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May 1, 2020

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

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

SUBJECT: Certain Cut-to-Length Carbon-Quality Steel Plate Products from
the Republic of Korea: Issues and Decision Memorandum for
Final Results of Antidumping Duty Administrative Review; 2018-
2019

I. SUMMARY

We analyzed the comments filed in the administrative review of the antidumping duty order on certain cut-to-length carbon-quality steel plate products (CTL plate) from the Republic of Korea (Korea) for the period of review (POR) February 1, 2018, through January 31, 2019. The review covered two mandatory respondents: Dongkuk Steel Mill Co., Ltd. (Dongkuk); and Hyundai Steel Company (Hyundai Steel). We recommend that you approve the positions described in the “Discussion of the Issue” section of this memorandum. Below are the issues for which we have received comments and rebuttal comments from interested parties:

1. Hyundai Steel’s Window Period
2. Hyundai Steel’s Constructed Export Price (CEP) Offset
3. Hyundai Steel’s Other Discount
4. Dongkuk’s Cost Smoothing
5. Dongkuk’s Currency Conversion

II. BACKGROUND

On December 18, 2020, the Department of Commerce (Commerce) published the preliminary results of this administrative review.¹ We invited interested parties to comment on the *Preliminary Results*. We received case briefs from Dongkuk, Hyundai Steel, and Nucor

¹ See *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2018-2019*, 84 FR 69360 (December 18, 2019) (*Preliminary Results*) and the accompanying Preliminary Decision Memorandum (PDM).



Corporation (the petitioner);² and, we received rebuttal case briefs from Dongkuk and the petitioner.³ On April 8, 2020, we extended the deadline for these final results, until April 30, 2020.⁴ Further on April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until June 19, 2020.⁵

III. SCOPE OF THE ORDER

The products covered by the antidumping duty order are certain hot-rolled carbon-quality steel: (1) universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to length (not in coils) and without patterns in relief), of iron or non-alloy quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products included in the scope of the order are of rectangular, square, circular, or other shape and of rectangular or non-rectangular cross section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been “worked after rolling”) – for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished, or coated with plastic or other non-metallic substances are included within the scope. Also, specifically included in the scope of the order are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products included in the scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of the order unless otherwise specifically excluded. The following products are specifically excluded from the order: (1) products clad, plated, or coated with metal, whether

² See Dongkuk’s Letter, “Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Case Brief,” dated January 17, 2020 (Dongkuk’s Case Brief); Hyundai Steel’s Letter, “Certain Cut-to-Length Carbon-Quality Steel Plate from Korea: Case Brief,” dated January 17, 2020 (Hyundai Steel’s Case Brief); and Petitioner’s Letter, “Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Case Brief,” dated January 17, 2020 (Petitioner’s Case Brief).

³ See Petitioner’s Letter “Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Rebuttal Brief,” dated January 27, 2020 (Petitioner’s Rebuttal Brief); and Dongkuk’s Letter, “Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Rebuttal Brief,” dated January 27, 2020 (Dongkuk’s Rebuttal Brief).

⁴ See Memorandum, “Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Extension of Deadline for Final Results of the Antidumping Duty Administrative Review,” dated April 8, 2020.

⁵ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19,” dated April 24, 2020.

or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

Imports of steel plate are currently classified in the HTSUS under subheadings 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, and 7226.99.0000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the merchandise covered by the order is dispositive.

IV. CHANGES TO THE PRELIMINARY RESULTS

For Dongkuk, we corrected a preliminary margin calculation error involving a currency conversion in response to Dongkuk's timely-submitted case brief.⁶ For Hyundai Steel, we corrected clerical errors concerning the application of the window period in the U.S. margin program, and deducted other discounts, where applicable, from the gross unit price.⁷ As a result, for the final results of this review, we calculated a margin of 2.26 percent for Dongkuk and 2.49 for Hyundai Steel. For further details, *see* "Discussion of the Issues" below.

V. RATES FOR RESPONDENTS NOT SELECTED FOR INDIVIDUAL EXAMINATION

For the respondents not selected for individual examination, *i.e.*, BDP International and Sung Jin Steel Co., Ltd., we used the same calculation methodology we used in the *Preliminary Results*.⁸ The margin changes to Dongkuk and Hyundai Steel resulted in a margin change for the respondents not selected for individual examination for the final results of this review. The final rate for these two non-selected respondents is 2.43 percent.

⁶ See Memorandum, "Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results Analysis Memorandum for Dongkuk Steel Company," dated concurrently with this memorandum (Dongkuk's Final Analysis Memorandum). Because all of the relevant details of the petitioner's comments on this issue are business proprietary, our analysis is contained in Dongkuk's Final Analysis Memorandum; *see also* Petitioner's Case Brief at 6-7. Hyundai Steel did not submit a rebuttal case brief.

⁷ See Memorandum, "Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results Analysis Memorandum for Hyundai Steel Company," dated concurrently with this memorandum (Hyundai Steel's Final Analysis Memorandum). Because all of the relevant details of the petitioner's comments on this issue are business proprietary, our analysis is contained in Hyundai Steel's Final Analysis Memorandum; *see also* Petitioner's Case Brief at 6-7. Hyundai Steel did not submit a rebuttal case brief.

⁸ See *Preliminary Results* PDM at 3.

VI. DISCUSSION OF THE ISSUES

Comment 1: Hyundai Steel's Window Period

Hyundai Steel's Argument:

First Clerical Error

- Commerce made a clerical error in the preliminary U.S. Margin Program when it set the beginning of the window period, BEGINWINDOW, equal to November 1, 2018, rather than to November 1, 2017.⁹
- Comments in the U.S. Margin Program indicate that BEGINWINDOW refers to the beginning of the window period in an administrative review and should be set equal to the date on the first day of the first month of the window period.¹⁰
- The POR is February 1, 2018 through January 31, 2019; however, BEGINWINDOW was set to November 1, 2018, when it should have been set to November 1, 2017. This typographical error impacted the definition of the USMONTH causing significant errors in the matching of U.S. sales and overstating Hyundai Steel's calculated AD rate.

Second Clerical Error

- Hyundai Steel reported all U.S. sales that entered the United States during the POR, *i.e.*, it defined the sales reporting universe as all sales with entries from February 1, 2018 through January 31, 2019.¹¹
- Hyundai Steel reported the date of sale as either the commercial invoice date or the Korean shipment date, as the case may be, for the U.S. sales within the reporting universe.¹²
- The date of sale typically will precede the date of U.S. entry, and for that reason, Hyundai Steel reported U.S. sales with entry dates (ENTRYDTU) during the POR that had dates of sale (SALEDATU) prior to the POR, with the earliest date of sale falling in November 2017.¹³
- In the Margin Program, Commerce had to populate the BEGINDAY macro, which it defines as the "First day of first month of U.S. sales."¹⁴ Although the earliest date of sale (SALEDATU) fell in November 2017, Commerce set BEGINDAY to December 1, 2017.¹⁵ For the final results Commerce must set BEGINDAY equal to November 1, 2017.

The petitioner did not comment on these clerical error issues.

⁹ See Hyundai Steel's Case Brief at 3-4.

¹⁰ *Id.*

¹¹ See Hyundai Steel's Case Brief at 4 (citing Hyundai Steel's July 25, 2019, Section C Response at C-4).

¹² See Hyundai Steel's Case Brief at 4 (citing Hyundai Steel's July 25, 2019, Section C Response at C-20).

¹³ See Hyundai Steel's Case Brief at 4.

¹⁴ See Hyundai Steel's Case Brief at 4 (citing Memorandum "Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Analysis Memorandum for Hyundai Steel Company," dated December 12, 2019 (Hyundai Steel's Prelim Analysis Memorandum), at Attachments D and E).

¹⁵ *Id.*

Commerce’s Position: The window period for matching contemporaneous home market sales to U.S. sales is defined in 19 CFR 351.414(f), which states that “{n}ormally, the Secretary will select as the first contemporaneous month the first of the following months which applies: (1) {t}he month during which the particular U.S. sales under consideration were made; (2) {i}f there are no sales of the foreign like product during this month, the most recent of the three months prior to the month of the U.S. sales in which there was a sale of foreign like product; (3) {i}f there are no sales of the foreign like product during any of these months, the earlier of the two months following the month of the U.S. sales in which there was a sale of the foreign like product.”

Comments in the U.S. Margin Program explain the correct parameters to define BEGINDAY and ENDAY, which defines the beginning and end of the window period:

“usually correspond to the first day of the first month and the last day of the last month of the window period, respectively, covering all U.S. sale dates. Reported CEP sales usually include all sales during the POR. For EP sales, they usually include all entries during the POR. Accordingly, there may be U.S. sales transactions with sale dates prior to the POR. For example, if the first EP entry in the POR was in June (first month of POR) but that entry had a sale date back in April, the window period would have to include the three months prior to April.”¹⁶

Additional comments in the U.S. Margin Program explain that BEGINWINDOW “refers to the beginning of the window period in an administrative review.”¹⁷

We agree with Hyundai Steel that BEGINDAY was not set correctly in the U.S. Margin Program in the preliminary results and have changed it to November 1, 2017; however, we disagree that BEGINWINDOW should be set to November 1, 2017, and instead set BEGINWINDOW equal to August 1, 2017 in the U.S. Margin Program for these final results to create the appropriate window period considering the earliest date of sale. We have also changed ENDDAY from April 30, 2019 to January 31, 2019, in the U.S. Margin Program. Because certain dates, which are key to this discussion, are business proprietary information, we provided a detailed discussion in Hyundai Steel’s Final Analysis Memorandum.¹⁸

Comment 2: Hyundai Steel’s CEP Offset

Hyundai Steel’s Comments:

- Hyundai Steel disagrees with Commerce’s preliminary conclusion that it did not qualify for a CEP offset, considering the differences between the single level of trade (LOT) in the home market (HM LOT) and the LOT of Hyundai Steel’s sales to its affiliate in the United States (CEPLOT).¹⁹

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See Hyundai Steel’s Final Analysis Memorandum at 4-6.

¹⁹ See Hyundai Steel’s Case Brief at 5 (citing *Preliminary Results* PDM at 10).

- Commerce will grant a CEP offset when: (1) a LOT adjustment cannot be calculated in accordance with section 773(a)(7)(A) of the Act--- here there is only a single LOT in the home market and no LOT adjustment was made nor argued for; and, (2) the HM LOT at which normal value (NV) is established is at a “more advanced stage of distribution” than the CEP LOT of Hyundai Steel’s sale to its U.S. sales affiliate, Hyundai Corporation USA (HC USA).²⁰
- Commerce relies on a respondent’s selling functions chart and related narrative discussion in the section A questionnaire response for making CEP offset decisions because this information identifies the extent of selling activities for each channel of distribution and customer category.²¹ Commerce did not request additional information, beyond its section A questionnaire concerning Hyundai Steel’s selling activities.²²
- Hyundai Steel sold the foreign like product through a single channel of distribution in the home market, *i.e.*, direct sales to distributors and end users.²³ In the United States, Hyundai Steel sold through two separate channels of distribution: (1) direct export price (EP) sales to unaffiliated customers located in the United States; and, (2) CEP sales to HC USA, an affiliated trading company located in the United States, which in turn sold to unaffiliated U.S. customers.²⁴
- Commerce disregarded the clearly identifiable differences between selling activities performed in the HM LOT and CEP LOT in its preliminary results.²⁵ Hyundai Steel performed substantially greater magnitude and intensity of selling activities to support its home market sales than to support its sales to its U.S. affiliate.²⁶
- For sales to HC USA at the CEP LOT, Hyundai Steel performed minimal selling functions because HC USA performs most of the selling functions for this channel of distribution.²⁷ Commerce examines Hyundai Steel’s selling functions and narrative explanations, and categorized its selling functions using Commerce’s five core selling function categories: (1) sales support; (2) training services; (3) technical support; (4) logistical services; and (5) sales-related administrative activities.²⁸
- Commerce should grant Hyundai Steel a CEP offset because, on both a qualitative and quantitative basis, substantial record evidence supports the conclusion that the HM LOT is at a different and more advanced stage of distribution than Hyundai Steel’s sales to HC USA at the CEP LOT.²⁹ Hyundai Steel conducts 16 selling activities for its HM LOT and conducts 13 selling activities for its CEP LOT.³⁰ Hyundai Steel’s selling-function specific, ratios of indirect-selling expense to total sales refute Commerce’s *Preliminary*

²⁰ See Hyundai Steel’s Case Brief at 5.

²¹ See Hyundai Steel’s Case Brief at 6 (citing *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Thirteenth Administrative Review*, 73 FR 14220 (March 17, 2008), and accompanying Issues and Decision Memorandum (IDM) at Comment 3.

²² See Hyundai Steel’s Case Brief at 7.

²³ *Id.* (citing Hyundai Steel’s, July 18, 2019, Section A Response at A-20 and Exhibit A-16-A).

²⁴ *Id.* (citing Hyundai Steel’s, July 18, 2019, Section A Response at A-21).

²⁵ *Id.* (citing *Preliminary Results* PDM at 10).

²⁶ *Id.* at 6 (citing Hyundai Steel’s, July 18, 2019, Section A Response at Exhibit A-16-A).

²⁷ See Hyundai Steel’s Case Brief at 8.

²⁸ *Id.* at 8-12 (citing Hyundai Steel’s, July 18, 2019, Section A Response at A-21 to A-25).

²⁹ See Hyundai Steel’s Case Brief at 12 (citing *Preliminary Results* PDM at 10).

³⁰ *Id.*

Results that there are “no differences in the intensity of selling activities it performed for its sales to the United States compared to its sales to the home market,” is not supported by the record.³¹

- For its home market transactions, Hyundai Steel performs substantial selling activities because it is responsible for all pre- and post-sale activities with its home market customers.³² In contrast, Hyundai Steel’s selling functions for CEP sales are limited because Hyundai Steel is not involved in the sales negotiations with the unaffiliated U.S. customers or with any other pre- or post-sale activities. HC USA is responsible for negotiations with unaffiliated U.S. customers using its own direct sales personnel to invoice customers, obtain payments, and maintain relationships with the unaffiliated U.S. customers. HC USA also performs its own sales forecasting, strategic/economic planning, marketing support, market research, personnel training, warranty services, and technical support for its U.S. sales.³³
- Hyundai Steel’s role in the CEP LOT is limited to receiving and processing orders placed by HC USA and arranging for ocean freight and delivery from Korea to the designated place of delivery.³⁴
- Commerce recently granted Hyundai Steel a CEP offset in the 18th administrative review of this proceeding (for the February 1, 2017 through January 31, 2018, POR), based on virtually identical facts: (1) Hyundai Steel had single LOTs in the home market and among EP and CEP sales in the U.S. market (no LOT adjustment was granted); (2) Hyundai Steel’s selling activities for the home market LOT were at a more advanced stage of distribution and substantially dissimilar from its activities for the CEP LOT.³⁵
- Commerce also reached a nearly identical decision granting Hyundai Steel a CEP offset in the February 1, 2016 through January 31, 2017, POR, as it did in its February 1, 2017 through January 31, 2018 administrative review.³⁶
- Although Commerce’s format for reporting selling activities since the last administrative review has changed, the underlying facts from the prior administrative reviews have not.³⁷
- Commerce has previously observed that evidence showing that the U.S. affiliate performs significant selling activities in the U.S. market supports the conclusion that the foreign

³¹ *Id.*

³² See Hyundai Steel’s Case Brief at 12.

³³ See Hyundai Steel’s Case Brief at 13 (citing Hyundai Steel’s Section A Response at Exhibit A-16-A).

³⁴ See Hyundai Steel’s Case Brief at 13.

³⁵ See Hyundai Steel’s Case Brief at 14 (citing *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 83 FR 65348 (December 20, 2018), and the accompanying PDM at 8-9, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017–2018*, 84 FR 25751 (June 4, 2019)).

³⁶ See Hyundai Steel’s Case Brief at 15 (citing *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 10670 (March 12, 2018), and the accompanying PDM at 8-10, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 32629 (July 13, 2018)).

³⁷ See Hyundai Steel’s Case Brief at 15-16 (citing Hyundai Steel’s, July 18, 2019, Section A Response at A-3).

producer's sales in the comparison market were made at a more advanced LOT than CEP sales.³⁸

- In *Cold Rolled Flat Products from Korea*, Commerce determined that at the CEP LOT, the respondent's U.S. affiliate was "heavily involved and performs exclusively" a number of selling activities.³⁹
- In *Magnesia Bricks from Mexico*, Commerce granted a CEP offset after finding, that respondent "sales to home market customers involve the full range of selling activities," compared to "only a limited amount of selling activities for its sales to its affiliate."⁴⁰
- In *Sheet and Strip from Germany*, Commerce found that in the home market the respondent made sales "further down the chain of distribution by providing certain downstream selling functions that are normally performed by the affiliated resellers in the U.S. market."⁴¹
- In *Carbon Steel Flat Products from Korea*, Commerce stated that "significant selling activities" were performed by the respondents' U.S. affiliates.⁴²
- In *Pipe Fittings from Taiwan*, Commerce noted that, whereas the respondent performed "the key sales functions of dealing with and negotiating with unaffiliated customers" in the home market, the U.S. affiliate performed this "key task" in the U.S. market).⁴³

Petitioner's Comments:

- Commerce preliminarily determined that a CEP offset adjustment was not warranted for Hyundai Steel.⁴⁴ Commerce found that the selling activities at Hyundai Steel's CEP LOT and home market LOT were substantially the same. Commerce also found that Hyundai Steel's sales at the CEP LOT involve the same selling activities as the home market and at the same level of intensity.⁴⁵ Commerce determined that the home-market sales were

³⁸ See Hyundai Steel's Case Brief at 16.

³⁹ See Hyundai Steel's Case Brief at 16 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Korea*, 67 FR 62124 (October 3, 2002) (*Cold Rolled Flat Products from Korea*), and accompanying IDM at Comment 10.

⁴⁰ See Hyundai Steel's Case Brief at 16 (citing *Certain Magnesia Bricks from Mexico: Notice of Final Determination of Sales at Less Than Fair Value*, 75 FR 45097 (August 2, 2010) (*Magnesia Bricks from Mexico*), and accompanying IDM at Comment 2.

⁴¹ See Hyundai Steel's Case Brief at 16-17 (citing *Stainless Steel Sheet and Strip in Coils from Germany: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 45024, 45029 (August 8, 2006), unchanged in *Stainless Steel Sheet and Strip in Coils from Germany: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 74897 (December 13, 2006) (*Sheet and Strip from Germany*).

⁴² See Hyundai Steel's Case Brief at 17 (citing *Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 70 FR 12443 (March 14, 2005) (*Carbon Steel Flat Products from Korea*), and accompanying IDM at Comment 4.

⁴³ See Hyundai Steel's Case Brief at 17 (citing *Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 78417 (December 24, 2002) (*Pipe Fittings from Taiwan*), and accompanying IDM at Comment 6.

⁴⁴ See Petitioner's Rebuttal Brief at 1 (citing *Preliminary Results PDM* at 10).

⁴⁵ *Id.*

at the same LOT and that the home market LOT is not at a more advanced stage of distribution than the CEP LOT.⁴⁶

- Commerce correctly found there were no differences in the intensity of Hyundai Steel's home market sales and Hyundai Steel's direct exports to U.S. customers.⁴⁷
- In its selling function chart, Hyundai Steel's purported differences in selling function intensity were captured in Hyundai Steel's direct expenses.⁴⁸
- While Hyundai Steel may have received a CEP offset in prior reviews, each administrative review stands on its own based on the facts on the respective record.⁴⁹
- Here, Commerce expanded the data it collects to analyze differences in LOTs for determining whether to grant a CEP offset.⁵⁰
- As Commerce explained in the preliminary results, Hyundai Steel's initial questionnaire and supplemental questionnaire responses demonstrated that the "activity intensities" of "Hyundai Steel's selling activities corresponding to the U.S. LOT and at the home market LOT...were substantially the same."⁵¹
- No information on the record disputes this finding or warrants a change of the *Preliminary Results* and, thus, Commerce should continue to deny Hyundai Steel a CEP offset in the final results of review.⁵²

Commerce's Position: No interested parties are challenging our finding that there was a single LOT in the home market and that no LOT adjustment is warranted. However, Hyundai Steel is challenging our denial of a CEP offset. In the *Preliminary Results*, we determined that there were only immaterial differences in the aggregate intensity of selling activities accounted for in indirect selling expenses when comparing Hyundai Steel's activity mix in its NV LOT to its CEP LOT; we determined that its NV LOT and its CEP LOT were at similar LOTs, and therefore a CEP offset was not warranted in accordance with 19 CFR 351.412(f).⁵³ Commerce's regulation at 19 CFR 351.412(c)(2) recognizes that determining that one marketing stage is more advanced than another requires the identification of "substantial differences" in selling activities. We characterized the slight differences in Hyundai Steel's selling activities identified in the

⁴⁶ See Petitioner's Rebuttal Brief at 2 (citing *Preliminary Results* PDM at 10).

⁴⁷ See Petitioner's Rebuttal Brief at 2 (citing *Preliminary Results* PDM at 10; and Hyundai Steel's, October 4, 2019, Supplemental Questionnaire Response at Exhibit S-2).

⁴⁸ See Petitioner's Rebuttal Case Brief at 2 (citing *Preliminary Results* PDM at 10).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ See *Preliminary Results* PDM at 10. In order to grant a CEP offset adjustment, Commerce must first determine that the NV LOT is more remote from the factory than the CEP LOT by examining whether sales are made at different marketing stages, as set forth in section 773(a)(7)(B) of the Tariff Act of 1930, as amended (the Act).

“provision of technical support” group of selling activities, as immaterial because they do not amount to substantial differences.⁵⁴

Nearly all activities tied to indirect selling expenses were performed at the same level of intensity.⁵⁵ Additional analysis of the selling-activity intensity comparisons between the HM LOT and CEP LOT, and of the producer-specific ratios of indirect selling expenses to total sales, supports the contention that these differences are immaterial as opposed to substantial.⁵⁶ Hyundai Steel argues that we should include certain selling activities it reported as logistical services in our comparison of indirect selling activity intensities between NV and CEP; however, we determined that these logistical services were already accounted for as direct expenses in our margin calculations and therefore, should not also be counted as indirect expenses, for the purposes of determining whether the single HM LOT upon which NV is calculated is at a more advanced LOT than the CEP LOT.⁵⁷

Our finding in the *Preliminary Results* was based on Hyundai Steel’s description of its channels of distribution in both the home market and the United States, along with its identification of the selling functions applicable to each channel of distribution, and its designation of entity-specific intensity levels of selling functions, supported by Hyundai Steel’s reported ratios of indirect selling expenses to total sales, as provided in Hyundai Steel’s selling functions chart.⁵⁸ Hyundai Steel provided this updated version of its selling functions chart in response to our supplemental questions regarding the chart it initially submitted as part of its section A response to the initial questionnaire.⁵⁹ Hyundai Steel’s selling functions chart provides the following: (1) it categorizes selling activities into five subgroups of activity types; (2) it reports selling activities

⁵⁴ See *Hyundai Steel v. United States*, 279 F. Supp. 3d 1349 (CIT 2017) (citing *Sucocitricon Cutrale Ltd. A. v. United States*, 2012 36 CIT 821 at 826 (CIT 2012)). (Although Cutrale may perform more selling functions or may perform selling functions more intensely in its home market, these differences do not warrant a CEP offset. The CEP offset provision applies in situations in which there is a substantial difference in the level of trade.” (citing *Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1305 (Fed. Cir. 2001))); see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997). (According to the *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27371 (May 19, 1997), *a.k.a.*, *Preamble*, the equivalent of a separate marketing stage occurs when the “seller takes on a role comparable to that of a reseller if the merchandise had changed hands twice. For example, a producer that normally sells to distributors (that, in turn, resell to industrial consumers) could make some sales directly, taking over the functions normally performed by the distributors. Such sales would be at the same LOT as the sales through the distributors. Each more remote level must be characterized by an additional layer of selling activities, amounting in the aggregate to a substantially different selling function. Substantial differences in the amount of selling expenses associated with two groups of sales also may indicate that the two groups are at different levels of trade.”).

⁵⁵ See Hyundai Steel’s, October 4, 2019, Supplemental Questionnaire Response at Exhibit S-2.

⁵⁶ See *Preliminary Results* PDM at 10; see also Hyundai Steel’s Final Analysis Memorandum at 4-6.

⁵⁷ See *Non-Oriented Electrical Steel from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances* 79 FR 61612 (October 14, 2014) and the accompanying IDM at Comment 2 (concerning packing, Commerce does not consider packing to be a selling function relevant to an LOT analysis, because packing is reported by respondents either in the PACKH/U (packing) variable of the sales list or as part of variable overhead - we make an adjustment for packing expenses in our margin calculations in accordance with section 773(a)(6)(A) of the Act) (footnotes omitted). For a more detailed analysis containing business proprietary information, see Hyundai Steel Final Analysis Memorandum at 4-6).

⁵⁸ See also Hyundai Steel’s July 18, 2019, Section A Response at A-20-A-25.

⁵⁹ See Hyundai Steel’s, October 4, 2019, Supplemental Questionnaire Response at Exhibit S-2 (the updated chart also identified the financial accounts in which the expenses were recorded).

conducted in the home market by Hyundai Steel, and by Hyundai Steel in the EP channel of distribution and Hyundai Steel and HC USA individually in the CEP channel of distribution (among other channels that are not consequential for the CEP offset analysis); (3) it reports intensity levels of selling activities performed by each entity in each channel of distribution; (4) it reports the variable names identifying where each expense is captured in the sales database; (5) it reports total level of indirect selling expense for each selling activity across the channels of distribution; and, (6) it reports a channel and entity specific ratio of indirect selling expense to total sales in the market. Because Hyundai Steel provided a full response to the newly expanded LOT questions in the initial questionnaire, and also answered supplemental questions asking for additional information, Hyundai Steel's claim that the record of this review is largely identical to that of the prior review is incorrect.⁶⁰

Hyundai Steel supplied selling-activity specific intensity levels and indirect selling expense ratios for each selling activity it reported.⁶¹ Hyundai Steel categorized these expenses according to the instructions in our questionnaire and our analysis of these categories was discussed in the *Preliminary Results*.⁶² In its responses to our questionnaires, Hyundai Steel also identified the variables in its home market and U.S. sales datasets that correspond to the reported selling activities. Using this information, we were able to select the group of selling activities which capture indirect selling expenses and excluded certain direct selling expenses from our analysis. "Direct selling expenses" are described in 19 CFR 351.410(c) as "expenses, such as commissions, credit expenses, guarantees, and warranties, that result from, and bear a direct relationship to, the particular sale in question," and "indirect selling expenses" are described in 19 CFR 351.412(f)(2) as "selling expenses, other than direct selling expenses or assumed selling expenses...",⁶³ that the seller would incur regardless of whether particular sales were made, but that reasonably may be attributed, in whole or in part, to such sales."

In the *Preliminary Results*, we determined that the HM LOT and the CEP LOT constituted a single LOT because there was virtually no difference in the aggregate selling activities performed by Hyundai Steel with respect to its home market sales compared to its sales to its U.S. affiliate.⁶⁴ Hyundai Steel argues that its home market LOT is at a more advanced stage than the LOT of its sales to its U.S. affiliate. Because we find that the selling-activity intensity levels coincide with the reported ratios, we relied on this information to conduct our analysis, rather than relying on the more general narrative explanations.⁶⁵ Additionally, we are not swayed by the five cases that Hyundai Steel cites in support of its contention that a CEP offset is warranted. Three of these cases, *Cold Rolled Flat Products from Korea*, *Carbon Steel Flat Products from*

⁶⁰ See *Corrosion-Resistant Steel Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 15114 (March 17, 2020) (*Corrosion-Resistant Steel from Korea*), and accompanying IDM at Comment 4 (citing *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 10784 (March 22, 2019) (*CORE Korea 16-17*), and accompanying IDM at Comment 6).

⁶¹ See Hyundai Steel's Section A Response at A-20 through A-25; and Hyundai Steel's, October 4, 2019, Supplemental Questionnaire Response at Exhibit S-2.

⁶² See *Preliminary Results* PDM at 10.

⁶³ According to 19 CFR 351.410(d), "Assumed Expenses" are "selling expenses that are assumed by the seller on behalf of the buyer, such as advertising expenses."

⁶⁴ See *Preliminary Results* PDM at 10.

⁶⁵ See Hyundai Steel's Final Analysis Memorandum at 4-6.

Korea, and Pipe Fittings from Taiwan, discuss comparisons between the producer in the home market and the affiliate in the CEP channel of distribution; however, the comparison in the instant case is between the selling activities performed by the producer in the home market and the producer's sales to its U.S. affiliate. Similarly, *Sheet and Strip from Germany* discusses a producer's more advanced LOT in its home market because it takes on some functions that are normally a reseller's functions but we do not have that situation in this case – there is a single LOT in the home market. Finally, *Magnesia Bricks from Mexico* discusses Commerce's granting of a CEP offset in a situation where there was a clear difference between a producer which offered a "full range" of services in its home market and "limited" services for sales to its U.S. affiliate, but that is simply not the case here, where we found almost no difference.

Despite Hyundai Steel's arguments to the contrary, Commerce is not necessarily bound by its determinations in a prior segment of a proceeding because each segment has its own unique factual record.⁶⁶ In other words, Commerce must examine each record on its own merits. The decision to grant a CEP offset is a fact-specific inquiry that must be made based on the record.⁶⁷

Because we find that the aggregate difference between the selling functions performed by Hyundai Steel for its sales in the single home market LOT and those it performed for sales to its U.S. selling affiliate LOT are not substantially different, we have continued to deny Hyundai Steel a CEP offset. In addition, for the reasons given above, we based this analysis on selling functions that are accounted for as indirect selling expenses and continue to disregard selling functions which were accounted for as direct selling expenses.

Comment 3: Hyundai Steel's Other Discount

Petitioner's Comments:

- In its *Preliminary Results*, Commerce used Hyundai Steel's most recent U.S. sales database to calculate Hyundai Steel's dumping margin.⁶⁸ In its initial section C questionnaire response, Hyundai Steel reported that it granted discounts in certain situations related to purchase order cancellations.⁶⁹ In these situations, "HC USA issued a credit memo providing a discount on the invoices related to the non-cancelled portion of subject merchandise on these purchase orders" and reported these discounts in the field OTHDISU.⁷⁰

⁶⁶ See, e.g., *Pakfood Public Co. v. United States*, 34 CIT 1122, 1138 (CIT 2010); *Alloy Piping Prod., Inc. v. United States*, 33 CIT 349, 358-59 (CIT 2009); and *Timken U.S. Corp. v. United States*, 434 F. 3d 1345 (Fed. Cir. 2006).

⁶⁷ See *Corrosion-Resistant Steel from Korea* IDM at Comment 4 (citing *CORE Korea 16-17* IDM at Comment 6).

⁶⁸ See Petitioner's Case Brief at 5 (citing Hyundai Steel's Prelim Analysis Memorandum at 2 (The case brief cites page 12; however, Commerce identified the datasets that it used in the *Preliminary Results* at 2)).

⁶⁹ See Petitioner's Case Brief at 5 (citing Hyundai Steel's, July 25, 2019, sections B, C, and D Questionnaire Response at C-28).

⁷⁰ *Id.*

- OTHDISU should have been included but was not included in the margin program in the adjustments to U.S. price.⁷¹ Commerce should include OTHDISU in the adjustments of U.S. price in the final margin program.

Hyundai Steel did not comment on this issue.

Commerce’s Position: For the final results of this review, we included OTHDISU in the calculation of adjustments to U.S. price to account for credit memos on partial canceled orders. We inadvertently did not include this adjustment to price in the *Preliminary Results*. Commerce’s regulation at 19 CFR 351.401(c) states that, “in calculating export price” we will “normally” use “a price that is net of price adjustments” as defined in 19 CFR 351.102(b), “that are reasonably attributable to the subject merchandise.” Also, Commerce’s regulation at 19 CFR 351.102(b) describes price adjustments as, “a change in price for subject merchandise...such as a discount, rebate, or other adjustment.” Because Hyundai Steel granted its customer a price discount that is attributable to individual sales, we deducted this other discount from the gross unit price in the final results of this review, where applicable.

Comment 4: Dongkuk’s Cost Smoothing

Petitioner’s Comments:

- Dongkuk’s reported costs do not accurately reflect the cost to produce CTL plate; there are substantial cost differences between control numbers (CONNUMs) with the same quality, specification, and heat treatment characteristics.⁷² These cost differences do not appear to be a result of differences in thickness or production yields.⁷³
- Pursuant to section 773(f)(1)(A) of the Act, Commerce relies on the records of the exporter or producer regarding cost, if they are “kept in accordance with the generally accepted accounting principles...and reasonably reflect the costs associated with the production and sale of the merchandise.”⁷⁴
- Commerce has an established practice of adjusting reported costs to eliminate significant cost differences between similar/identical CONNUMs.⁷⁵
 - In the 2014-2015 administrative review of CTL plate, Commerce found that Hyundai Steel’s costs varied considerably although the only difference in physical characteristics was product thickness. To mitigate this, Commerce re-allocated costs among products and has done this in subsequent reviews for Hyundai Steel.⁷⁶

⁷¹ See Petitioner’s Case Brief at 5-6 (Although the petitioner bracketed this information in its case brief, adjustments to gross price in the U.S. margin program in the preliminary results were provide in public information in the public version of the Analysis Memo at 85).

⁷² See Petitioner’s Case Brief at 2.

⁷³ *Id.* at 3.

⁷⁴ *Id.* at 2.

⁷⁵ *Id.* at 3-4.

⁷⁶ *Id.* at 3 (citing *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea*, 81 FR 62712 (September 12, 2016) (*CTL Plate Korea 14-15*) and accompanying IDM at Comment 1).

- In the 2015-2016 administrative review of CTL plate, Commerce made the same adjustment for Dongkuk, noting that considerable variation in costs did not appear to be related to physical characteristics.⁷⁷
- In *Circular Welded Pipe from Korea* and *Heavy Walled Rectangular Pipe from Korea*, Commerce smoothed costs under similar circumstances.⁷⁸
- In accordance with Commerce’s handling of this issue in all prior reviews for Hyundai Steel, Commerce should make sure conversion costs are averaged by quality, specification, and heat treatment.⁷⁹

Dongkuk’s Comments:

- Commerce should use Dongkuk’s costs of production as reported; the petitioner has no factual basis to support its claim that differences in cost are not driven by differences in physical characteristics.⁸⁰
- The cases cited by the petitioner do not provide comparable factual analyses.
 - In *CWP Korea*, Commerce found that no adjustment was warranted because the differences were normal considering actual production or were otherwise insignificant in relation to the totality of production.⁸¹
 - In *CTL Plate Korea 15-16*, Commerce issued a supplemental questionnaire to Dongkuk regarding the cost differences between selected CONNUMs and collected additional cost data before making a factual determination.⁸²
 - In *CTL Plate Korea 14-15*, Commerce found that differences in costs were related to differences in product-specific production volumes and pre-rolling production.⁸³
 - In *HWR Pipes and Tubes*, Commerce adjusted costs after finding that the differences were due to the timing of purchase and production rather than physical characteristics.⁸⁴
- In the instant review, the petitioner has not cited to, nor has Commerce collected, evidence to support the petitioner’s assertion that cost differences do not “appear” to be a result of differences in thickness or production yield, and that differences in production yield “could not possibly cause such a large difference in {total cost of manufacturing}.”⁸⁵

⁷⁷ *Id.* at 4 (citing *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea*, 82 FR. 42075 (September 6, 2017) (*CTL Plate Korea 15-16*) and accompanying IDM at Comment 3).

⁷⁸ See Petitioner’s Case Brief at 3 (citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea*, 81 FR 47347 (July 21, 2016) (*HWR Pipes and Tubes*), and accompanying IDM at Comment 8; and *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, 81 FR 39908 (June 20, 2016) (*CWP Korea*), and accompanying IDM at Comment 11).

⁷⁹ See Petitioner’s Case Brief at 5.

⁸⁰ See Dongkuk’s Rebuttal Brief at 1-2.

⁸¹ See Dongkuk’s Rebuttal Brief at 2 (citing *CWP Korea* IDM at Comment 11).

⁸² See Dongkuk’s Rebuttal Brief at 3 (citing *CTL Plate Korea 15-16* IDM at Comment 3).

⁸³ See Dongkuk’s Rebuttal Brief at 4-5 (citing *CTL Plate Korea 14-15* IDM at Comment 5).

⁸⁴ See Dongkuk’s Rebuttal Brief at 4 (citing *HWR Pipes and Tubes* IDM at Comment 8).

⁸⁵ See Dongkuk’s Rebuttal Brief at 3.

- There is no evidentiary basis to overcome the requirement of section 773(f)(1)(A) of the Act.⁸⁶ Moreover, the CONNUMs cited by the petitioner are insignificant in relation to the totality of the reported production information, representing less than 0.039 percent of the total reported production quantity.⁸⁷

Commerce’s Position: For the final results of this review, we did not recalculate or adjust Dongkuk’s reported costs. Pursuant to section 773(f)(1)(A) of the Act, “costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise.”

Accordingly, pursuant to section 773(f)(1)(A) of the Act, we are instructed to rely on a company’s normal books and records if two conditions are met: (1) the books are kept in accordance with the home country’s GAAP; and (2) the books reasonably reflect the cost to produce and sell the merchandise. In the instant case, the unadjusted per-unit costs are derived from Dongkuk’s normal books and records, which are kept in accordance with Korean GAAP.⁸⁸ Therefore, the question we are facing is whether the per-unit costs from Dongkuk’s normal books reasonably reflect the costs to produce and sell the subject merchandise.

At the outset of a case, we identify the physical characteristics that are the most significant in differentiating products.⁸⁹ These are the physical characteristics that define unique products, *i.e.*, the CONNUMs, for sales comparison purposes. The level of detail within each physical characteristic (*e.g.*, the multiple different grades or sizes of a product) reflects the importance, with price-to-price comparisons, that we place on establishing NV based on comparison market sales of the identical, or the most similar, foreign like product. Thus, under sections 773(f)(1)(A) and 773(a)(6)(C)(ii) and (iii) of the Act, a respondent’s reported product costs should reflect meaningful cost differences attributable to these different physical characteristics. This ensures that the product-specific costs we use for the sales-below-cost test, CEP profit, constructed value, and the difference-in-merchandise adjustment, accurately reflect the distinct physical characteristics of the products whose sales prices are used in our dumping calculations.

The physical characteristics identified in this case are whether or not the plate is painted, quality, specification and grade, heat treatments, standard thickness, and standard width.⁹⁰ For the reasons below we find that differences in costs between CONNUMs are not significant relative to the totality of the reported production, nor does record evidence support that such differences are unrelated to physical characteristics.

⁸⁶ *Id.*

⁸⁷ See Dongkuk’s Rebuttal Brief at 4.

⁸⁸ See Dongkuk’s section A response, dated July 29, 2019, at Attachment A-1.

⁸⁹ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Korea*, 64 FR 73196 (December 29, 1999), and accompanying IDM.

⁹⁰ See, *e.g.*, Commerce’s initial questionnaire, dated June 4, 2019, at B-9 through B-14.

In past cases, Commerce revised reported CONNUM-specific costs that were based on normal books and records, because the reported large cost differences among products were unrelated to differences in the physical characteristics of the products.⁹¹ For the first time in this proceeding, unlike in prior reviews, in its brief, the petitioner flagged CONNUM pairs from Dongkuk's cost database alleging cost differences despite having the same paint, quality, specification, and heat treatment characteristics. In analyzing Dongkuk's cost database, we found that within groups of similar CONNUMs, the reported direct materials costs are reasonably consistent with the group average direct materials costs. While there are some outliers, these outliers are insignificant in relation to the totality of the reported production information.⁹² Consequently, we did not collect additional information from Dongkuk that might definitively explain the differences in costs between the specific CONNUMs identified by the petitioner in its case brief. Therefore, we consider it reasonable to rely on Dongkuk's reported product-specific material cost as recorded in its normal books and records for the final results of this review.

The petitioner argued that in prior segments of the current proceeding, as well as among other proceedings, Commerce has an established practice of adjusting reported costs to eliminate significant cost differences between similar CONNUMs.⁹³ We note that while we have smoothed costs for Dongkuk in the past, the circumstances in the prior reviews were such that there was additional information from Dongkuk on the record that explained the differences in costs between the CONNUMs identified by the petitioner. Given the analysis described above, we do not find it appropriate to adjust Dongkuk's reported costs for the final results of this review.

Comment 5: Dongkuk's Currency Conversion

Dongkuk's Comments:

- Although Dongkuk reported some of U.S. credit expenses (CREDITU) and domestic indirect selling expense (DINDIRSU) in Korean won, Commerce inadvertently treated the expenses as U.S. dollar denominated in the preliminary margin calculation program.⁹⁴

The petitioner did not comment on this issue.

Commerce's Position: Commerce agrees that the margin calculation program should be revised to reflect the expense variables of CREDITU and DINDIRSU as Korean won denominated for some of Dongkuk's U.S. sales. We have adjusted the margin calculation programs accordingly for the final results of this review.⁹⁵

⁹¹ See, e.g., *CTL Plate Korea 14-15 IDM* at Comment 5; *CTL Plate Korea 15-16 IDM* at Comment 3; *HWR Pipes and Tubes IDM* at Comment 8; and *CWP Korea IDM* at Comment 9.

⁹² Additional information concerning this analysis may be found in the Dongkuk's Final Analysis Memorandum, because the cost information key to this discussion is business proprietary information.

⁹³ See Petitioner's Case Brief at 3-4 (citing *CTL Plate Korea 14-15 IDM* at Comment 5; *CTL Plate Korea 15-16 IDM* at Comment 3; *HWR Pipes and Tubes IDM* at Comment 8; and *CWP Korea IDM* at Comment 11).

⁹⁴ See Dongkuk's Case Brief at 1.

⁹⁵ See Dongkuk's Final Analysis Memorandum, for the details of this change.

VII. RECOMMENDATION

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



Agree

Disagree

5/1/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance