



A-580-883

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December 9, 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
Antidumping Duty Administrative Review: Certain Hot-Rolled
Steel Flat Products from the Republic of Korea; 2017-2018

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Korea (Korea) for the period of review (POR) October 1, 2017 through September 30, 2018. Commerce selected one respondent for individual examination, Hyundai Steel Company (Hyundai). We preliminarily determine that Hyundai made sales of the subject merchandise at prices below normal value (NV) during the POR.

II. BACKGROUND

On October 3, 2016, Commerce published in the *Federal Register* the AD order on hot-rolled steel from Korea.¹ On October 1, 2018, Commerce published a notice of opportunity to request an administrative review of the *Order*.² On October 29, 2018, Hyundai requested an administrative review of its exports of subject merchandise to the United States pursuant to this proceeding.³ On October 31, 2018, AK Steel Corporation; ArcelorMittal USA LLC; Nucor Corporation; SSAB Enterprises, LLC; Steel Dynamics, Inc.; and United States Steel Corporation

¹ See *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders*, 81 FR 67962 (October 3, 2016) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 49358 (October 1, 2018).

³ See Hyundai's Letter, "Hot-Rolled Steel Flat Products from the Republic of Korea, Case No. A-580-883: Request for Antidumping Duty Administrative Review," dated October 29, 2018.



(collectively, the petitioners) requested an administrative review for this proceeding with respect to eight companies.⁴ On December 11, 2018, based on timely requests for administrative reviews, we initiated an administrative review of hot-rolled steel from Korea.⁵

On December 12, 2018, Commerce released U.S. Customs and Border Protection (CBP) data under administrative protective order (APO) to all interested parties having an APO and invited comments regarding CBP data and respondent selection.⁶ Pursuant to section 777A(c)(2)(B) of the Act, Commerce selected Hyundai as the sole mandatory respondent, which accounted for the largest volume of subject merchandise that can reasonably be examined. 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, resulting in a revised deadline for the preliminary results of August 12, 2019.⁷

On January 30, 2019, Commerce issued its initial AD questionnaire to Hyundai,⁸ to which Hyundai responded in a timely manner.⁹ Between April 10 and May 2, 2019, the petitioner submitted comments regarding Hyundai's sections A-D questionnaire responses.¹⁰ In addition, between May 6 and July 9, 2019, Commerce issued supplemental questionnaires to Hyundai, to which Hyundai responded in a timely manner.¹¹ The petitioner submitted comments regarding

⁴ See Petitioners' Letter, "Hot-Rolled Steel Flat Products from the Republic of Korea – Petitioners' Request for 2017/2018 Administrative Review," dated October 31, 2018. The companies in the petitioners' request are: Dongbu Steel Co., Ltd.; Dongkuk Industries Co., Ltd.; Hyundai Steel Company; Marubeni-Itochu Steel Korea; POSCO; POSCO Daewoo Corporation; Soon Hong Trading Co.; and Sungjin Co. Subsequent filings in this case have been made only on behalf of ArcelorMittal USA LLC (the petitioner).

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 63615 (December 11, 2018); see also *Certain Hot-Rolled Steel Flat Products from the Republic of Korea; 2017-2018; Rescission of the Antidumping Duty Administrative Review in Part*, 84 FR 18005 (April 29, 2019), rescinding the administrative review as to Dongbu Steel Co., Ltd.; Dongkuk Industries Co., Ltd.; Marubeni-Itochu Steel Korea; Soon Hong Trading Co.; and Sungjin Co.

⁶ See Commerce's Letter, "Antidumping Duty Review of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Customs Data for Respondent Selection Purposes," dated December 12, 2018.

⁷ See Memorandum, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

⁸ See Commerce's Letter, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Questionnaire," dated January 30, 2019.

⁹ See Hyundai's Letter, "Certain Hot-Rolled Steel Flat Products from Korea, 10/01/2017-9/30/2018 Administrative Review; Case No. A-580-883: Initial Section A Questionnaire Response," dated March 22, 2019 (Hyundai's Section A Questionnaire Response); and Hyundai's Letter, "Certain Hot-Rolled Steel Flat Products from Korea, 10/01/2017-9/30/2018 Administrative Review; Case No. A-580-883: Hyundai Steel's Initial Sections B-D Questionnaire Response," dated April 5, 2019 (Hyundai's Section B-D Questionnaire Response).

¹⁰ See Petitioner's Letter, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea – Petitioner's Comments on Hyundai Steel Company's Section A Questionnaire Response," dated April 10, 2019; Petitioner's Letter, "Hot-Rolled Steel Flat Products from the Republic of Korea – Petitioner's Submission of New Factual Information to Rebut, Clarify, or Correct Hyundai Steel's Sections B-D Questionnaire Response," dated April 19, 2019 (Petitioner NFI April 19); Petitioner's Letter, "Certain Hot-Rolled Steel Flat Products from Korea – Petitioner's Comments on the Sections B and C Questionnaire Response of Hyundai Steel Company," dated April 26, 2019; Petitioner's Letter, "Administrative Review of Hot-Rolled Steel Flat Products from South Korea – Petitioner's Comments on the Section D Questionnaire Response of Hyundai Steel Company," dated May 2, 2019.

¹¹ See Hyundai's Letter, "Certain Hot-Rolled Steel Flat Products from Korea, 10/01/2017-9/30/2018 Administrative Review; Case No. A-580-883: Supplemental Section A Questionnaire Response," dated May 22, 2019 (Hyundai's Section A Supplemental); Hyundai's Letter, "Certain Hot-Rolled Steel Flat Products from Korea, 10/01/2017-

Hyundai's supplemental questionnaire responses between June 3 and September 5, 2019.¹² Hyundai provided rebuttal comments to the petitioners' comments regarding their questionnaire responses between July 18 and September 11, 2019.¹³

On July 18, 2019, Commerce extended the deadline for the preliminary results of this review until November 1, 2019.¹⁴ On October 16, 2019, Commerce fully extended the deadline for the preliminary results until December 10, 2019.¹⁵

III. SCOPE OF THE ORDER

The products covered by this *Order* are certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and whether or not annealed, painted, varnished, or coated with plastics

9/30/2018 Administrative Review; Case No. A-580-883: Supplemental Section A Questionnaire Response," dated July 1, 2019 (notwithstanding document title, a response to Commerce's Section B Supplemental Questionnaire (Hyundai's Section B Supplemental)); Hyundai's Letter, "Certain Hot-Rolled Steel Flat Product from Korea, 10/01/2017-9/30/2018 Administrative Review; Case No. A-580-883: Supplemental Section B Questionnaire Response," dated July 8, 2019 (Hyundai's Supplemental Section B); Hyundai's Letter, "Certain Hot-Rolled Steel Flat Products from Korea, 10/01/2017-9/30/2018 Administrative Review; Case No. A-580-883: Supplemental Section C Questionnaire Response," dated July 15, 2019 (Hyundai's Supplemental Section C); Hyundai's Letter, "Certain Hot-Rolled Steel Flat Products from Korea, 10/01/2017-9/30/2018 Administrative Review; Case No. A-580-883: Supplemental Section D Questionnaire Response," dated July 30, 2019.

¹² See Petitioner's Letter, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea - Petitioner's Submission of New Factual Information to Rebut, Clarify, or Correct Hyundai Steel's Supplemental Section A Questionnaire Response," dated June 3, 2019 (Petitioner NFI June 3); Petitioner's Letter, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea - Petitioner's Submission of New Factual Information to Rebut, Clarify, or Correct Hyundai Steel's Supplemental Section B Questionnaire Response," dated July 11, 2019; Petitioner's Letter, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea - Petitioner's Comments on the Supplemental Section A Questionnaire Response of Hyundai Steel Company," dated July 12, 2019 (Petitioner Comments July 12); Petitioner's Letter, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea - Petitioner's Comments on the Supplemental Section B Questionnaire Response of Hyundai Steel Company," dated July 24, 2019; Petitioner's Letter, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea - Petitioner's Comments Pertaining to the Issue of Written Agreements Underlying Hyundai Steel's Section A, B, C, and D Questionnaire Responses and Supplemental Responses," dated August 2, 2019; Petitioner's Letter, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea - Petitioner's Comments on the Supplemental Section C Questionnaire Response of Hyundai Steel Company," dated September 3, 2019; Petitioner's Letter, "Administrative Review of Certain Hot-Rolled Steel Flat Products from Korea - Petitioner's Comments on the Supplemental Section D Questionnaire Response of Hyundai Steel Company," dated September 5, 2019.

¹³ See Hyundai's Letter, "Certain Hot-Rolled Steel Flat Products from Korea, 10/01/2017-9/30/2018 Administrative Review; Case No. A-580-883: Hyundai Steel's Comments in Response to Petitioner's Comments on Hyundai Steel's May 22, 2019 Supplemental Section A Questionnaire Response," dated July 18, 2019; Hyundai's Letter, "Certain Hot-Rolled Steel Flat Products from Korea, 10/01/2017-9/30/2018 Administrative Review; Case No. A-580-883: Hyundai Steel's Comments in Response to Petitioner's Comments on Hyundai Steel's General Customer Agreements," dated August 12, 2019; Hyundai's Letter, "Certain Hot-Rolled Steel Flat Products from Korea, 10/01/2017-9/30/2018 Administrative Review; Case No. A-580-883: Hyundai Steel's Comments in Response to Petitioner's Comments on Hyundai Steel's Supplemental Section C and Supplemental Section D Responses," dated September 11, 2019 (Hyundai's Supplemental C & D Response).

¹⁴ See Memorandum, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review, 2017-2018," dated July 18, 2019.

¹⁵ See Memorandum, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Second Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review, 2017-2018," dated October 16, 2019.

or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (“width”) of 12.7 mm or greater, regardless of thickness, and regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the resulting measurement makes the product covered by the existing antidumping¹⁶ or countervailing duty¹⁷ orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products From the Republic of Korea (A-580-836; C-580-837), and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

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

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

¹⁶ See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products from France, India, Indonesia, Italy, Japan and the Republic of Korea, 65 FR 6585 (February 10, 2000).

¹⁷ See Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate from India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea, 65 FR 6587 (February 10, 2000).

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

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, the substrate for motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels. Subject merchandise includes hot-rolled steel that has been further processed in a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the *Order* if performed in the country of manufacture of the hot-rolled steel.

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

- Universal mill plates (*i.e.*, hot-rolled, flat-rolled products not in coils that have been rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, of a thickness not less than 4.0 mm, and without patterns in relief);
- Products that have been cold-rolled (cold-reduced) after hot-rolling;¹⁸
- Ball bearing steels;¹⁹
- Tool steels;²⁰ and

¹⁸ For purposes of this scope exclusion, rolling operations such as a skin pass, levelling, temper rolling or other minor rolling operations after the hot-rolling process for purposes of surface finish, flatness, shape control, or gauge control do not constitute cold-rolling sufficient to meet this exclusion.

¹⁹ Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

²⁰ Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

- Silico-manganese steels;²¹

The products subject to this *Order* are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.10.1500, 7208.10.3000, 7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7208.90.0000, 7210.70.3000, 7211.14.0030, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.11.0000, 7225.19.0000, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.5000, 7226.91.7000, and 7226.91.8000. The products subject to the *Order* may also enter under the following HTSUS numbers: 7210.90.9000, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.5000, 7226.99.0180, and 7228.60.6000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the *Order* is dispositive.

IV. PRELIMINARY DETERMINATION OF NO SHIPMENTS

This review covers two companies that were not selected for individual examination, POSCO and POSCO Daewoo Corporation (collectively, POSCO).²² POSCO certified it had no reviewable entries, exports, or sales of subject merchandise into the United States during the POR.²³ Consistent with our practice, we issued a “No Shipment Inquiry” to CBP²⁴ and received no information that contradicts POSCO’s no shipment claim. Accordingly, we preliminarily determine that POSCO had no shipments during the POR.

V. AFFILIATION

²¹ Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

²² Commerce previously determined that these companies are affiliated and should be treated as a single entity. In the absence of information indicating that we should reevaluate this finding, we are treating POSCO and POSCO Daewoo Corporation as a single entity. See *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 15228 (March 22, 2016), and accompanying Preliminary Decision Memorandum (PDM) at 6-8, unchanged in *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 53419 (August 12, 2016); see also *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 56821 (November 14, 2018), and accompanying PDM at 8-9, unchanged in *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 32720 (July 9, 2019), and accompanying Issues and Decision Memorandum (IDM) at 1.

²³ See POSCO’s Letter, “Certain Hot-Rolled Steel Flat Products from South Korea, Case No. A-580-883: No Shipment Letter,” dated January 11, 2019.

²⁴ See Memorandum, “Certain Hot-Rolled Steel Flat Products from the Republic of Korea: POSCO’s No Shipments Inquiry Instructions,” dated December 5, 2019.

Section 771(33) of the Act defines the term affiliated persons (affiliates) to include: (A) members of a family; (B) an officer or director of an organization and that organization; (C) partners; (D) employers and employees; (E) any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and that organization; (F) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) any person who controls any other person and that other person. For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. Commerce's regulations at 19 CFR 351.102(b)(3) state that in finding affiliation based on control, Commerce will consider, among other factors: (i) corporate or family groupings; (ii) franchise or joint venture agreements; (iii) debt financing, and (iv) close supplier relationships. With respect to close supplier relationships, Commerce has determined that the threshold issue is whether either the buyer or seller has, in fact, become reliant on the other.²⁵ A "close supplier relationship" is established when a party demonstrates that the relationship is significant and could not be easily replaced.²⁶ Only if Commerce determines that there is reliance does it evaluate whether one of the parties is in a position to exercise restraint or direction over the other.²⁷ Commerce will not, however, find affiliation on the basis of this factor unless the relationship has the potential to affect decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.²⁸

The petitioner alleges that Hyundai is affiliated with certain home market customers by virtue of close supplier relationships.²⁹ In the final results of the 2016-2017 review of this *Order*, Commerce found that Hyundai and its customers were not affiliated within the meaning of section 771(33) of the Act.³⁰ The petitioner placed evidence on the record of this segment of the proceeding from the 2016-2017 administrative review, with the purpose of supporting their arguments regarding Hyundai's close supplier relationships. Pursuant to section 771(33) of the Act, we reviewed the record evidence regarding Hyundai's relationships with certain home market customers provided in Hyundai's questionnaire responses, and the additional information the petitioners placed on the record of this review,³¹ and preliminarily find that there is no evidence that Hyundai has extra-commercial involvement with its customers resulting in reliance and control. Therefore, we preliminarily find that there is insufficient evidence to demonstrate reliance for purposes of finding affiliation through control under section 771(33)(G) of the Act.

²⁵ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (SAA) at 838.

²⁶ See *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404, 18417 (April 15, 1997).

²⁷ See *Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011), and accompanying IDM at Comment 21; and *TIJID, Inc. v. United States*, 366 F. Supp. 2d 1286, 1298-1300 (CIT 2005).

²⁸ See 19 CFR 351.102(b)(3).

²⁹ See Petitioner NFI April 19; see also Petitioner NFI June 3; and Petitioner Comments July 12.

³⁰ See *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2016-2017*, 84 FR 32720 (July 9, 2019) (*Hot-Rolled Steel Final 2016-2017*), and accompanying IDM at 24-26.

³¹ See Petitioner NFI June 3.

VI. PARTICULAR MARKET SITUATION

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of a particular market situation (PMS) for the purposes of constructed value (CV) under section 773(e) of the Act.³² 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 cost of production in the ordinary course of trade, {Commerce} may use another calculation methodology under this subtitle or any other calculation methodology.”

When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

On August 19, 2019, we received a PMS allegation from the petitioners alleging that a PMS exists in Korea and Commerce should use an alternative calculation methodology in place of the respondents’ reported production costs to compensate for the PMS.³³ The petitioners alleged that a cost-based PMS exists because of distortions to the shipping and iron ore markets, global steel overcapacity, and various Korean government subsidies. We accepted the allegation and solicited further comments from interested parties,³⁴ and additionally requested modifications to the petitioner’s regression analysis of the PMS allegation.³⁵ The petitioner timely submitted a response to our request for a modification, and, while the petitioner did provide alternative regressions, the petitioner did not make the requested modifications to the regression analysis.³⁶ Between November 4 and November 15, 2019, the petitioner and respondent submitted comments and rebuttal comments on the PMS allegation.³⁷

In analyzing the PMS allegation, Commerce also takes into consideration relevant prior PMS determinations. In the preliminary results for *Certain Cold-Rolled Steel Flat Products from South Korea*,³⁸ when the respondent self-produced a majority of the hot-rolled coil, the input that

³² See Trade Preferences Extension Act of 2015, Public Law 114-27, 129 Stat. 362 (2015).

³³ See Petitioner’s Letter, “Certain Hot-Rolled Steel Flat Products from the Republic of Korea – Petitioner’s Particular Market Situation Allegation,” dated August 19, 2019.

³⁴ See Memorandum, “Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Acceptance of the Particular Market Situation Allegation and Deadline for Comments,” dated October 18, 2019.

³⁵ *Id.* at Attachment.

³⁶ See Petitioner’s Letter, “Certain Hot-Rolled Steel Flat Products from the Republic of Korea – Petitioner’s Response to the Department’s Supplemental Question Regarding Petitioner’s Particular Market Situation Allegation,” dated October 23, 2019.

³⁷ See Petitioner’s Letter, “Certain Hot-Rolled Steel Flat Products from the Republic of Korea – Petitioner’s Initial Comments and New Factual Information Concerning PMS Allegation,” dated November 4, 2019; Hyundai’s Letter, “Certain Hot-Rolled Steel Flat Products from Korea, 10/01/2017-9/30/2018 Administrative Review, Case No. A-580-883: Hyundai Steel’s Comments in Response to Petitioner’s Particular Market Situation Allegation,” dated November 4, 2019; Hyundai’s Letter, “Certain Hot-Rolled Steel Flat Products from Korea, 10/01/2017-9/30/2018 Administrative Review, Case No. A-580-883: Hyundai Steel’s Reply to Petitioner’s Comments on Particular Market Situation Allegation,” dated November 15, 2019; and Petitioner’s Letter, “Certain Hot-Rolled Steel Flat Products from the Republic of Korea – Petitioner’s Rebuttal Comments In Response to Hyundai Steel’s Initial Comments Concerning Petitioner’s Particular Market Situation Allegation,” dated November 15, 2019.

³⁸ See *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 63607 (November 18, 2019), and accompanying PDM at 16-17.

was subject to the PMS cost allegation, we only made the cost adjustment for the respondent's purchases of hot-rolled coil, and did not make a cost adjustment for the hot-rolled coil that the respondent self-produced. For reasons more fully explained in the proprietary PMS Memorandum, we preliminarily find that, although a PMS does exist, it is not appropriate to make a cost adjustment for Hyundai's self-produced slab input.³⁹

VII. DISCUSSION OF THE METHODOLOGY

Comparisons to NV

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Hyundai's sales of subject merchandise from Korea to the United States were made at less than normal value, Commerce compared the export price (EP) or constructed export price (CEP), as appropriate, to the NV as described in the "Export Price/Constructed Export Price" and "Normal Value" sections of this memorandum.

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates dumping margins by comparing weighted-average normal values to weighted-average EPs (or CEPs) (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In AD investigations, Commerce examines whether to compare weighted-average normal values 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, the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is analogous to the issue in AD investigations.⁴⁰

In numerous AD investigations, Commerce applied a "differential pricing" analysis for determining whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.⁴¹ Commerce finds that the differential pricing analysis used in those recent

³⁹ For a more detailed discussion of our acceptance of the PMS and the reason we are not making an adjustment at this time, see Memorandum, "2017-2018 Administrative Review of the Antidumping Duty Order on Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Decision on Particular Market Situation Allegation," dated December 10, 2019 (PMS Memorandum).

⁴⁰ 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 *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

⁴¹ See, e.g., *Polyethylene Terephthalate Resin from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 19696 (May 4, 2018), unchanged in *Polyethylene Terephthalate Resin from Taiwan: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 48287 (September 24, 2018); *Large Diameter Welded Pipe from Canada: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 43649 (August 27, 2018), unchanged in *Large Diameter Welded Pipe from Canada: Final Affirmative Determination of Sales at Less Than*

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 weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs, (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. 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 differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip codes or city and state names) 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 being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that Commerce uses in making comparisons between EP (or CEP) and normal value 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.

Fair Value, 84 FR 6378 (February 27, 2019); and *Cast Iron Soil Pipe from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 83 FR 44567 (August 31, 2018), unchanged in *Cast Iron Soil Pipe from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 6767 (February 28, 2019).

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 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

For Hyundai, based on the results of the differential pricing analysis, Commerce preliminarily finds that 97.68 percent of the value of U.S. sales pass the Cohen’s *d* test, and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods.⁴² Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because there is at least a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the

⁴² See Memorandum, “Antidumping Duty Administrative Review of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results Analysis Memorandum for Hyundai Steel Company,” dated December 10, 2019 (Hyundai Preliminary Calculation Memo), at 6-7.

weighted-average dumping calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, Commerce is applying the average-to-transaction method for all U.S. sales to calculate the weighted-average dumping margin for Hyundai.

C. Product Comparisons

In accordance with section 771(16) of the Act, Commerce considered all products produced and sold by the respondents in Korea as described in the "Scope of the Order" section of this memorandum, above, that were in the ordinary course of trade. Commerce compared U.S. sales to sales made in the home market, where appropriate. 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, Commerce compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, Commerce matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: whether the product is painted, minimum specified carbon content, quality, minimum specified yield strength, nominal thickness, nominal width, form, pickled, and patterns in relief. For Hyundai's sales of hot-rolled steel in the United States, the reported control number (CONNUM) identifies the characteristics of hot-rolled steel as it entered the United States.

Hyundai reported an additional specification of "43" for the quality variable. It indicated that the code was for "Steels Designated with Properties for OCTG Specifications" and that the products included under this designation were distinct from those provided under quality "40" because OCTG-designated steel requires different chemical and mechanical properties and undergoes different processing and testing.⁴³ It also noted that Commerce has used a distinct OCTG quality variable in the first administrative review, and that it designates between line pipe and OCTG in its own antidumping orders on each product.⁴⁴ The petitioner argued that Hyundai should have reported these items under quality variable "40" for "Steels Designated with Properties for Line Pipe Specifications", or alternately under "50" for "Structural Steel that is not classifiable in another listed Quality subcategory." Commerce preliminarily finds that the "43" designation is appropriate because it is consistent with our determination in the 2016-2017 administrative review, in which we accepted this additional variable, and the petitioners presented no new information supporting a change to this determination.⁴⁵

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

⁴³ See Hyundai's Supplemental Section B at 17-18.

⁴⁴ *Id.*

⁴⁵ See Hyundai Preliminary Calculation Memo at 2.

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.⁴⁶ 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.⁴⁷

For its home market sales, Hyundai reported the earlier of shipment date (*i.e.*, the date the merchandise leaves the factory or warehouse), or invoice date in the field SALEDATH.⁴⁸ Hyundai normally recognizes a sale at the time of shipment from the factory.⁴⁹ However, in some limited instances, customers requested that Hyundai delay shipments to a later date.⁵⁰ Consequently, certain home market sales that were invoiced during the POR had not yet shipped from Hyundai's factory. In these instances, because Hyundai had issued tax invoices for these sales, and ownership of the merchandise was transferred to the customer when the tax invoices were issued, Hyundai reported these sales in its sales database.⁵¹

For its U.S. sales to unaffiliated customers, Hyundai reported the earlier of shipment date (*i.e.*, the date the merchandise leaves the factory or warehouse), or invoice date in the field SALEDATU.⁵² For its U.S. sales through Hyundai Corporation (USA) (HCUSA) to unaffiliated customers, Hyundai reported the date of shipment from HCUSA's warehouse as the date of sale. For both home market and U.S. sales, Hyundai issued its commercial invoices (U.S. market) or tax invoices (home market) at or after the time of shipment.⁵³

For these preliminary results, we used the shipment date or invoice date as the date of sale as indicated above for Hyundai's home market and U.S. sales, consistent with Commerce's normal methodology regarding date of sale because the material terms of sale (*e.g.*, price and quantity) are still subject to change when orders are confirmed.⁵⁴

⁴⁶ See 19 CFR 351.401(i); *see also Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (*Allied Tube*) (quoting 19 CFR 351.401(i)).

⁴⁷ 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 23, 2004), and accompanying IDM at Comment 10; *see also Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

⁴⁸ See Hyundai's Sections B-D Questionnaire Response at B-24.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See Hyundai's Sections B-D Questionnaire Response at C-22.

⁵³ See Hyundai's Section A Questionnaire Response at Exhibit A-17 and Exhibit A-18.

⁵⁴ See 19 CFR 351.401(i); and *Allied Tube*. Additionally, Hyundai reported its U.S. sales (both EP and CEP) for all entries that occurred during the POR. However, it also reported several CEP sales that had a revised entry date such that, according to CBP, they entered after the POR, but had a date of sale during the POR. Consistent with our preference to rely on the date of entry, when available, in defining the universe of sales to include in our analysis, we have not included these sales in our analysis for this administrative review as they will be included in the subsequent administrative review, if one is requested. See, *e.g.*, *Stainless Steel Wire Rod from Sweden: Final Results of Antidumping Duty Administrative Review*, 72 FR 17834 (April 10, 2007), and accompanying IDM at Comment 3; *Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Results of Antidumping Duty Administrative Review*, 70 FR 13458 (March 21, 2005), and accompanying IDM at Comment 5 (finding that

Export Price/Constructed Export Price

In accordance with section 772(a) of the Act, we calculated certain Hyundai sales sold to the first unaffiliated purchaser in the United States prior to importation on an export price (EP) basis. In accordance with section 772(b) of the Act, for the remainder of Hyundai's U.S. sales, we used constructed export price (CEP) because the merchandise under consideration was sold in the United States by U.S. sellers affiliated with Hyundai.

We based Hyundai's EP sales on the price to the first unaffiliated purchaser in the United States. Commerce also made adjustments for billing adjustments, and U.S. and Korean brokerage and handling charges, as appropriate. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight, marine insurance, foreign brokerage and handling, U.S. customs duties, U.S. brokerage and handling, international freight, and U.S. inland freight. In addition, Hyundai reported expenses associated with loading subject merchandise onto trucks for shipment in "other direct selling expenses."⁵⁵ We have included those expenses in Hyundai's movement expenses.

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. Hyundai reported CEP sales of the subject merchandise through its affiliate HCUSA during the POR.⁵⁶

We calculated CEP based on the price to customers in the United States. We made deductions from the starting price for any movement expenses (*e.g.*, foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling, international freight, marine insurance, U.S. inland freight, and U.S. duty), in accordance with section 772(c)(2)(A) of the Act, where appropriate. In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which include direct selling expenses (imputed credit expenses and U.S. inventory carrying costs) and indirect selling expenses (ISE).⁵⁷

Normal Value

A. 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 equal to or greater than five percent of the aggregate volume of U.S. sales),

date of entry for CEP sales is appropriate to rely on to determine the universe of sales when respondents can tie CEP sales to specific entries within the POR).

⁵⁵ See Hyundai's Section B-D Questionnaire Response at C-49 and Exhibit B-18.

⁵⁶ See Hyundai's Section B-D Questionnaire Response at C-1.

⁵⁷ The petitioner requested that we adjust the ISE ratio; however, based on the information on the record we are declining to adjust the ISE ratio at this time. See Hyundai's Supplemental Section C at C-18 and Exhibit C-42; see also Hyundai's Supplemental C & D Response at 3-5.

Commerce normally compares the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If Commerce determines that no viable home market exists, Commerce may, if appropriate, use a respondent's sales of the foreign like product to a third country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this review, Commerce determined that the aggregate volume of home market sales of the foreign like product for each respondent was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, Commerce used home market sales as the basis for NV for Hyundai, in accordance with section 773(a)(1)(B) of the Act.⁵⁸

B. Affiliated Party Transactions and Arm's Length Test

Commerce may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.⁵⁹ Commerce excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because Commerce considers them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c), Commerce "may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."⁶⁰

To test whether Hyundai's home market sales to affiliated customers were made at arm's-length prices, Commerce compared these prices to the prices of sales of comparable merchandise to unaffiliated customers, net of all discounts and rebates, movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated customer were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated customer, Commerce determined that the sales to that affiliated customer were at arm's length prices.⁶¹ In this review, Commerce excluded sales to affiliated customers in the home market that were not made at arm's length prices from our analysis because we considered these sales to be outside the ordinary course of trade.⁶²

C. Overrun Sales

In calculating NV, section 773(a)(1)(B)(i) of the Act states that NV is "the price at which the foreign like product is first sold (or, in absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade...", where the "ordinary course of trade" is defined as "the conditions and practices which, for a

⁵⁸ See Hyundai's Section A Questionnaire Response at A-3-A-4 and Exhibit A-1.

⁵⁹ See 19 CFR 351.403(c).

⁶⁰ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1367 (CIT 2003), *aff'd*, 306 F. Supp. 2d 1291 (CIT 2004).

⁶¹ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002).

⁶² See 19 CFR 351.102(b)(35).

reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind.”⁶³ The SAA clarifies this portion of the statute, stating, “Commerce may consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions generally made in the same market.”⁶⁴ Therefore, the statute and the SAA agree that a determination of what is within the ordinary course of trade must be based on an analysis of the sales in question as compared to sales of merchandise of the same class or kind generally made in the home market.

By basing the determination of NV upon representative sales, the provision ensures an appropriate comparison between NV and sales to the United States. Congress has not specified any criteria that the agency should use in determining the appropriate “conditions and practices.” Thus, Commerce, “in its discretion, chooses how best to analyze the many factors involved in a determination of whether sales are made within the ordinary course of trade.”⁶⁵ In evaluating whether sales of overrun merchandise are outside the ordinary course of trade, Commerce has considered several factors in past cases. These non-dispositive factors include, but are not limited to, the following: (1) whether the merchandise is “off-quality” or produced according to unusual specifications; (2) the comparative volume of sales and the number of buyers in the home market; (3) the average quantity of the overrun and commercial sales; and (4) the price and profit differentials in the home market.⁶⁶

Hyundai indicated its overrun sales occur when products “are not accepted by the original customer, whether due to excess production volumes or quality issues, and sold to another customer.”⁶⁷ Additionally, its sales of overrun merchandise were much more likely to be classified as non-prime merchandise as compared to its non-overrun sales; of comparatively low volume and comparatively low sales quantity; and of dissimilar price and profit levels.⁶⁸ As a result of this analysis, we determine that Hyundai’s overrun sales were not made in the ordinary course of trade and have not included them in our margin calculation.

D. Level of Trade

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 level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁶⁹ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that

⁶³ See section 771(15) of the Act.

⁶⁴ See SAA at 834.

⁶⁵ See *Laclede Steel Co. v. United States*, 19 CIT 1076, 1078 (1995).

⁶⁶ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1364-65 (CIT 2003); see also *Certain Cut-to Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 42075 (September 6, 2017), and accompanying IDM.

⁶⁷ See Hyundai’s Section B-D Questionnaire Response at B-13.

⁶⁸ See Hyundai Preliminary Calculation Memo at 5 and Attachment VI.

⁶⁹ See 19 CFR 351.412(c)(2).

there is a difference in the stages of marketing.⁷⁰ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, Commerce examined 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),⁷¹ Commerce considered the starting prices before any adjustments. For CEP sales, Commerce considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁷²

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 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 is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁷³

Hyundai stated there is one level of trade in the home market, and that this level is more advanced than that for the various CEP channels of trade for its U.S. sales.⁷⁴ Hyundai reported that it performed the following selling functions for sales to all home market customers: sales forecasting; strategic/economic planning; personnel training/exchange; engineering services; advertising; packing; inventory maintenance; order input/processing; direct sales personnel; sales/marketing support; market research; technical assistance; provide cash discounts; provide warranty services; provide freight and delivery arrangement; and provide post-sale warehousing.⁷⁵

In the U.S. market, Hyundai reported that it made sales through three main channels of distribution: EP sales to unaffiliated U.S. distributors and end-users (Channel 1); CEP sales through its affiliate HCUSA to unaffiliated U.S. end-users (Channel 2); and CEP sales through its affiliate HSA to unaffiliated end-users and affiliated end-users (Channel 3).⁷⁶ With respect to

⁷⁰ *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.

⁷¹ 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).

⁷² See *Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

⁷³ See, e.g., *OJ from Brazil* IDM at Comment 7.

⁷⁴ See Hyundai's Section A Questionnaire Response at A-23-A-27; see also Hyundai's Sections B-D Questionnaire Response at B-34 and B-35.

⁷⁵ See Hyundai's Section A Supplemental Questionnaire Response at Exhibit A-44.

⁷⁶ See Hyundai's Section A Response at A-21.

all U.S. channels, Hyundai reported these functions: sales forecasting; strategic/economic planning; personnel training/exchange; advertising; order input/processing; direct sales personnel; sales/marketing support; market research; technical assistance; provide warranty services; and freight and delivery arrangement. For packing and inventory maintenance, all U.S. channels reported these functions except Hyundai's U.S. affiliates in Channel 2. Only Channel 3 provided post sale warehousing.⁷⁷

Based on the selling function categories noted above, we compared the EP (Channel 1) and CEP (Channels 2 and 3) LOT to the home market LOT and found that the selling functions Hyundai performed for its home market customers had minimal intensity differences that were too insignificant to warrant different LOTs. Thus, we determine that Hyundai's U.S. sales through all its channels are made at the same LOT.

Because of the totality of the facts and circumstances, we preliminarily determine that Hyundai's home market LOT is not at a more advanced stage of distribution than its EP/CEP LOT through Channels 1, 2, and 3, and thus, no LOT adjustment is necessary. Consequently, there is no basis for considering a CEP offset with respect to Hyundai. Accordingly, we have not granted a CEP offset, pursuant to section 773(a)(7)(B) of the Act.

E. Cost of Production Analysis

In accordance with section 773(b)(3) of the Act, we calculated cost of production (COP) based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (G&A) and interest expenses. We made certain adjustments to mitigate the direct material cost differences that are unrelated to physical characteristics.⁷⁸ However, we relied on all other COP data submitted by Hyundai, as reported in its most recently submitted cost databases for the COP calculation.

1. Cost Averaging Methodology

Commerce's normal practice is to calculate an annual weighted-average cost for the POR. However, we recognize that possible distortions may result if we use our normal annual-average cost method during a time of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted-average cost, we evaluate the case-specific record evidence by examining two primary criteria: 1) the change in the cost of manufacturing (COM) recognized by the respondent during the POR must be deemed significant; and 2) the record evidence must indicate that sales during the shorter cost-averaging periods could be reasonably aligned with the COP or CV during the same shorter cost-averaging periods.⁷⁹ In prior cases, we established 25 percent as the threshold between the high- and low-

⁷⁷ See Hyundai's Section A Supplemental Questionnaire Response at Exhibit A-44.

⁷⁸ See Hyundai Preliminary Calculation Memo at Attachment I.

⁷⁹ See *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010), and accompanying IDM at Comment 6; and *Stainless-Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008) (*SSPC Belgium Final*), and accompanying IDM at Comment 4.

quarter COM during a period of 12 months for determining that the changes in COM are sufficiently significant to warrant a departure from our standard annual average-cost approach.⁸⁰ In the instant case, record evidence shows that Hyundai did not experience significant cost changes between the high and low quarterly COM during the POR.⁸¹ Therefore, we have used our normal practice and calculated the annual weighted-average POR costs.

2. 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.⁸² As explained above, we examined the cost data and preliminarily determined that our annual weighted-average cost methodology is appropriate. Therefore, Hyundai's COP is based on an annual average COP. *See* the "Cost Averaging Methodology" section, above, for further discussion.

We find that Hyundai's reported per-unit costs exhibited significant variations unrelated to the physical characteristics of the products under review. Such findings are not unusual, as Commerce is directed to use as a starting point a respondent's normal books and records.⁸³ While there were some fluctuations in material costs between similar products, they were not, on the whole, significant or frequent. For conversion costs, we found significant differences that affected the majority of the reported CONNUMs. Because we find that CONNUM cost differences exist due to the combining of production from multiple mills, differences in timing of production, production quantities produced in batches, we have smoothed conversion costs.⁸⁴

We find it appropriate to mitigate cost fluctuations by smoothing Hyundai's reported unit costs by weight-averaging conversion costs among products of the same nominal thickness, nominal width, and form. Specifically, Commerce revised Hyundai's reported per-unit costs by weight-averaging the reported direct labor costs, variable overhead costs, and fixed overhead costs across products with the same thickness, width, and form characteristics.⁸⁵ We then recalculated the general and administrative expenses and the financial expenses by applying the corresponding rate to the revised costs.⁸⁶ This ensures that the product-specific costs we use for the sales-below-cost test, CV, and the difference-in-merchandise adjustment accurately reflect the physical characteristics of the products whose sales prices are used in Commerce's dumping calculations.

Hyundai also reported purchases of minor inputs from affiliated suppliers.⁸⁷ In instances where an input is not a major input, section 773(f)(2) of the Act directs Commerce to determine whether the transactions between affiliates fairly reflect the amount usually incorporated in sales

⁸⁰ *See SSPC Belgium Final IDM* at Comment 4.

⁸¹ *See* Hyundai's Section B-D Questionnaire Response at Exhibit D-6.

⁸² *See* "Test of Comparison Market Sales Prices" section for treatment of home market selling expenses.

⁸³ *See* section 773(f)(1)(A) of the Act; *see also Hot-Rolled Steel Final 2016-2017 IDM* at 10.

⁸⁴ *See* Hyundai Preliminary Calculation Memo at 2-3 and Attachment I.

⁸⁵ *Id.*

⁸⁶ *Id.* at 4.

⁸⁷ *See* Hyundai's Section B-D Questionnaire Response at Exhibit D-7.

of the merchandise under consideration in the market under consideration. We compared the average purchase price of scrap on a per-metric-ton (MT) basis from affiliated and unaffiliated suppliers and determined that Hyundai purchased scrap below fair market value from its affiliated suppliers.⁸⁸ Therefore, we adjusted Hyundai's purchases of steel scrap from its affiliates to reflect a market price.

3. 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 to determine whether the sales 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.

4. 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 the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any 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) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and, 2) based on our comparison of prices to the weighted-average COPs for the POI, they 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.

We found that, for certain specific products, more than 20 percent of Hyundai's home market sales during the POR 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 excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.⁸⁹

F. Calculation of NV Based on Comparison Market Prices

For those comparison products for which there were an appropriate number of sales at prices above the COP for Hyundai, we based NV on comparison market prices. We calculated NV based on packed prices to customers in Korea.

⁸⁸ *Id.* at 3 and Appendix I.

⁸⁹ See Hyundai Preliminary Calculation Memo at Attachment I.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, Commerce also made adjustments for physical differences in 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 COM for the foreign like product and subject merchandise.⁹⁰

Commerce calculated NV based on delivered or ex-works prices to unaffiliated customers.⁹¹ We made deductions, where appropriate, from the starting price for movement expenses, including inland freight and warehousing, under section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and in circumstances of sale (imputed credit expenses and other direct selling expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

G. 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. Accordingly, for those hot-rolled steel products for which we could not determine the NV based on comparison market sales because, as noted in the “Results of the COP Test” section above, all sales of the comparable products failed the COP test, we based NV 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 selling, general, and administrative (SG&A) expenses, profit, and U.S. packing costs. For Hyundai, 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 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 Hyundai’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 351.410.⁹²

For comparisons to Hyundai’s CEP sales, we deducted from CV direct selling expenses incurred on its comparison market sales, in accordance with section 773(a)(8) of the Act.⁹³

VIII. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as

⁹⁰ See 19 CFR 351.411(b).

⁹¹ See Hyundai Preliminary Calculation Memo at Attachment I.

⁹² See Hyundai Preliminary Calculation Memo at Attachments I and II.

⁹³ *Id.*

certified by the Federal Reserve Bank. The exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange>.

IX. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒

Agree

☐

Disagree

12/9/2019

X



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