asserts that Commerce reversed its preliminary negative PMS findings under improper political interference from the White House.<sup>50</sup> HiSteel asserts that the petitioners have not identified any linkage between the alleged distortions and HiSteel's reported costs. Regarding the subsidy rate for POSCO from *Hot-Rolled Steel from Korea*, which was based entirely on AFA and is outdated, HiSteel contends that Commerce conceded upon

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<sup>44</sup> *Id.*; see also Attachment D.

<sup>45</sup> *Id.* at 10 and Attachments E.1, E.2, and F. As further support, Kukje Steel submits additional reports showing: (1) China's supply reforms in the steel sector and the impact of such reforms; and (2) declines and projected declines in global capacity and increasing prices and profitability for steel. *Id.* at 10 and Attachments G, H, and I.

<sup>46</sup> Kukje Steel argues that, for example, the petitioners claim that various press articles indicate POSCO's profitability has been adversely affected by imports of steel products from China; however, POSCO's actual financial results show that its operating profit and net income in 2016 and 2017 were higher than in any previous year from 2013. *Id.* at 14 and Attachments M.1 – M.5 (containing information from POSCO's website and copies of POSCO's financial statements for each year from 2013 to 2017).

<sup>47</sup> *Id.* at 15 (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014–2015*, 82 FR 18105 (April 17, 2017) (*OCTG from Korea 14-15 AR*), and accompanying IDM at Comment 3 and Attachment N (containing the CIT's opinion in *Nexteel v. United States*, 355 F. Supp 3d 1336, 1351 (CIT 2019)).

<sup>48</sup> *Id.* at 16–19. As support for this assertion, Kukje Steel submits data and alternate regression calculations and programming. See Attachments O, and P.1-P.12.

<sup>49</sup> *Id.* at 19 and Attachment Q.

<sup>50</sup> See HiSteel PMS Allegation Rebuttal at 2 (citing *OCTG from Korea 14-15 AR* IDM at Comment 3 and Attachment 13, containing Email correspondence from White House trade policy advisor Peter Navarro.

remand in the CVD investigation of cold-rolled steel from Korea that the use of AFA for POSCO was incorrect.<sup>51</sup> Further, HiSteel argues that Commerce has consistently found no countervailable subsidies exist regarding Korean electricity. Finally, HiSteel argues that the petitioners base much of their PMS allegation on articles allegedly obtained from various sources and that Commerce cannot rely on such articles in the absence of corroboration.<sup>52</sup> HiSteel claims that, if we continue to make a PMS adjustment for subsidies on HRC provided by POSCO, we should base the adjustment on rates from the more recent CVD investigation of cut-to-length plate from Korea or the first administrative review of the CVD order on hot-rolled steel from Korea. Finally, HiSteel claims that the petitioners' regression analysis, while slightly different from the model expressly rejected by Commerce in other cases, including LDWP from Korea, continues to make numerous quantitative and qualitative assumptions that render it incomplete and invalid.<sup>53</sup>

### Analysis

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

In the instant review, the petitioners alleged that a PMS exists in Korea which distorts the COP for HWR pipe and tube based on the following four factors: (1) subsidization of Korean hot-rolled steel products by the Korean government; (2) the distortive pricing of unfairly traded HRC from China; (3) strategic alliances between Korean HRC suppliers and Korean HWR pipe and tube producers; and (4) distortive government control over electricity prices in Korea. Section 504 of the TPEA does not specify whether to consider these allegations individually or based on a totality of the circumstances. In the previous administrative review of HWR pipe and tube from Korea, the petitioners alleged that a PMS existed in Korea based on the same four factors and, upon analyzing the four allegations as a whole, Commerce found that a PMS existed in Korea during that POR.<sup>54</sup> For the current review, after analyzing the petitioners' allegation and the factual information and comments subsequently submitted by interested parties, we preliminarily determine that the circumstances present during the instant review remained largely

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<sup>51</sup> *Id.* at 3 (citing *Final Results of Redetermination Pursuant to Court Remand*, June 6, 2018, following *POSCO v. United States*, 296 F. Supp. 3d 1320 (CIT 2018)).

<sup>52</sup> HiSteel argues that, for example, the petitioners claim that various press articles indicate POSCO's profitability has been adversely affected by imports of steel products from China; however, POSCO's actual financial results show that its operating profit and net income in 2016 and 2017 were higher than in any previous year from 2013. *Id.* at 6 and Attachments 9-12 (containing information from POSCO's website and copies of POSCO's financial statements for each year from 2013 to 2017).

<sup>53</sup> *Id.* at 4-5 and Attachments 15-19. According to HiSteel, the regression model is extremely volatile and sensitive to very minor quantitative adjustments, such as the use of more statistically valid data ranges and the elimination of extreme outliers. As support for its assertions, HiSteel provides analysis. *Id.* at Attachments 17-19.

<sup>54</sup> See *HWR from Korea 2016-2017 Final Results* IDM at Comment 1.

unchanged from those in the 2016-2017 POR which led to the finding of a PMS in Korea in *HWR from Korea 2016-2017 Final Results*. Therefore, based on the record evidence in this proceeding, we preliminarily find that a PMS exists in Korea, which distorts the COP of HWR pipe and tube. This PMS results from the collective impact of the four factors described above.

In the current administrative review, as in *HWR from Korea 2016-2017 Final Results*, we considered the four aspects underlying the PMS allegation as a whole, based on their cumulative effect on the COP for Korean HWR pipe and tube. Based on the existence of these conditions in the Korean market, we preliminarily find that a single PMS exists which impacts the COP for HWR pipe and tube during the POR. The record evidence demonstrates that the Korean government subsidized HRC and that the mandatory respondents purchased HRC from entities receiving these subsidies, including POSCO.<sup>55</sup> Additionally, we note that HRC as an input of HWR pipe and tube constitutes a substantial proportion of the cost of HWR production; thus, distortions in the HRC market have a significant impact on the COP for HWR pipe and tube.<sup>56</sup>

Further, as a result of significant overcapacity in Chinese steel production, which stems, in part, from the distortions and interventions prevalent in the Chinese economy, the Korean steel market has been flooded with imports of cheaper Chinese steel products, placing downward pressure on Korean domestic steel prices.<sup>57</sup> This situation distorts the Korean market prices of HRC, the main input in Korean HWR pipe and tube production.

With respect to the petitioners' contention that certain Korean HRC suppliers and Korean HWR pipe and tube producers attempt to compete by engaging in strategic alliances, we agree that the record evidence supports that such strategic alliances exist in Korea.<sup>58</sup> Because strategic alliances have led to distortions in the prices of HRC, as evidenced by the record information,<sup>59</sup> we find that such strategic alliances are a contributing factor to the PMS in Korea impacting the COP for HWR pipe and tube.

With respect to the allegation of distortion present in the electricity market, consistent with the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, a PMS may exist where there is government control over prices to such an extent that home market prices cannot be considered to be competitively set.<sup>60</sup> Moreover, electricity in Korea functions as a tool of the government's industrial policy. Furthermore, the largest electricity supplier, KEPCO, is a government controlled entity.<sup>61</sup> Accordingly, the Korean government's

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<sup>55</sup> See PMS Allegation at Exhibit 8; see also HiSteel's February 27, 2019 BCQR at Appendix D-3-B; and Kukje Steel's August 7, 2019 Supplemental Section D Response (Kukje Steel's August 7, 2019 SDQR) at Exhibit S3-5.

<sup>56</sup> See HiSteel's March 9, 2018 BCDQR at Appendix D-3-A; and Kukje Steel's August 7, 2019 SDQR at S3-3.

<sup>57</sup> See PMS Allegation at 38 and Exhibits 16 and 18.

<sup>58</sup> *Id.* at Exhibits 7, 11, 60 through 62.

<sup>59</sup> *Id.*

<sup>60</sup> See Statement of Administrative Action (SAA) Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) at 822.

<sup>61</sup> See *Welded Line Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 33919 (July 18, 2018), and accompanying IDM at Comment 1; 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 1.

involvement in the electricity market in Korea is a contributing factor to the PMS in Korea impacting the COP for HWR pipe and tube.

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

Having preliminarily determined that a PMS exists for the respondents' production costs for HWR pipe and tube, we then examined whether there was sufficient record evidence to quantify the impact of the PMS in order to potentially employ an alternative calculation methodology, as contemplated by section 504 of the TPEA.

In this administrative review, we preliminarily determine to apply an upward adjustment to HiSteel's and Kukje Steel's reported costs for their HRC inputs on the basis that a PMS exists. In addition, we have determined that there is sufficient evidence to quantify the impact of this PMS.

Our adjustment for these preliminary results is derived from the Regression Analysis. We preliminarily find that the adjustment factor resulting from the Regression Analysis appropriately quantifies the impact of the PMS concerning the distortion in cost of HRC that we find to have existed in Korea during the POR.<sup>62</sup> In our view, the Regression Analysis sufficiently quantifies the impact of the PMS on the material cost of HRC, and derives a corresponding adjustment factor that, when applied to the costs of HRC, accounts for the distortions induced by the observed PMS.

The respondents raise a number of concerns with the Regression Analysis submitted by the petitioners. However, at this stage, Commerce believes that the petitioners' regression equation, although imperfect, includes a reasonable number of independent variables that account for all relevant categories of factors from a price determination standpoint (cost and demand), while at the same time minimizing the endogeneity problem through the use of proxies where necessary, *e.g.*, the variable gross fixed capital formation for the variable national steel demand. The petitioners rely on the Ordinary Least Squares method to generate coefficient estimates and then use the "fitted" equation to quantify the effect on the import average unit value of global uneconomic capacity. Therefore, Commerce finds in this case that the petitioners' regression is acceptable for the purpose of quantifying a PMS adjustment for these preliminary results. Commerce will continue to evaluate the regression model as we develop the concepts and types of analysis to address allegations of PMS under section 773(e) of the Act.

### Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the

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<sup>62</sup> See HiSteel Preliminary Calculation Memo; *see also* Kukje Steel Preliminary Calculation Memo.



volume of HiSteel's and Kukje Steel's respective home market sales of the foreign like product to the volume of their U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

Based on this comparison, we determined that, pursuant to 19 CFR 351.404(b), the aggregate volume of home market sales of the foreign like product for each of the respondents was sufficient to permit a proper comparison with U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV for HiSteel and Kukje Steel, in accordance with section 773(a)(1)(B)(i) of the Act.

We note that the petitioners filed an allegation that HiSteel's and Kukje Steel's home markets may not be viable.<sup>63</sup> The basis of the allegation was Commerce's finding of a PMS related to HRC in various Korean steel cases, including in the first administrative review of HWR pipe and tube from Korea. Commerce's regulations at 19 CFR 351.404(d) permit interested parties to allege that a given company's home market is not viable, and, as a result, that it should not be used as the basis for NV. Specifically, this regulation states:

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

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

We disagree with the petitioners that the facts in this case are analogous to those in *Biodiesel from Argentina* and *Biodiesel from Indonesia*. Rather, in those cases, Commerce found the existence of a PMS with respect to the domestic biodiesel markets in Argentina and Indonesia as a result of government price control or intervention in those markets. Specifically, based on the records of those cases, Commerce determined that: (1) the Government of Indonesia requires biodiesel producers to fulfill a mandate to provide biodiesel to it at set prices and quantities;<sup>64</sup> and (2) the price and quantity of all domestic biodiesel sales in Argentina are set by the government and assigned to producers based on non-market factors.<sup>65</sup> This stands in clear contrast to the facts here, where the petitioners' PMS allegation established a link between the cost to produce HWR pipe and tube, but not the price at which it was sold in the marketplace. Absent this direct link, we find no basis to reject, out of hand, the prices charged by the

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<sup>63</sup> See Petitioners' Letter, "Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Market Viability Allegations as to HiSteel and Kukje Steel," dated March 1, 2019 (HM Viability Allegation).

<sup>64</sup> See *Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018) (*Biodiesel from Indonesia*), and accompanying IDM at Comment 2.

<sup>65</sup> See *Biodiesel from Argentina: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 8837 (March 1, 2018) (*Biodiesel from Argentina*), and accompanying IDM at Comment 2.

respondents during the POR to their home market customers, especially when those prices are above a COP which has been adjusted to remove any PMS-related distortion to input costs.

### Level of Trade (LOT)

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same LOT as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>66</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>67</sup> In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),<sup>68</sup> we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.<sup>69</sup>

When Commerce is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>70</sup>

In this administrative review, as discussed above, we based NV on CV for Kukje Steel. When NV is based on CV, the NV LOT is that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit.<sup>71</sup> In accordance with 19 CFR 351.412(d), Commerce will make its LOT determination under paragraph (d)(1) of this section on the basis of sales of the foreign like product by the producer or exporter. As discussed below in the

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<sup>66</sup> See 19 CFR 351.412(c)(2).

<sup>67</sup> *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (*OJ from Brazil*), and accompanying IDM at Comment 7.

<sup>68</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

<sup>69</sup> See *Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>70</sup> See, *e.g.*, *OJ from Brazil* IDM at Comment 7.

<sup>71</sup> See, *e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 47081 (August 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004).

“Calculation of NV Based on CV,” section, because we based NV on CV calculated using HiSteel’s CV selling expenses and profit ratio from the present administrative review, we compared HiSteel’s home market LOT to Kukje Steel’s U.S. sale LOT.

In this administrative review, we obtained information from HiSteel and Kukje Steel regarding the marketing stages involved in making reported home market and U.S. sales, including a description of the selling activities performed by the respondents for each channel of distribution.<sup>72</sup> Our LOT findings are summarized, as follows.

### HiSteel

In the home market, HiSteel reported that it made sales through one channel of distribution (*i.e.*, direct sales to distributors and end users).<sup>73</sup> According to HiSteel, it performed the following selling functions for sales to all home market customers: order input/processing; market research; sales forecasting; strategic planning; personnel training; sales promotion; packing; inventory maintenance; and handling of freight and delivery arrangements.<sup>74</sup>

Selling activities can be generally grouped into five selling function categories for analysis: (1) provision of sales support;<sup>75</sup> (2) provision of training services;<sup>76</sup> (3) provision of technical support;<sup>77</sup> (4) provision of logistical services;<sup>78</sup> and (5) performance of sales-related administrative activities.<sup>79</sup> Based on these selling function categories noted above, we find that HiSteel performed sales support, training services, logistical services, and sales-related administrative activities for its home market sales. Because we find that there were no differences in selling activities performed by HiSteel to sell to its home market customers, we determine that there is one LOT in the home market for HiSteel.

With respect to the U.S. market, HiSteel reported that it made sales through two channels of distribution (*i.e.*, to U.S. distributors and to Korean trading companies).<sup>80</sup> HiSteel reported that it performed the following selling functions in Korea for sales to all U.S. customers: order

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<sup>72</sup> See HiSteel’s February 25, 2019, Section A Questionnaire Response (HiSteel’s February 25, 2019 AQR) at 15-17; and Kukje Steel’s February 19, 2019 Section A Questionnaire Response (Kukje Steel’s February 19, 2019 AQR) at A-10 – A-12.

<sup>73</sup> See HiSteel’s February 25, 2019 AQR at 15; and HiSteel’s February 27, 2019 BCQR at 22-23 and Appendix B-2.

<sup>74</sup> See HiSteel’s February 25, 2019 AQR at Appendix A-4.

<sup>75</sup> The provision of sales support may include sales forecasting strategic/economic Planning, advertising, sales promotion, sales/marketing support, market research, and other related activities. See *Acetone from Belgium: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 84 FR 49999 (September 24, 2019), and accompanying PDM at 17.

<sup>76</sup> The provision of training services may include personnel training/exchange, distributor/dealer training, and other related activities. *Id.*

<sup>77</sup> The provision of technical support may include engineering services, technical assistance, and other related activities. *Id.*

<sup>78</sup> The provision of logistical services may include inventory maintenance, post-sale warehousing, repacking, freight and delivery, and other related activities. *Id.*

<sup>79</sup> The performance of sales-related administrative activities may include order input/processing, rebate programs, warranty service, and other related activities. *Id.*

<sup>80</sup> See HiSteel’s February 25, 2019 AQR at 16-17; and HiSteel’s February 27, 2019 BCQR at 56-57 and Appendix C-2.

input/processing; market research; sales forecasting; strategic planning; personnel training; sales promotion; packing; inventory maintenance; and handling of freight and delivery arrangements.<sup>81</sup> Accordingly, based on the selling function categories noted above, we find that HiSteel performed sales support, training services, logistical services, and sales-related administrative activities for all of its reported U.S. sales. Because HiSteel performed the same selling functions at the same relative level of intensity for all of its U.S. sales, we determine that all U.S. sales are at the same LOT.

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions HiSteel performed for its U.S. and home market customers are virtually identical. Therefore, we preliminarily determine that sales to the United States and home market during the POR were made at the same LOT and, as a result, no LOT adjustment is warranted.

### Kukje Steel

In the U.S. market, Kukje Steel reported that it made sales through one channel of distribution (*i.e.*, direct sales to unaffiliated U.S. distributors).<sup>82</sup> Kukje Steel reported that it performed the following selling functions in Korea for sales to all U.S. customers: sales forecasting; strategic/economic planning; personnel training/exchange; order input/processing; direct sales personnel; sales/marketing support; market research; payment of commissions; freight and delivery arrangement; inventory maintenance; and packing.<sup>83</sup> Accordingly, based on the selling function categories noted above, we find that Kukje Steel performed sales support, training services, logistical services, and sales-related administrative activities for all of its reported U.S. sales. Because Kukje Steel performed the same selling functions at the same relative level of intensity for all of its U.S. sales, we determine that all U.S. sales are at the same LOT.

We compared Kukje Steel's U.S. LOT to HiSteel's home market LOT and found that the selling functions HiSteel performed for its home market customers are virtually the same as those performed by Kukje Steel for its U.S. customers. Therefore, we preliminarily determine that Kukje Steel's sales to the United States were made at the same LOT as HiSteel's home market U.S. sales. As a result, no LOT adjustment is warranted.

### Cost of Production Analysis

Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires Commerce to request CV and COP information from respondent companies in all AD proceedings. Accordingly, Commerce requested this information from HiSteel and Kukje Steel.

We examined HiSteel's and Kukje Steel's cost data and determined that our quarterly cost methodology is not warranted for HiSteel or Kukje Steel, and, therefore, we applied our standard methodology of using annual costs based on HiSteel's and Kukje Steel's reported data.

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<sup>81</sup> See HiSteel's February 25, 2019 AQR at Appendix A-4.

<sup>82</sup> See Kukje Steel's February 19, 2019 AQR at A-10 and Exhibit A-5; and Kukje Steel's March 6, 2019 BCQR at C-14.

<sup>83</sup> See Kukje Steel's February 19, 2019 AQR at Exhibit A-6.

## 1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses and interest expenses.<sup>84</sup>

We relied on the COP data submitted by HiSteel except as follows:<sup>85</sup>

- We adjusted HiSteel's reported HRC costs to reflect the PMS.
- We revised HiSteel's G&A expenses to exclude gains associated with disposal of tangible assets.

We relied on the COP data submitted by Kukje Steel except as follows:<sup>86</sup>

- We adjusted Kukje Steel's reported HRC costs to reflect the PMS.
- We limited Kukje Steel's scrap offset to the amount of actual sales for the POR, which was less than the difference between the gross material input and net finished good output quantities.

## 2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product in order to determine whether the sale prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

## 3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of a respondent's home market sales of a given product are at prices less than the COP, we do not disregard any of the below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: (1) the sales were made

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<sup>84</sup> See "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses.

<sup>85</sup> See HiSteel Preliminary Calculation Memo.

<sup>86</sup> See Kukje Steel Preliminary Calculation Memo.

within an extended period of time in accordance with section 773(b)(2)(B) of the Act; and (2) based on our comparison of prices to the weighted-average COPs for the POR, the sales were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

For HiSteel, we found that, for certain products, more than 20 percent of HiSteel's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

For Kukje Steel, we found that there were no above-cost home market sales, and that such sales did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded these sales and based NV on CV for Kukje Steel, in accordance with section 773(b)(1) of the Act.

#### Calculation of NV Based on Comparison Market Prices

##### HiSteel

We calculated NV based on delivered or ex-factory prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for early payment discounts, in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for inland freight under section 773(a)(6)(B)(ii) of the Act.

For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales (*i.e.*, credit expenses) and added U.S. direct selling expenses (*i.e.*, credit expenses and bank charges). We recalculated HiSteel's home market credit expenses to be based on gross unit prices net of early payment discounts.<sup>87</sup>

When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.<sup>88</sup> We also deducted comparison market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

#### Calculation of NV Based on CV

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. For HiSteel, where we were unable to find a home market match of identical or similar merchandise, we based NV on CV in accordance with section

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<sup>87</sup> For further discussion, *see* the HiSteel Preliminary Calculation Memo.

<sup>88</sup> *Id.*

773(a)(4) of the Act. For Kukje Steel, as noted above, all sales of the comparable products failed the COP test, and therefore we based NV for it on CV.

Sections 773(e)(1) and (2)(A) of the Act provide that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for SG&A expenses, profit, and U.S. packing costs. For HiSteel and Kukje Steel, we calculated the cost of materials and fabrication based on the methodology described in the “Cost of Production Analysis” section, above. We based SG&A and profit for HiSteel on the actual amounts incurred and realized by it in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act. For comparisons to HiSteel’s EP sales, we made circumstances-of-sale adjustments by deducting direct selling expenses incurred on comparison market sales from, and adding U.S. direct selling expenses, to CV, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410.

In the absence of a comparison market for Kukje Steel,<sup>89</sup> we are unable to calculate CV profit using the preferred method under section 773(e)(2)(A) of the Act (*i.e.*, based on the respondent’s own home market or third country sales made in the ordinary course of trade). When the preferred method is unavailable, we must instead rely on one of the three alternatives outlined in sections 773(e)(2)(B)(i) through (iii) of the Act. Those alternatives are: (i) the use of the actual amounts incurred and realized by the specific exporter or producer in connection with the production and sale in the foreign country of merchandise that is in the same general category of products as the subject merchandise; (ii) the use of the weighted average of the actual amounts incurred and realized by exporters or producers (other than the respondent) in connection with the production and sale of the foreign like product, in the ordinary course of trade country, for consumption in the foreign country; or (iii) based on any other reasonable method, except that the amount for profit may not exceed the amount realized by exporters or producers (other than the respondent) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise (*i.e.*, the “profit cap”).

For the preliminary results, we calculated Kukje Steel’s CV profit and selling expenses under section 773(e)(2)(B)(ii) of the Act using HiSteel’s combined CV profit and selling expenses for the POR.<sup>90</sup> HiSteel’s combined selling expense and profit reflects the profit of a Korean HWR pipe and tube producer, on comparison market sales of the merchandise under consideration, in the ordinary course of trade. The combined CV profit and selling expense ratio is also public

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<sup>89</sup> See Kukje Steel Preliminary Calculation Memo.

<sup>90</sup> The petitioners also submitted information for the calculation of CV profit and selling expenses. Specifically, the petitioners provided the annual reports for a global steel and industrial company and an Indian steel producer. See Petitioners’ Letter, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Other Factual Information - CV Profit and Selling Expense Information,” dated October 7, 2019. HiSteel and Kukje Steel submitted rebuttal comments and factual information. See HiSteel’s Letter, “Administrative Review of the Antidumping Duty Order on Heavy Walled Rectangular Carbon Steel Pipes and Tubes from Korea – Response to Petitioners’ October 7 Submission,” dated October 31, 2019; and Kukje Steel’s Letter, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Rebuttal Comments on PMS Allegation,” dated October 31, 2019. Specifically, HiSteel provided financial statements for six Indian pipe and tube producers.

information.<sup>91</sup> Thus, for these preliminary results, we based Kukje Steel's CV profit and selling expenses on the combined CV profit and selling expense rate determined for HiSteel.

Finally, we made adjustments to CV for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For HiSteel and Kukje Steel, we made adjustments for direct selling expenses and assumed expenses, including credit expenses and bank charges, where applicable. For Kukje Steel, we also made a commission offset, in accordance with 19 CFR 351.410(e), based on HiSteel's home market indirect selling expenses, where commissions were granted on Kukje Steel's U.S. sales.<sup>92</sup>

## **VI. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE**

As noted above, DOSCO was selected as a mandatory respondent. This company received Commerce's questionnaire in this administrative review, but did not submit a response. For the reasons stated below, we determine that the use of facts otherwise available with an adverse inference is appropriate for the preliminary results with respect to DOSCO.

### **A. Use of Facts Available**

Sections 776(a)(1) and (2) of the Act provide that if necessary information is not available on the record or an interested party: (A) withholds information requested by Commerce; (B) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act states that if an interested party, "promptly after receiving a request from {Commerce} for information, notifies {Commerce} that such party is unable to submit the information requested in the requested form and manner," then Commerce shall consider the ability of the interested party and may modify the requirements to avoid imposing an unreasonable burden on that party. Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

DOSCO did not respond to our original questionnaire or otherwise participate in this administrative review. As a result, we preliminarily find that the necessary information is not available on the record of this proceeding, that DOSCO withheld information Commerce requested, that it failed to provide information by the specified deadlines, and that it significantly impeded the proceeding. Moreover, because DOSCO failed to provide any information, section 782(e) of the Act is not applicable. Accordingly, pursuant to sections 776(a)(1) and

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<sup>91</sup> See Memorandum, "Constructed Value Selling Expense and Profit Rates for Kukje Steel Co., Ltd. for the Preliminary Results," dated November 6, 2019.

<sup>92</sup> *Id.*



776(a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available to determine DOSCO's preliminary dumping margin.

#### B. Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available. In applying adverse inferences, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>93</sup> In addition, the SAA explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."

We preliminarily find that DOSCO did not act to the best of its ability to comply with Commerce's request for information. DOSCO fully participated in the prior segments of this proceeding and was aware of the potential consequences of its failure to respond within the established deadline. Nonetheless, DOSCO informed Commerce that it did not intend to participate in this review and it elected not to respond to Commerce's questionnaire.<sup>94</sup> The failure of DOSCO to participate in this proceeding and respond to Commerce's questionnaire has precluded Commerce from performing the necessary analysis to calculate a weighted-average AD margin for it based on its own data. Therefore, Commerce concludes that DOSCO failed to cooperate to the best of its ability in providing the necessary information for Commerce to conduct this administrative review. Accordingly, we preliminarily find that the application of facts available with an adverse inference, pursuant to section 776(b) of the Act, is warranted.

#### C. Selection and Corroboration of AFA Rate

Section 776(b) of the Act states that Commerce, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. Commerce's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated rate of any respondent.<sup>95</sup> As AFA, we are preliminarily assigning DOSCO a dumping margin of 53.80 percent, which is the highest rate in the petition.<sup>96</sup>

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<sup>93</sup> See section 776(b)(1)(B) of the Act.

<sup>94</sup> See DOSCO's Letter, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea - Notification of Inability to Participate as Mandatory Respondent," dated December 14, 2019.

<sup>95</sup> See *Welded Stainless Pressure Pipe From Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), and accompanying IDM at Comment 3.

<sup>96</sup> See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 49202, 49205 (August 17, 2015).

Section 776(c) of the Act provides that where Commerce relies on secondary information rather than information obtained during the course of a review, it must corroborate that information using independent sources that are reasonably at its disposal. The AFA rate that Commerce has selected is from the petition and is, thus, secondary information subject to the corroboration requirement. To corroborate this AFA margin, we compared it to the preliminary transaction-specific margins we calculated for the mandatory respondents in this administrative review, *i.e.*, HiSteel and Kukje Steel. We determined that there were multiple transactions, whose terms are within the range of terms of other sales in the respective sales databases, for which the transaction-specific dumping margin was within the range of the petition rate.<sup>97</sup> Therefore, we find that the rate alleged in the petition has probative value.

As a result, we find the AFA rate of 53.80 percent to be corroborated “to the extent practicable” within the meaning of section 776(c) of the Act because the rate is relevant to the cooperative respondents. As the 53.80 percent rate is both reliable and relevant, we determine that it has probative value and, thus, it has been corroborated to the extent practicable, pursuant to section 776(c) of the Act. Therefore, we preliminarily determine that the AFA rate is corroborated for purposes of this review.

## VII. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

## VIII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

11/6/2019

**X** 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

<sup>97</sup> See HiSteel Preliminary Calculation Memo; and Kukje Steel Preliminary Calculation Memo.