A-580-880
Administrative Review
POR: 9/1/2017 – 8/31/2018
Public Document
E&C/OII: AM/WH

July 6, 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: Issues and Decision Memorandum for the Final Results of the 2017-2018 Administrative Review of the Antidumping Duty Order on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea

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I. SUMMARY

We analyzed the comments of interested parties in the 2017-2018 administrative review of the antidumping duty (AD) order covering heavy walled rectangular welded carbon steel pipes and tubes (HWR pipe and tube) from the Republic of Korea (Korea). As a result of our analysis, we made changes to the margin calculations from the *Preliminary Results*[1] for two of the mandatory respondents in this review, HiSteel Co., Ltd. (HiSteel) and Kukje Steel Co., Ltd. (Kukje Steel), as well as the non-selected companies.[2] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of issues in this administrative review for which we received comments from the interested parties.

General Issues

Comment 1: Existence of a Particular Market Situation (PMS)
Comment 2: Quantification of PMS Adjustment
Comment 3: Application of PMS Adjustment

[1] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017– 2018*, 84 FR 63613 (November 18, 2019) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).
[2] These companies are: (1) Ahshin Pipe & Tube Company; (2) Bookook Steel Co., Ltd.; (3) Dongbu Steel Co., Ltd.; (4) Ganungol Industries Co. Ltd.; (5) Hanjin Steel Pipe; (6) Husteel Co., Ltd.; (7) Hyosung Corporation; (8) Hyundai Steel Co.; (9) Hyundai Steel Pipe Company; (10) K Steel Co. Ltd.; (11) Miju Steel Manufacturing Co., Ltd.; (12) NEXTEEL Co., Ltd.; (13) POSCO DAEWOO; (14) Sam Kang Industrial Co., Ltd.; (15) Sam Kang Industries Co., Ltd.; (16) Samson Controls Ltd., Co.; (17) SeAH Steel Corporation; and (18) Yujin Steel Industry Co. Ltd.

HiSteel-Specific Issues

Comment 4: Credit Expenses
Comment 5: Differential Pricing

II. BACKGROUND

On November 18, 2019, the Department of Commerce (Commerce) published the *Preliminary Results* of this administrative review. This review covers 21 producers and exporters. The period of review (POR) is September 1, 2017 through August 31, 2018.

We invited parties to comment on the *Preliminary Results*.[3] On January 8, 2020, we received case briefs the petitioner,[4] HiSteel, and Kukje Steel.[5] On February 3, 2020, we received rebuttal briefs from the same parties.[6] On February 12, 2020, Commerce extended the deadline for the final results of this administrative review, until May 15, 2020.[7] On March 4, 2020, we held a public hearing.[8] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until July 6, 2020.[9]

On June 17 and 19, 2020, Commerce placed additional information on the record of this administrative review.[10] On June 24, 2020, we received rebuttal information from HiSteel and Kukje Steel.[11]

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[3] *See Preliminary Results*, 84 FR at 63614.
[4] The petitioner is Nucor Tubular Products Inc., formally known as Independence Tube Corporation and Southland Tube, Incorporated, Nucor companies.
[5] *See* Kukje Steel's Case Brief, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea – Case Brief," dated January 8, 2020 (Kukje Steel Case Brief); HiSteel's Case Brief, as refiled based on Commerce's request, "Administrative Review of the Antidumping Order Heavy Walled Rectangular Carbon Steel Pipe and Tube from Korea – Redacted Case Brief," dated February 20, 2020 (HiSteel Case Brief); and the petitioner's Case Brief, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Case Brief," dated January 20, 2020 (Petitioner's Case Brief).
[6] *See* Kukje Steel's Rebuttal Case Brief, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea – Rebuttal Case Brief," dated February 3, 2020 (Kukje Steel Rebuttal Brief); HiSteel's Rebuttal Case Brief, "Administrative Review of the Antidumping Order Heavy Walled Rectangular Carbon Steel Pipe and Tube from Korea – Rebuttal Brief of HiSteel Co. Ltd.," dated February 3, 2020 (HiSteel Rebuttal Brief); and the petitioner's Rebuttal Case Brief, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Rebuttal Brief," dated February 3, 2020 (Petitioner's Rebuttal Brief).
[7] *See* Memorandum, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated February 12, 2020.
[8] *See* Memorandum, "2017-2018 Administrative Review of the Antidumping Duty Order on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Notice of Hearing," dated February 27, 2020, and the Hearing Transcript filed on March 11, 2020.
[9] *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.
[10] *See* Memoranda, "Antidumping Duty Administrative Review of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Placing New Factual Information on the Record," dated June 17, 2020 and June 19, 2020, respectively (June 17 NFI Memo and June 19 NFI Memo, respectively).
[11] *See* HiSteel's Rebuttal Submission, "Administrative Review of the Antidumping Order on Heavy Walled

III. SCOPE OF THE ORDER

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

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

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

IV. MARGIN CALCULATIONS

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

- We increased the cost of the respondents' purchased hot-rolled coil (HRC) by 25.61 percent for the final results, revised down from the 49.35 percent used in the *Preliminary Results*. *See* Comment 1.

Rectangular Carbon Steel Pipe and Tube from Korea for the 2017-2018 Review Period - Response to New Factual Information," dated June 24, 2020 (HiSteel NFI Rebuttal Submission); *see also* Kukje Steel's Rebuttal Submission, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Objection to June 17th and 19th Information Releases and Submission of Rebuttal Factual Information," dated June 24, 2020 (Kukje Steel NFI Rebuttal Submission); and Petitioner's Letter, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Comments on New Factual Information," dated June 24, 2020 (Petitioner Comments on NFI).

- We applied the revised PMS adjustment percent to the cost of purchased HRC reported in the DIRMAT and ADJ_DIRMAT database fields for HiSteel and Kukje Steel, respectively. *See* Comment 3.[12]

- We corrected the interest rate used to calculate HiSteel's home market credit expenses, and revised HiSteel's credit expenses for certain U.S. sales.[13] *See* Comment 4.

V. DISCUSSION OF ISSUES

General Issues

Comment 1: Existence of a PMS

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

HiSteel's Case Brief

- The statute does not permit an adjustment to the COP used to test whether HiSteel's home market sales were made at below COP based on an alleged PMS in Korea. The TPEA allows Commerce to make adjustments only when the PMS affects the comparability of U.S. sales to the sales in the comparison market, but not to adjust the COP for the below-COP analysis.[14]

- Because Commerce based its preliminary PMS finding in this administrative review on the prior administrative review of this case, which, in turn was based on Commerce's PMS finding in *OCTG Korea 2014-2015 Final Results*,[15] in light of the Court of International Trade's (CIT's) decision in *Nexteel I* that there was no evidence of the existence of a PMS for HRC in Korea based on the four factors relied upon by Commerce, Commerce should follow *Nexteel I* and calculate the final results margins without PMS adjustments.[16]

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[12] *See* Memorandum entitled, "Calculations for HiSteel Co., Ltd. (HiSteel) for the Final Results" dated May 15, 2020 (HiSteel Final Calculation Memo); *see also* Memorandum entitled, "Margin Calculations for Kukje Steel Co., Ltd. for the Final Results" dated May 15, 2020 (Kukje Steel Final Calculation Memo).
[13] *See* HiSteel Final Calculation Memo.
[14] *See* HiSteel Case Brief at 2-6 and 12-15 (citing Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA)).
[15] *Id*. at 6-7 (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 18105 (April 17, 2017) (*OCTG Korea 2014-2015 Final Results*)).
[16] *Id*. at 6-7 (citing *Nexteel Co. v. United States*, 355 F. Supp. 3d 1336, 1364 (CIT 2019) (*Nexteel I*); and PDM at 15).

- There is no evidence on the record supporting the petitioner's allegation that Korean HRC producers received subsidies at a rate of 58.68 percent because that subsidy rate was based on the application of total adverse facts available in *Hot-Rolled Steel—Korea (CVD)*.[17] Further, that rate has been superseded by *HRS from Korea CVD AR 2016*, as amended, to be 0.54 percent.[18]

- Regarding strategic alliances, there is no record evidence that HiSteel has strategic alliances with any Korean hot-rolled steel producers.[19]

- As for electricity, Commerce has consistently found that Korean electricity prices do not confer any subsidy benefit.[20] Further, there is no record evidence that Korea Electric Power Corporation (KEPCO) supplied electricity to HiSteel or to Korean steel coil producers at subsidized rates during the POR.

- There is no evidence that either: (1) HiSteel purchased HRC from POSCO at unfairly low prices; or (2) the prices for HRC in Korea did not accurately reflect the COP in the ordinary course of trade.[21] On the contrary, POSCO's average selling prices have increased since

[17] *Id*. at 8-9 (citing *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016) (*Hot-Rolled Steel—Korea (CVD*)). HiSteel notes that the subsidy rate for POSCO from *Hot-Rolled Steel—Korea (CVD)* was based on total adverse facts available (AFA), whereas HiSteel has cooperated to the best of its abilities in this administrative review. HiSteel argues that the CIT has consistently held that Commerce may not penalize a cooperative party for non-cooperation by an unaffiliated party (citing *SKF USA v. United States*, 675 F. Supp. 2d 1264, 1276 (CIT 2009)).

[18] *Id*. at 9 (citing *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 2016*, 84 FR 28461 (June 19, 2019) (*HRS from Korea CVD AR 2016*); and *Countervailing Duty Order on Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Amended Final Results of the First Administrative Review*, 84, FR 35604, 35605 (July 24, 2019) (*HRS from Korea CVD Amended Final*)).

[19] *Id*. at 9-10. HiSteel maintains that SeAH, NEXTEEL, and HYSCO are not respondents in this proceeding, and thus petitioner's claim about alleged alliances between these companies and the Korean steel coil producers is irrelevant. Further, HiSteel notes that 1) Hyundai Steel and HYSCO have merged to become one company (citing *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Oil Country Tubular Goods from the Republic of Korea*, 81 FR 64873 (September 21, 2016)); and 2) Commerce has consistently found that there is no affiliation between SeAH and POSCO (citing, *e.g.*, *Welded Line Pipe from the Republic of Korea Preliminary Determination*, 80 FR 29620 (May 22, 2015), and accompanying PDM at 18, unchanged in *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015)).

[20] *Id.* at 10-11 (citing *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49946 (July 29, 2016) (*Cold-Rolled Steel Korea CVD Final Determination*), and accompanying Issues and Decision Memorandum (IDM) at Comment 2; *Hot-Rolled Steel—Korea CVD* IDM at Comment 2; *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015) (*WLP Korea CVD Final Determination*), and accompanying IDM at Comment 1; and *Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 82 FR 16341 (April 4, 2017) (*CTL Plate Korea CVD Final Determination*), and accompanying IDM at Comment 2).

[21] *Id*. at 11-12.

2016, and POSCO's financial results show that its gross and operating profits increased every year from 2014 to 2018.[22]

- In this case, there is no record evidence that the prices for steel coils in Korea (either on a market-wide or company-specific basis) fail to reflect the COP of those inputs.[23]

- The petitioner bases much of its PMS allegation on 2016 press articles that indicate POSCO's profitability has been adversely affected by imports of steel products from China; however, POSCO's actual financial results show that its operating profit and net income in 2016 and, even more so, in 2017 were higher than in any previous year since 2013.[24]

Kukje Steel's Case Brief

There is no "cost-based" PMS with respect to HRC inputs in the production of subject merchandise:

- The statute does not permit an adjustment to the COP used to test whether Kukje Steel's home market sales were made at below COP based on an alleged PMS in Korea.[25]

- Section 504 of the TPEA modified the definition of "ordinary course of trade" and the provisions concerning the calculation of "constructed value" to permit Commerce to adjust constructed value (CV) "if a {PMS} exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the {COP} in the ordinary course of trade;" however, it did not change the statutory provisions regarding the calculation of COP or application of the sales-below-cost test.[26]

- The Court of International Trade (CIT) has ruled that the PMS found by Commerce in prior segments of OCTG from Korea is not supported by evidence on the record of those respective segments.[27]

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[22] *Id*. (citing HiSteel's Letter, "Administrative Review of the Antidumping Duty Order on Heavy Walled Rectangular Carbon Steel Pipes and Tubes from Korea – Response to the Department's April 12 Request for Comments on Particular Market Situation Allegations, dated May 10, 2019 (HiSteel PMS Allegation Rebuttal)); s*ee also* 15-17.

[23] *Id*. at 15.

[24] *Id.* at 16-17 (citing HiSteel PMS Allegation Rebuttal containing information from POSCO's website and copies of POSCO's financial statements for each year from 2013 to 2017).

[25] *See* Kukje Steel's Case Brief at 9-15.

[26] Kukje Steel notes that the CIT recently held that PMS adjustments for purposes of the sales-below-cost test are not contemplated under the Tariff Act of 1930, as amended (the Act), but rather are limited to CV calculations. *Id.* at 14-15 (citing *Saha Thai Steel Pipe Company v. United States*, 422 F. Supp. 3d 1363, 1369-1370 (CIT 2019) (*Saha Thai)*). Further, Kukje Steel notes that the CIT recently again found that applying any PMS adjustment for purposes of performing the sales-below-cost test is contrary to the AD statute and thus Commerce should refrain from doing so for the final results. *See* Kukje Steel Rebuttal Brief at 2-3 (citing *Husteel Co. v. United States*, 426 F. Supp. 3d 1376 (CIT 2020); and *Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States*, 426 F. Supp. 3d 1395 (CIT 2020)).

[27] *Id*. at 15-18. Moreover, Kukje Steel argues that the specific finding that low-priced Chinese steel flooded the Korean market during the POR is directly contradicted by substantial record evidence. *Id*. at 17 and 29.

- Commerce has not determined that the PMS in Korea is not "ordinary." Rather, because Commerce found that a PMS has existed in Korea that has distorted the COP since July 2014 for a number of Korean steel cases, the market situation represents a normal condition that Commerce can no longer consider outside the ordinary course of trade.[28]

- A PMS adjustment should be reserved for only the most unusual of circumstances. In reaching affirmative PMS determinations in several Korean steel cases, Commerce has departed from its prior, reasoned analysis; thus, these PMS determinations cannot withstand judicial review.[29]

- Commerce must empirically and quantitatively analyze the PMS allegation with respect to a respondent's actual COP, using a data-driven methodology for benchmarking the relevant COP, as it has in other recent cases. Commerce failed to perform this level of analysis in the *Preliminary Results* and must do so for the final results to determine whether a PMS exists.[30]

- Commerce made no new factual finding in the *Preliminary Results* to support a determination that HRC inputs for HWR pipe and tube are not within the ordinary course of trade or to support an overall affirmative PMS finding.[31]

- Commerce must comply with its WTO obligations in calculating respondents' COP. Article 2.2 of the WTO Antidumping Agreement states that AD calculations based on costs other than those in the domestic market must reasonably reflect the costs associated with the production of the subject merchandise.[32] No basis exists for Commerce to disregard Kukje Steel's actual reported costs on the record.[33]

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[28] *Id*. at 18-19.

[29] *Id.* at 19-21 (citing Statement of Administrative Action (SAA) Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) at 822; *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997); *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 68 FR 52741 (September 5, 2003), and accompanying IDM at Comment 1; *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review*, 62 FR 18404, 18422 (April 15, 1997), and accompanying IDM at Comment 1; and *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 76 FR 40881 (July 12, 2011), and accompanying IDM at Comment 3)).

[30] *Id.* at 21 -24 (citing *Steel Concrete Reinforcing Bar from Taiwan: Final Determination of Sales at Less Than Fair Value*, 82 FR 34925 (July 27, 2017), and accompanying IDM at Comment 1; *Biodiesel from Argentina: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 50394 (October 31, 2017), and accompanying PDM at 23; *Biodiesel from Argentina: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 8837 (March 1, 2018) (*Biodiesel from Argentina*), and accompanying IDM at Comment 3; *Biodiesel from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 50379 (October 31, 2017), and accompanying PDM at 23; and *Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018), and accompanying IDM at Comment 3).

[31] *Id*. at 6, 18, and 24.

[32] *Id*. at 25 (citing the World Trade Organization (WTO)'s Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994) (WTO Antidumping Agreement).

[33] *Id*. at 25-26.

- Commerce's preliminary PMS finding was not based on substantial evidence, and thus Commerce should reverse its preliminary PMS finding and make no adjustment in the final AD calculations.[34] Specifically, Commerce's preliminary finding that a PMS exists contains no analysis on how the "four factors" apply to Kukje Steel in this administrative review or to the specific merchandise under consideration.[35]

    - There is no record evidence in this review demonstrating that the factors cited by Commerce in its PMS determination distorted Kukje Steel's actual costs to produce HWR pipe and tube.

    - Commerce undertook no analysis in the *Preliminary Results* to show that the prices Kukje Steel paid for its HRC inputs used to produce HWR, either from Korean or foreign suppliers, were inconsistent with market prices or were below the suppliers' COP.

- Record evidence contradicts Commerce's preliminary finding that steel production overcapacity globally caused a PMS in Korea during the POR.[36]

    - The record evidence does not show that Kukje Steel's cost to manufacture HWR in the POR was distorted by HRC sourced from China or elsewhere, or that Kukje Steel's HRC purchase prices were inconsistent with world or regional prices.

    - Likewise, the evidence does not show that the Korean market has been distorted by imported HRC volumes, especially considering the ample domestic supply of HRC that exists in Korea.

- Recent data, reported by the World Steel Association Yearbook 2018, the Organization for Economic Co-operation and Development (OECD), and the Global Steel Purchasing Managers' Index), show that problems relating to global overcapacity, and especially Chinese/Korean steel overcapacity, were at significantly reduced levels during the POR and, effectively, were controlled even before the POR.[37]

- A decrease in global overcapacity, and increase in national demand and consumption, resulted in a reduced surplus of steel; record data confirm an anticipated reduction in

[34] *Id*. at 26-47.
[35] *Id*. at 26-27, and 41-42.
[36] *Id*. at 27-28, and 40-41. Kukje Steel maintains that Commerce's finding that the alleged steel overcapacity is a global problem undermines the main point that a "unique" or "particular" market situation is transpiring in Korea; the situation in Korea is no more "particular" than that in the United States due to global steel overcapacity. *Id*. at 28.
[37] *Id*. at 28-33 (citing to Kukje Steel's Letter, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Rebuttal Factual Information Related to Alleged Particular Market Situation," dated May 10, 2019 (Kukje Steel PMS Allegation Rebuttal) at Attachments E, F, G, and H).

international trade in steel during the POR and that a distorted, or out of the ordinary, market situation in Korea did not exist.[38]

- Korean import data, compiled and published by Commerce, show that the volume of Korea's steel imports trended downwards from 2010 to 2018, with imports decreasing by 17 percent in 2017. The combination of significant reductions in imports of steel flat products during the POR, coupled with significant increases in the average unit values (AUVs) of the steel imported, means that the significantly reduced volume of imports could not have had a downward impact on domestic steel flat product pricing in Korea during the POR.[39]

- Since early 2016, global steel overcapacity has been effectively controlled and prices of steel products (including HRC) began rebounding to their normal levels.[40]

- The near *de minimis* final subsidy rates calculated by Commerce for POSCO in *HRS from Korea CVD AR 2016* and *HRS from Korea CVD Amended Final* demonstrate that any potential intervention by the Korean government in the domestic HRC market had no material impact on the production costs of HRC.[41]

- Commerce made no effort, on the record of this review, to confirm or corroborate the existence of a strategic alliance between Kukje Steel and its HRC suppliers in the POR or to discern how a strategic alliance might have contributed to a PMS.[42]

- The CIT has discredited Commerce's *Preliminary Results* PMS findings with respect to the alleged "strategic alliance" as a basis for finding a PMS.[43]

- Commerce has consistently found that no countervailable subsidies exist regarding Korean electricity that confer benefits to Korean steel producers.[44] Moreover, record evidence contemporaneous with the instant POR shows that Korean electricity rates reflected market principles.[45]

[38] *Id*. at 34-37 (citing Kukje Steel PMS Allegation Rebuttal at Attachment E and PMS Allegation at Exhibit 107.) According to Kukje Steel, these facts demonstrate that, rather than flooding markets around the world, there was a conspicuous reduction of Chinese steel exports during the POR. *Id*. at 35-36.
[39] *Id*. at 36.
[40] *Id*. at 37-42.
[41] *Id*. at 43 (citing *HRS from Korea CVD AR 2016* and *HRS from Korea CVD Amended Final*).
[42] *Id*. at 44-45.
[43] *Id.* at 44 (citing *Husteel Co., Ltd. v. United States*, 98 F. Supp.3d 1315, 1359 (CIT 2015)).
[44] *Id*. at 45-46 (citing, *e.g.*, *Cold-Rolled Steel Korea CVD Final Determination* IDM at Comment 2; *Hot-Rolled Steel—Korea CVD* IDM at Comment 2; *WLP Korea CVD Final Determination*; and *CTL Plate Korea CVD Final Determination*).
[45] *Id*. at 46-47 (citing Kukje Steel PMS Allegation Rebuttal at Attachment B).

Petitioner's Rebuttal Brief[46]

Rejection of Petitioner's Sur-Rebuttal Comments

- Commerce should disregard the respondent's PMS arguments, as the petitioner has been prejudiced in this proceeding by being denied the opportunity to respond to the respondent's rebuttal comments on the petitioner's PMS allegation.[47] Further, the respondents raise new legal and economic arguments they did not put forward in their rebuttal comments.[48]

- Commerce's April 12, 2019 memorandum did not prohibit the submission of sur-rebuttal comments. Commerce's regulations do not prohibit sur-rebuttal comments or specify a deadline for parties to submit sur-rebuttal comments under 19 CFR 351.301(c)(5), which provided for the acceptance of new factual information that is not otherwise defined in Commerce's regulations. Because Commerce extended the deadline for the preliminary determination, the petitioner's factual information was timely filed. Commerce's past practice demonstrates it was unreasonable to limit opportunities to provide critical information, let alone comment, on this issue.[49]

- The CIT has repeatedly required Commerce to allow parties a meaningful ability to comment on the information on the record and submit rebuttal information. Further, the CIT has stated that where "a party has been denied the opportunity (to which it is entitled by law and regulation) to make that factual record in the preliminary results phase, including the opportunity to submit rebuttal information, then the case brief will be deficient."[50]

Existence of a PMS

- It is a fundamental tenet of U.S. AD law that the calculation of dumping margins requires a fair comparison between costs and prices in the ordinary course of trade. Under Section 504

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[46] *See* Petitioner's Rebuttal Brief at 2-36. The petitioner also argued that HiSteel's case brief should be rejected, as it contained new factual information (NFI). *Id.* at 11. Commerce rejected HiSteel's case brief on February 18, 2020, and allowed HiSteel to refile after removing the NFI. *See* Commerce's Letter, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Rejection of Case Brief," dated February 18, 2020. Therefore, we have not summarized, or further addressed, the petitioner's comments on this issue.

[47] *Id*. at 2-4 (citing Petitioners' Letter, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Particular Market Situation Allegation and Supporting Information, dated April 2, 2019 (PMS Allegation)).

[48] *Id*. at 2-4 (citing Kukje Steel Case Brief; HiSteel Case Brief; HiSteel PMS Allegation Rebuttal; Kukje Steel PMS Allegation Rebuttal; and Letter from Kukje Steel, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Rebuttal Comments on PMS Allegations," dated October 31, 2019).

[49] *Id*. at 4-8 (citing Commerce's Letter, "Antidumping Duty Administrative Review of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Rejection of New Factual Information," dated June 18, 2019; Memorandum, "Antidumping Duty Administrative Review of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Reject Document from ACCESS," dated June 18, 2019; Memorandum, "Deadlines for Submission of Factual Information Relating to Particular Market Situation," dated April 12, 2019; 19 CFR 351.301(c)(5); 19 CFR 351.102(b)(21)(v); HiSteel PMS Allegation Rebuttal; Kukje Steel PMS Allegation Rebuttal; and *Preliminary Results*, 84 FR at 63615).

[50] *Id*. at 8-10 (citing *Huzhou Muyun Wood Co. v. United States*, 279 F. Supp. 3d 1215, 1224 (CIT 2017); and *Wuhu Fenglian Co. v. United States*, 836 F. Supp. 2d 1398, 1403 (CIT 2012)).

of the TPEA, Commerce has the broad authority to address situations in a foreign market where inputs are purchased and where inherent distortions in that market prevent a fair comparison. Commerce has the authority to choose any alternative methodology to account for distorted prices and costs.[51]

- Commerce should reject the respondents' arguments that recent CIT decisions indicate it should find a PMS did not exist in Korea during the POR. *Saha Thai* is not binding on Commerce's determination in this review and is in conflict with *Vicentin S.A.I.C.* Further, the respondents misconstrue the CIT's decisions in *Nexteel I* and *Nexteel II*, as the CIT's analyses in both cases do not address the extent to which the global overcapacity crisis and the Korean government subsidization in the underlying administrative review resulted in a PMS.[52]

- Commerce correctly found that a PMS existed in Korea during the POR based on the four factors alleged in the petitioner's PMS allegation.[53]

- Commerce should reject the respondents' claim that the decrease in the subsidy rate for one company in *Hot-Rolled Steel—Korea (CVD*) demonstrates that there was no distortion of HRC in Korea during the POR. On the contrary, *Hot-Rolled Steel—Korea (CVD*) shows that the Korean government continues to subsidize its domestic HRS producers. Further, the magnitude of the subsidy does not negate the fact the Korean government continues to provide subsidies.[54]

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[51] *Id.* at 11-18 (citing PDM at 14-16; Section 773(a)(1), (e), and (f)(1)(A) of the Act; TPEA; *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 24471 (May 28, 2019) (*HWR from Korea 2016-2017 Final Results*), and accompanying IDM at 12-19; *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 17146 (April 18, 2018), and accompanying IDM at 16-23; *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 24085 (May 24, 2019) (*OCTG from Korea 2016-2017 Final Results*), and accompanying IDM at 9-12, 23-30; *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 33919 (July 18, 2018) (*WLP from Korea 15-16 Final*), and accompanying IDM at 12-18; *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 27762 (June 14, 2019) (*WLP from Korea 2016-2017 Final Results*) ,and accompanying IDM at 7-9, 17-23; *Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 3616 (January 22, 2020) (*CWP from Turkey 2017-2018 Final Results*), and accompanying IDM at 4-7; *Vicentin S.A.I.C. v. United States*, 404 F. Supp. 3d 1323 (CIT 2019) (*Vicentin S.A.I.C.*); and *Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2715 (January 16, 2020) (*CWP India 2017-2018 Final Results*), and accompanying IDM at 50).

[52] *Id.* at 18-22 (citing *Saha Thai*, 422 F. Supp. 3d at 1337-1344; *Vicentin S.A.I.C.*, 404 F. Supp. 3d at 1337*;* PDM at 14-15; *Nexteel I*, 355 F. Supp. 3d at 1336-1365; *Nexteel Co. v. United States*, 392 F. Supp. 3d 1276 (CIT 2019) (*Nexteel II*); *OCTG from Korea 2016-2017 Final Results* IDM at 10, 27; and PMS Allegation at 27-28.

[53] *Id.*at 22-23 (citing PDM at 14-15; *Nexteel II*, 392 F.Supp. 3d at 1287; *HWR from Korea 2016-2017 Final Results* IDM at 12-13; *OCTG from Korea 2016-2017 Final Results* IDM at 9-10, 23-24; *WLP from Korea 2016-2017 Final Results* IDM at 7-8, 17; and PMS Allegation at 27).

[54] *Id.* at 23-24 (citing PDM at 15-16).

- Commerce should reject the respondents' claim that the PMS allegation did not provide evidence demonstrating a strategic alliance between certain Korean HRC suppliers and Korean HWR producers. The respondents cannot point to any record evidence that refutes Commerce's preliminary finding of a strategic alliance. Additionally, as Commerce has noted in *OCTG from Korea 2016-2017 Final Results* and *WLP from Korea 2016-2017 Final Results*, it evaluates the existence of a PMS based on the totality of circumstances in the market.[55] In the previous review of this proceeding, Commerce found that "whether or not DOSCO and/or HiSteel are part of such an alliance is not relevant to our consideration to the presence of strategic alliances in the Korean HRC and HWR industries."[56] Consistent with this and other proceedings, Commerce should continue to find that strategic alliances have led to distortions in the price of HRC and that those alliances are a contributing factor to the PMS in Korea.[57]

- Contrary to HiSteel's claims regarding electricity, the existence of an affirmative subsidy finding on electricity is not a prerequisite to a PMS finding, nor does it affect the substantial evidence of market distortion in Korean electricity prices.[58]

- The respondents' arguments that there is no evidence that Chinese imports and the global steel overcapacity crisis impacted HRC purchase prices in Korea during the POR are unavailing.[59]

    - Commerce has recognized in numerous proceedings, and the record demonstrates, that the global steel excess capacity crisis has not subsided by the start of the POR.[60]

    - The record contains substantial evidence that Chinese HRC imports have contributed to the PMS in Korea; those Chinese HRC imports have driven down HRC prices in Korea; and that Chinese HRC imports have negatively affected Korean pipe producers. Commerce has reached the same conclusion in numerous other proceedings, including the previous administrative review of this order. As recently as January 2020, Commerce found, in *CWP from Korea AR 17-18*, which has a comparable POR to this case, that "a significant volume of Chinese steel products continue to be imported into Korea."[61] In other reviews, Commerce has stated that

[55] *Id.*at 24-25 (citing *OCTG from Korea 2016-2017 Final Results* IDM at 22-25; *WLP from Korea 2016-2017 Final Results* IDM at 17-19; *HWR from Korea 2016-2017 Final Results* IDM at 14; PDM at 15; and PMS Allegation at 27).
[56] *Id.* at 25 (citing *HWR from Korea 2016-2017 Final Results* IDM at 18).
[57] *Id.* (citing *OCTG from Korea 2016-2017 Final Results* IDM at 22-25; *WLP from Korea 2016-2017 Final Results* IDM at 17-19; *HWR from Korea 2016-2017 Final Results* IDM at 14).
[58] *Id.* at 25-26 (citing SAA at 822; PMS Allegation at 28; PDM at 15-16; *OCTG from Korea 2016-2017 Final Results* IDM at 25; *WLP from Korea 2016-2017 Final Results* IDM at 19; and *HWR from Korea 2016-2017 Final Results* IDM at 14).
[59] *Id.* at 26-27.
[60] *Id.* at 27 (citing *CWP India 2017-2018 Final Results* IDM at 20-24; and PMS Allegation at Exhibits 54, 65, 70, 72-74, 90-91, 124-127).
[61] *Id.* at 27-28 (citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2719 (January 16, 2020) (*CWP from Korea AR 17-18*), and accompanying PDM at 13).

consistency between a respondent's input costs and prices in other markets does not "refute our finding that global excess steel capacity contributes to a PMS in Korea."[62]

- The four alleged factors combine to cause a distortion in the price and cost of steel production in Korea, preventing an accurate comparison, as Commerce has recognized in prior proceedings.

PMS Reserved for Unusual Circumstances

- Kukje Steel's argument that Commerce should not apply a PMS adjustment because findings of a PMS are reserved for rare and unique circumstances is incorrect, as Commerce does not limit its application of PMS adjustments to rare and unique circumstances. Commerce maintains the discretion to find a PMS to exist under a wide range of circumstances. Commerce rejected a similar argument from a respondent in *OCTG from Korea 2016-2017 Final Results*.[63]

Commerce is not Required to Analyze Respondents' Actual Costs

- Kukje Steel's argument that Commerce erred in not basing its PMS determination on an empirical analysis of the respondent's own costs reflects a misunderstanding of Commerce's practice. Kukje Steel asserts that Commerce did not even attempt to establish any linkage between its actual manufacturing costs and the alleged distortion. Kukje Steel further claims that Commerce had not shown that Kukje Steel's HRC costs are inaccurate or would distort the duty calculations in any material way. However, Commerce does not need to establish a link between a particular respondent's costs and the distortions in the Korean HRC market.

- In a previous review of this proceeding, Commerce rejected the above argument, finding that "no such analysis was necessary," as "there is sufficient evidence demonstrating that the market as a whole is distorted."[64] In other reviews, Commerce has maintained that comparing average unit prices to the respondent's own costs did not address the purpose of a PMS analysis, which is concerned with the distortions in the overall market rather than distortions in a particular sale or transactions.[65]

- The TPEA provides that, where a PMS exists such that "the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary cost of trade," Commerce has the authority to use any alternative methodology to account for the distorted process and costs as reported.[66] As such, Commerce preliminarily found that the PMS adjustment accounts for the distortion calculated for the entire Korean market and then applied it to the specific costs of each respondent. As Commerce noted in

[62] *Id.* at 28-29 (citing *OCTG from Korea 2016-2017 Final Results* at 16-17; *WLP from Korea 2016-2017 Final Results* IDM at 17; and *HWR from Korea 2016-2017 Final Results* IDM at 12-13).
[63] *Id.* at 30-31 (citing TPEA at 822; and *OCTG from Korea 2016-2017 Final Results* IDM at 12).
[64] *Id.* at 32 (citing *HWR from Korea 2016-2017 Final Results* IDM at 17).
[65] *Id.* at 32 (citing *OCTG from Korea 2016-2017 Final Results* IDM at 28; and *Biodiesel from Argentina* IDM at 22.
[66] *Id.* at 32-33 (citing *Preliminary Results* PDM at 14-16).

OCTG from Korea 2016-2017 Final Results, "{c}ompanies do not operate in a vacuum, but, rather, purchase their inputs in a market."[67]

- Contrary to what Kukje Steel asserts, Commerce is not required to use an empirical analysis when evaluating the existence of a PMS. As noted above, under the broad authority of the TPEA, Commerce has the discretion to use any alternative methodology to account for distorted prices and costs as reported. Commerce has rejected similar arguments in other proceedings, finding that a quantitative or empirical analysis of whether a respondent's HRC costs were incurred in the ordinary course of trade was not necessary.[68]

PMS Finding is Consistent with the United States' WTO Obligations

- Kukje Steel argues that denying a company's actual costs and adjusting or replacing them with other expenses from external sources is inconsistent with the WTO Antidumping Agreement. However, Commerce did use Kukje Steel's reported costs as the basis for its analysis and simply applied a PMS adjustment to those specific costs to account for the fact the Korean HRC market was distorted. The Tariff Act of 1930, as amended (the Act), provides inherent authority to adjust reported costs and, thus, it is consistent with the United States' WTO obligations.[69]

- Kukje Steel further asserts that the petitioner did not argue, and Commerce has not shown, that Kukje Steel did not negotiate and pay fair market value for its HRC purchases. However, Commerce need not reach the conclusion that Kukje Steel, or any other respondent, did not pay a fair market price for its HRC to find that a PMS exists in Korea, as the premise of the petitioner's PMS allegation is that the entire HRC market is distorted by the collective impact of the various factors detailed in the allegation.[70]

Commerce's Position:

We continue to find that a PMS exists in Korea that distorts the COP of HWR pipe and tube. This PMS results from the collective impact of the four factors described below.

Section 504 of the TPEA[71] added the concept of "particular market situation" in the definition of the term "ordinary course of trade" for purposes of CV under section 773(e) of the Act, and through these provisions for purposes of the COP under section 773(b)(3) of the Act, added the concept of the term "particular market situation" to the definition of "ordinary course of trade," under section 771(15) of the Act. Section 773(e) of the Act states that "if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the COP in the ordinary course of trade, the administering authority

[67] *Id.* at 33 (citing *OCTG from Korea 2016-2017 Final Results* IDM at 29).
[68] *Id*. at 33-34 (citing TPEA; PMS Allegation at 27-28; and *OCTG from Korea 2016-2017 Final Results* IDM at 28-29)
[69] *Id*. at 34-35 (citing PDM at 16, *WLP from Korea 2016-2017 Final Results* IDM at 9; and Section 773(f)(1)(A) of the Act).
[70] *Id.*
[71] *See* Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).

may use another calculation methodology under this subtitle or any other calculation methodology."

In the instant review, the petitioner alleged that a PMS exists in Korea which distorts the COP for HWR based on the following four factors: (1) subsidization of Korean hot-rolled steel products by the Korean government; (2) the distortive pricing of unfairly traded HRC from China; (3) strategic alliances between Korean HRC suppliers and Korean HWR pipe and tube producers; and (4) distortive government control over electricity prices in Korea.[72] Section 504 of the TPEA does not specify whether to consider these allegations individually or based on a totality of the circumstances. In the previous administrative review of HWR pipe and tube from Korea, the petitioner alleged that a PMS existed in Korea based on the same four factors and, upon analyzing the four allegations as a whole, Commerce found that a PMS existed in Korea during that POR.[73] For the current review, after analyzing the petitioner's allegation and the factual information and case briefs subsequently submitted by interested parties, we determine that the circumstances present during the instant review – that is, the PMS allegation itself and the record evidence concerning the allegation – are relevant to the POR in this administrative review, and, similar to our finding in *HWR from Korea 2016-2017 Final Results*, we came to the same conclusion.

In the current administrative review, we considered the four aspects underlying the PMS allegation as a whole, based on their cumulative effect on the COP for Korean HWR pipe and tube.[74] Based on the existence of these conditions in the Korean market, we continue to find that a single PMS exists which impacts the COP for HWR pipe and tube during the POR. The record evidence shows that the Korean government subsidized HRC, the primary input into HWR production, and that the mandatory respondents purchased HRC from entities receiving these subsidies, including POSCO.[75] Record evidence further shows that HRC constitutes a substantial proportion of the cost of HWR pipe and tube production; thus, distortions in the HRC market have a significant impact on the COP for HWR pipe and tube.[76]

Further, as a result of the significant overcapacity in Chinese steel production, which stems, in part, from the distortions and interventions prevalent in the Chinese economy, the Korean steel market has been sharply impacted by imports of cheap Chinese steel products, placing downward pressure on Korean domestic steel prices.[77] Specifically, there is evidence on the record of this proceeding that Korea is one of the top two destinations of Chinese exports of hot-rolled steel,[78] and import prices of HRC from China have generally been significantly lower than they are from

[72] *See* PMS Allegation.
[73] *See HWR from Korea 2016-2017 Final Results* IDM at Comment 1.
[74] *See Preliminary Results* PDM at 14-16.
[75] *See* PMS Allegation at 27 and Exhibits 7, 9, and 10; *see also* HiSteel's February 27, 2019 BCQR at Appendix D-3-B; and Kukje Steel's August 7, 2019 Supplemental Section D Response (Kukje Steel's August 7, 2019 SDQR) at Exhibit S3-5.
[76] *See* HiSteel's February 27, 2019 BCDQR at Appendix D-3-A; and Kukje Steel's August 7, 2019 SDQR at S3-3.
[77] *See* PMS Allegation at 38 and Exhibits 16 and18.
[78] *See* PMS Allegation Exhibit 113.

the rest of the world.[79] This situation distorts the Korean market prices of HRC, the main input in Korean HWR pipe and tube production.

We agree with the petitioner that the record evidence supports that such strategic alliances exist in Korea.[80] Because strategic alliances have led to prices of HRC significantly below prevailing market value, as evidenced by the record information,[81] we find that such strategic alliances are a contributing factor to the PMS in Korea, impacting the COP for HWR pipe and tube. Such evidence supports the allegation that these strategic alliances may have affected prices in the period covered by the prior administrative review, up to and including this POR. For example, in December 2017, the Korea Fair Trade Commission (KFTC) fined Hyundai along with five other Korean steel producers 92.1 billion won for rigging bids for pipe sold to a Korean gas company over a period of ten years.[82] Hyundai and five other Korean steel producers received the largest fines amongst the group of steelmakers, and the practice was referred to by a KFTC official as a "long-term chronic practice." [83]

Although the period for which Hyundai Steel and five other Korean steel producers were disciplined for their bid-rigging schemes was before the POR of this instant review, these decisions by the KFTC provide ample evidence that strategic alliances and price fixing schemes are prevalent in the Korean market, may have created distortions in the prices of HRC in the past, and may continue to impact HRC pricing in a distortive manner during the instant POR and in the future.

This factor of non-competitive behavior alone is not definitive of a PMS, but it is an integral part of Commerce's reasonable totality approach in evaluating the full effect of all of these elements on the Korean HRC market.

We disagree with the respondents that Commerce must find that HiSteel and Kukje Steel individually engage in strategic alliances. As we have found, in the previous review of this order, a respondent's individual engagement in alliances is not necessary to determine that these alliances are a contributing factor to distortive pricing in the Korean HRC market as a whole. [84] Commerce evaluates the existence of a PMS based on the totality of circumstances in the market, and the record of this review demonstrates presence of strategic alliances in the Korean HRC and HWR pipe and tube industries.[85]

With respect to the allegation of distortion present in the electricity market, consistent with the SAA accompanying the Uruguay Round Agreements Act (URAA), a PMS may exist where there is government control over prices to such an extent that home market prices cannot be

[79] *See* PMS Allegation Exhibit 117.
[80] *Id.* at Exhibits 7, 11, 60 through 62.
[81] *Id.*
[82] *Id*. at Exhibit 93.
[83] *Id*.
[84] *See HWR from Korea 2016-2017 Final Result* IDM at 18.
[85] *See OCTG from Korea 2016-2017 Final Results* IDM at 22-25; *WLP from Korea 2016-2017 Final Results* IDM at 17-19.

considered to be competitively set.[86] Moreover, electricity in Korea functions as a tool of the government's industrial policy. Furthermore, the largest electricity supplier, KEPCO, is a government-controlled entity.[87] Accordingly, the Korean government's involvement in the electricity market in Korea is a contributing factor to the PMS in Korea impacting the COP for HWR pipe and tube. Considering the government control over KEPCO, it is notable that KEPCO reported its first operating loss in six years for 2018.[88] It is implausible that losses of this magnitude, associated with KEPCO's pricing, would have occurred without government control, particularly when KEPCO explicitly states that its costs are submitted to the GOK to establish the electricity rate.

We find the argument that Commerce has consistently found that Korean electricity prices do not confer any subsidy benefit to be unavailing. Whether we found a specific program used by a respondent in a countervailing duty review to be countervailable has no bearing on our analysis of whether or not a PMS existed in Korea during the POR. We also disagree that Commerce must find that KEPCO supplied electricity to HiSteel or to Korean steel coil producers at subsidized rates during the POR. The Korean government subsidizes electricity in Korea.[89] As we have found with strategic alliances, Commerce need not find the individual respondents individually bought electricity at a subsidized rate. Rather, we have found there to be record evidence that there was distortion present in the Korean electricity market during the POR. Finally, we disagree that record evidence contemporaneous with the instant POR shows that Korean electricity rates reflected market principles. The information provided by Kukje Steel compares electricity rates from various countries.[90] Simply because the Korean industrial electricity prices reported by the International Electricity Agency are comparable to other countries is not evidence that those rates are not subsidized. Evidence on the record of this review demonstrates that electricity rates were being subsidized, and Commerce continues to find that there is distortion present in the Korean electricity market.

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

We disagree with Kukje Steel's claim that Commerce should not apply a PMS adjustment because findings of a PMS are reserved for rare and unique circumstances. Commerce maintains the discretion to find a PMS to exist under a wide range of circumstances.[91] Further, regarding Kukje Steel's assertion that the market situation in Korea represents a normal condition and Commerce, therefore, cannot consider it to be outside the ordinary course or trade, we disagree.

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[86] *See* H.R. Doc. 103-316, vol 1 (1994) at 822.
[87] *See WLP from Korea 15-16 Final* at Comment 1; *see also Large Diameter Welded Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 84 FR 6374 (February 27, 2019) (*LDWP from Korea*), and accompanying IDM at Comment 1.
[88] *See* PMS Allegation at Exhibits 97 and 98.
[89] *Id.* at Exhibits 7, 8, and 10.
[90] *See* Kukje Steel PMS Allegation Rebuttal at Attachment B.
[91] See *OCTG from Korea 2016-2017 Final Results* IDM at 12.

Under section 504 of the TPEA, Commerce has the broad authority to address situations in a foreign market where inputs are purchased and where inherent distortions in the market prevent a fair comparison.

With respect to the respondents' arguments concerning the legal standard for finding a cost-based PMS, all parties agree that section 504 of the TPEA enables Commerce to address a PMS where the cost of materials, fabrication, or processing fail to accurately reflect the COP in the ordinary course of trade. HiSteel and Kukje Steel contend that section 504(b) of the TPEA modified provisions concerning only the calculation of CV, and that there is no additional statutory authority for Commerce to use an alleged cost-based PMS to adjust a producer's production costs to determine whether there were comparison-market sales priced below their COP.[92] We disagree with this interpretation of the Act. Specifically, the term "ordinary course of trade," defined in section 771(15) of the Act, includes situations in which "the administering authority determines that the {PMS} prevents a proper comparison {of normal value} with the export price or constructed export price." Thus, where a PMS affects the COP for the foreign like product through distortions to the cost of inputs, it is reasonable to conclude that such a situation may prevent a proper comparison of the export price with normal value based on home market prices just as with NV based on CV. The claim that an examination of a PMS for purposes of the sales-below-cost test goes beyond the plain language of the Act fails to consider that the provision at issue, section 773(e) of the Act, specifically includes the term "ordinary course of trade." Thus, the definition of that term, again, found in section 771(15) of the Act, is integral to that PMS provision. Accordingly, we disagree with the argument that Commerce cannot analyze a PMS claim in determining whether a company's comparison-market sale prices were below cost and, therefore, are outside the "ordinary course of trade." Indeed, we find that this interpretation would defeat the very purpose of an "ordinary course of trade" analysis under the PMS provision, which is to ensure that the distortions caused by a PMS do not prevent fair comparisons of NV with U.S. price. Accordingly, we find that HiSteel's and Kukje Steel's arguments are inconsistent with the intent of Congress in adding this provision to the Act, and we agree with the petitioner that Commerce is granted the discretion to use "any other calculation methodology"[93] if costs are distorted by a PMS, including for the purposes of COP under section 773(b)(3) of the Act.

We disagree with Kukje Steels argument that Commerce is not complying with its WTO obligations in calculating the respondents' COP. Commerce used Kukje Steel's and HiSteel's costs in calculating individual antidumping margins for both companies. However, because of our finding that a PMS existed in Korea during the POR, we have adjusted those costs to account for the PMS in our calculations. That adjustment is consistent with the TPEA and is not inconsistent with the United States' WTO obligations.

With respect to Kukje Steel's argument that Commerce has made no new factual findings with regard to a PMS in the instant proceeding, relying instead on previous determinations in other cases, we find that the same factors that led to the finding that a PMS existed in the other proceedings (*e.g., OCTG from Korea 2016-2017 Final Results*, *WLP from Korea 2016-2017 Final Results*, and *HWR from Korea 2016-2017 Final Results*) are also present in this

[92] *See* HiSteel Case Brief at 2-6; and Kukje Steel Case Brief at 9-15.
[93] *See* section 773(e) of the Act.

administrative review. Further, although we are analyzing the same four factors in the instant review as those that are alleged in the reviews cited by Kukje Steel, we have carefully reviewed the evidence supplied in the instant review as it relates to each factor. Although there are many similarities between the facts in this review and those in *OCTG from Korea 2016-2017 Final Results*, because HRC is the primary input for OCTG as well as HWR pipe and tube and the same market conditions for Korean HRC apply, we have undertaken a thorough analysis of record evidence in the instant proceeding rather than relying on decisions in other cases.

Regarding HiSteel's argument that Commerce should follow *Nexteel I* and *Nexteel II*, which found that there was no evidence of a PMS for HRC in Korea based on the four factors relied upon by Commerce, we disagree. In those cases, the CIT ruled that Commerce did not tie its analysis to substantial evidence on the record of those reviews. In reaching our determination in the instant review, we relied solely on the record of this review which includes ample evidence of the global overcapacity of steel and its impact on HRC prices in Korea, as well as the subsidization of electricity and HRC. Therefore, based on this record, we find sufficient evidence of a PMS in Korea during the POR.

With respect to the respondents' contention that there is no evidence showing that any alleged subsidies received by the HRC producers affected the HRC prices charged to HWR producers, we disagree. In this case, record evidence shows subsidization of HRC producers by the Korean government,[94] as well as purchases of HRC by the mandatory respondents from Korean HRC suppliers that received such subsidies.[95]

Furthermore, although the respondents argue there is no evidence that their specific purchases of HRC were outside the ordinary course of trade, we believe that no such analysis is necessary. We disagree with the notion that such company-specific analysis is necessary and appropriate in a situation where, as here, there is sufficient evidence demonstrating that the market as a whole is distorted and a PMS exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the COP in the ordinary course of trade. Companies do not operate in a vacuum, but, rather, purchase their inputs in a market. If a particular market is distorted as a whole, it would be illogical to conclude that one company operating in that particular market is insulated from the market distortions with respect to costs.

We also disagree with Kukje Steel that Chinese imports into Korea are not significant enough to have an impact on the Korean market. Kukje Steel points to information that indicates Korean imports of steel are decreasing and Korean steel exports are increasing. However, that same report also notes that Korea is the 4th largest importer of steel in the world and, in 2018, Chinese steel still accounted for 50 percent of all imports of steel into Korea.[96] Therefore, we continue to find that imports of Chinese steel still have an impact on the Korean HRC market.

Further, we find HiSteel's claim that POSCO's financial statements show an increase in its operating profit and net income in 2016 and 2017 compared to prior years does not refute our

[94] *See* PMS Allegation at Exhibit 27.
[95] *Id.*; *see also* HiSteel's February 27, 2019 BCQR at Appendix D-3-B; and Kukje Steel's August 7, 2019 SDQR at Exhibit S3-5.
[96] *See* PMS Allegation at Exhibit 107.

finding that POSCO received government subsidies. As noted above, there is sufficient evidence on the record that POSCO has received government subsidies during the POR. Therefore, POSCO's published financial statements do not provide sufficient support for HiSteel's assertion that the Korean HRC market is not distorted.

In this case, we relied upon our interpretation of the amended statute and the facts submitted and certified as accurate by the parties in their submissions. After considering the facts and comments on the record, we find that a PMS exists in Korea based on the petitioner's allegations and supporting evidence taken as a whole, as explained above.

With respect to Kukje Steel's characterization of global steel production capacity, actual production, and capacity utilization rates through the time of the POR and Kukje Steel's interpretation of the data on the record, we strongly disagree with its contention that the global steel overcapacity crisis is over. While economic indicators of an increasing global capacity crisis may have leveled off in the period prior to the POR, this does not demonstrate that the effects of two decades of price suppression have been ameliorated. Although there was a relatively small decrease in excess capacity from 2016-2018, the current estimates of excess capacity are still alarming.[97] Further, as Commerce found in *CORE from Korea 2017-2018*, during the POR which overlaps with the POR in the instant case, China continued to be the largest manufacturer and exporter of steel globally, with estimates indicating that its capacity for steel production continues to grow.[98]

In arguing that the PMS Allegation is not particular to Korea, Kukje Steel asserts that the global overcapacity crisis, or Chinese/Korean steel overcapacity, has distorted the cost of steel production all over the world, and that the Korean steel market is no more "particular" than the rest of the world. We do not find this argument persuasive because the global overcapacity crisis will manifest its distortive effects differently in different markets. In the Korean market particularly, the government provided subsidization to major producers of HRC aimed at supporting domestic steel producers, a scenario of further distortions that is unique to Korea.[99]

Comment 2: Quantification of PMS Adjustment

In the *Preliminary Results*, we quantified the impact of the PMS in Korea by making an upward adjustment to the respondents' reported HRC costs, basing that adjustment on the petitioner's regression analysis.[100]

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[97] *See* PMS Allegation.

[98] *See* PMS Allegation at Exhibit 104 (Commerce Memorandum, "Antidumping Duty Administrative Review of Corrosion-Resistant Steel Products from the Republic of Korea: Post Preliminary Decision Memorandum on Particular Market Situation Allegation," dated February 7, 2019); *see also 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) (*CORE from Korea 2017-2018*), and accompanying IDM at Comment 2.

[99] *See* PMS Allegation at 27 and Exhibits 7, 9, and 10.

[100] *See Preliminary Results* PDM at 16; *see also* PMS Allegation.

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- In past reviews, Commerce based its adjustment for an alleged PMS impacting HRC prices in Korea on the subsidy rates from *Hot-Rolled Steel – Korea CVD Order*.[101] In this review, the petitioner instead has requested that Commerce base the PMS adjustment on a regression analysis. The regression analysis allows for price estimation based on a false assumption that the global steel industry operated at an 85 percent capacity utilization rate.

- The petitioner's regression analysis fails to satisfy the requirements for a time-series analysis, is invalidated by statistical tests, and generates results that fluctuate over time. If the regression analysis is used, Commerce should make two adjustments to the preliminary calculations. First, Commerce should not use the coefficients proposed by the petitioner but, instead, use the coefficients generated from the 2013 through 2017 period. Second, Commerce should calculate an adjustment based on 2018 data instead of 2017 data.[102]

- The petitioner's regression model does not take into account the separate impact that each of the explanatory variables (*i.e.*, uneconomic capacity, iron ore, scrap, exchange rates, gross fixed capital formation, and aluminum) has on the AUV, and, therefore, it has no meaning. In fact, by multiplying the explanatory variables, the petitioner's model predicts the geometric mean rather than the arithmetic mean, which would entail adding each variable.[103]

- The petitioner's proposed regression model fails to address the unique requirements of a time-series data analysis and, therefore, produces unreliable predictions and estimations. Due to the exogeneity requirement in a proper time-series analysis, if the dependent variable in the petitioner's model (*i.e.*, AUVs) affects any past, present or future values of the explanatory variables (*i.e.*, uneconomic capacity, iron ore, scrap, exchange rates, gross fixed capital formation, and aluminum), then the regression output is not valid.[104] The petitioner's model includes a number of explanatory variables that are affected by past, present, and future values of HRC prices, such as iron ore, scrap, and uneconomic capacity, which violates the requirement of strict exogeneity.

- The variance inflation factor test, when applied to the petitioner's proposed regression model, revealed collinearity issues with respect to the following explanatory variables: global fixed capital formation, iron ore prices, scrap prices, and aluminum prices. Therefore, because the petitioner has not addressed the multicollinearity in its regression model, it is invalid.[105]

- While autocorrelation in the petitioner's explanatory variables is not problematic in a time-series analysis, autocorrelation in the petitioner's dependent variable (*i.e.*, the AUVs) violates

[101] *See* HiSteel Case Brief at 17 (citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 83 FR 50892 (October 10, 2018), and accompanying PDM at 13-14).
[102] *See* HiSteel Case Brief at 18.
[103] *Id.* at 18-19 (citing PMS Allegation at 2 and Exhibit 1.1).
[104] *Id.* at 20 (citing HiSteel PMS Allegation Rebuttal at Attachment 16).
[105] *Id.* at 22.

the underlying assumptions in ordinary least squares (OLS) and two-stage least squares (2SLS) analyses and could cause bias in coefficient estimates and predictions.[106]

- In addition to experiential knowledge, the Durbin-Watson test (*i.e.*, a measure of autocorrelation) indicates that there is less than a one in 10,000 chance that the AUV data are not autocorrelated. Since the petitioner did not address the correlation, the results of its regression model are biased with artificially high statistical significance.[107]

- Although the reasons for doing so are unclear, in a PMS decision in *OCTG from Korea*, Commerce stated that, for a similar regression analysis submitted by domestic parties, the autocorrelation evidence on the record was mixed.[108] In this instance, the autocorrelation in the petitioner's regression model is masked due to the endogeneity and collinearity of iron ore and steel scrap.[109]

- In *OCTG from Korea*, Commerce stated correctly that heteroskedasticity in data undermines the reliability of an OLS regression model, but was incorrect in determining that the evidence of heteroskedasticity was incomplete.[110] The studentized Breusch-Pagan test, which is a standard test measuring heteroskedasticity, revealed that there is heteroskedasticity in the petitioner's regression model data, rendering it invalid.[111]

- The petitioner's regression model fails to measure the independent effects of each explanatory variable on the dependent variable (*i.e.*, AUVs), because it effectively multiplies the explanatory variables. The petitioner also fails to explain why this model is appropriate, even though it departs from accepted practice.[112]

- The petitioner's regression analysis incorrectly assumes that global capacity utilization was 85 percent. In fact, the regression analysis produced models which were trained on time periods where global capacity utilization was less than 85 percent.[113] Therefore, the petitioner's model cannot extrapolate what the AUVs would have been if there had been 85 percent capacity utilization.

- The petitioner also incorrectly assumes that the relationship between the AUVs and uneconomic capacity is linear, which can cause an overstatement of the relationship between the variables and predicted values. Therefore, Commerce should reject the petitioner's

[106] *Id.* at 23 (citing HiSteel PMS Allegation Rebuttal at Attachment 16).
[107] *Id.* at 24 and Attachment 2.
[108] *Id.* at 24 (citing Memorandum, "2017-2018 Administrative Review of Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea: Decisions on Particular Market Situation Allegation," dated November 8, 2019 (OCTG PMS Decision Memo)).
[109] *Id.* at 24-25 and Attachment 3.
[110] *Id.* at 25 (citing OCTG PMS Decision Memo; *see also* HiSteel PMS Allegation Rebuttal at Attachment 16).
[111] *Id.* at 25 and Attachment 4.
[112] *Id.* at 26-27.
[113] *Id.* at 27 (citing PMS Allegation at Exhibit 6).

proposal that its regression analysis can be used to extrapolate results beyond the scope of its data.[114]

- The petitioner's model should be rejected because it fails validation tests which are used to determine whether the coefficients generated by the regression analysis are stable. The results of such tests indicate that variables, including uneconomic capacity and iron ore, vary in magnitude and in sign when run over different sub-periods within the overall period.[115] As a result, the petitioner's conclusion that AUVs can be predicted by variables such as uneconomic capacity is invalid.

- The petitioner asserts that the preferred coefficients are those generated based on the analysis of the 2008-2017 data set, which is misguided. An analysis of the most recent time period is preferred, because those relationships are most likely to correspond to present relationships. In addition, statistical measures, such as R-squared and adjusted R-squared, are higher for the 2013-2017 period than the 2008-2017 period, which demonstrates that the coefficients from the 2013-2017 period are a better fit for the data.[116] This more accurate model indicates that an 85 percent capacity utilization rate would result in a cost reduction of HRC in Korea and, therefore, a downward adjustment to HiSteel's coil costs would be appropriate.[117]

- In the *Preliminary Results*, Commerce's PMS adjustment was based on a comparison of the actual AUVs for 2017 to the AUVs for 2017 predicted by the petitioner's regression model. However, eight months of the review period fall within 2018 and, therefore, an adjustment based on 2017 data is inappropriate. In fact, the information required to estimate AUVs for 2018 has been placed on the record.[118] Commerce should make the PMS adjustment using the 2018 figures and, if the 2017 figures need to be partly used, then Commerce should use the updated 2017 uneconomic capacity figure, which is on the record.[119]

Kukje Steel's Case Brief

- The petitioner's regression analysis relies on assumptions that justify its claim that the Korean pipe producers' HRC costs are understated by 49.35 percent and should have been $808.80 per metric ton in 2017, if the industry was at 85 percent capacity utilization.[120] The dependent variable in the petitioner's regression equation is the AUV for imported HTS 7208 for a subset of OECD countries as well as Brazil, China, India, Indonesia, and Russia. The

[114] *Id.* at 27-31.
[115] *Id.* at 32, Attachment 5, and Attachment 6 (citing HiSteel PMS Allegation Rebuttal at Attachment 18).
[116] *Id.* at 34-35, Attachment 5, Attachment 7, and Attachment 8 (citing PMS Allegation at 2 and Exhibit 1.1).
[117] *Id.* at 35.
[118] *Id.* at 36 (citing Kukje Steel PMS Allegation Rebuttal at Attachment P).
[119] *Id.* at 36-37 (citing Kukje Steel PMS Allegation Rebuttal at Attachment P.4B).
[120] *See* Kukje Steel Case Brief at 48 (citing PMS Allegation at Exhibit 1.3).

framework also takes into account steelmaking inputs, exchange rates, gross fixed capital formation, aluminum prices, and uneconomic capacity (an excess capacity variable).[121]

- The assumptions underlying the petitioner's regression framework include that for HRC production, a minimum 85 percent capacity utilization must be achieved to be profitable; the appropriate time frame for setting the coefficients of the model is from 2008 to 2017; the AUVs should be based on HTS 7208; the variables uneconomic capacity, iron ore, steel scrap, exchange rates, gross fixed investment, and aluminum prices should be included; and the adjustment factor should be calculated using 2017 values. These assumptions have been engineered by the petitioner in order to create a favorable outcome.[122]

- In the *Preliminary Results*, Commerce stated that the petitioner's regression equation was imperfect, but it accepted the proposed regression analysis and PMS adjustment with no modifications.[123] The petitioner's regression analysis, however, is an unacceptable basis for making a PMS adjustment. At a minimum, if the regression analysis is adopted, Commerce must correct the petitioner's data errors and use appropriate assumptions.

- A PMS adjustment should apply to a particular market and not a global market. Therefore, the use of global overcapacity in the regression analysis is illogical. In fact, the assumption that the relationship between each country and the excess capacity variable in the model is the same indicates that there is no PMS in Korea.[124]

- Kukje Steel's market-based purchase prices for HRC and its manufacturing costs for HWR pipe and tube do not suffer from any type of distortion. Since the petitioner does not provide an equilibrium price at which the costs of manufacturing HWR pipe and tube converge, Commerce should not make any PMS adjustment for the final results.[125]

- Even though the petitioner's regression model and results for the time period 2008 to 2017 were accepted by Commerce in the *Preliminary Results*, the regression model is not an acceptable methodology for evaluating the existence of a PMS in Korea or for quantifying a PMS adjustment.[126] Therefore, Commerce should not accept the petitioner's regression model or PMS adjustment for the final results.

- The petitioner's regression model results reveal a statistically significant negative correlation of -0.59 between uneconomic capacity and AUVs.[127] This result, however, is contrary to evidence, as excess capacity would not lead to price depression and, in fact, could be a result of lower production and supply of steel.[128] The petitioner fails to provide any evidence or

[121] *Id.* at 48-49.
[122] *Id.* at 49.
[123] *Id.* at 50 (citing *Preliminary Results* PDM at 16).
[124] *Id.* at 51.
[125] *Id.* at 51-52.
[126] *Id.* at 52-53 (citing *Preliminary Results* PDM at 16; *see also* PMS Allegation at Exhibit 1.1).
[127] *Id.* at 53 (citing PMS Allegation at Exhibit 1.1).
[128] *Id.*

explanation of how excess capacity, or the uneconomic capacity variable, is correlated with depressed prices. Therefore, the PMS adjustment resulting from these claims is unsupported.

- The petitioner's methodology is biased and flawed and, therefore, it cannot be relied upon by Commerce in the final results. More specifically, econometric problems exist with respect to the uneconomic capacity variable. The petitioner proposes using a model where uneconomic capacity is used to obtain estimated coefficients that are then used to calculate prices with a hypothetical capacity utilization level in Korea. In order for the model to be unbiased, the covariance of uneconomic capacity and the capacity utilization should be zero, meaning they are uncorrelated. Since domestic conditions in Korea have an impact on both Korean producers' capacity utilization and global excess capacity levels (*i.e.*, uneconomic capacity), the petitioner's model produces biased coefficient estimates. Even if the bias is ignored, the estimated coefficients cannot be used to determine prices because the petitioner estimates $\beta\gamma$, and the coefficient which needs to be applied is β.[129]

- Commerce used the gross fixed capital formation variable as a basis for accepting the petitioner's regression analysis.[130] The petitioner's results reveal a statistically insignificant negative correlation of -0.008 between gross fixed capital formation and the AUVs.[131] Gross fixed capital formation is a measure of demand, and the petitioner downplays the impact of demand side variables on steel prices.[132] The petitioner's arguments lack merit, since steel prices are a function of both supply and demand. In addition, the petitioner should not rely on gross fixed capital formation as a measure of macroeconomic demand for steel, since it is a broad category and not all assets are related to steel consumption. Even an industry specific analysis, which would have been superior to using gross fixed capital formation, would still yield an inaccurate formulaic correlation of steel prices and macroeconomic demand variables. For these reasons, the petitioner's regression-based PMS adjustment is unusable.[133]

- Commerce should reject the petitioner's regression-based PMS adjustment because of critical deficiencies in the model. First, the petitioner fails to support the inclusion of aluminum in the model, and record evidence does not support the proposition that global aluminum prices should be negatively correlated to the AUVs. Second, the petitioner fails to explain why oil, a relevant input to steelmaking, was not included in the model.[134]

- Commerce should reject the petitioner's regression-based PMS adjustment in the final results, because the petitioner fails to account for countervailable subsidies in the regression

[129] *Id.* at 54-56.
[130] *Id.* at 56 (citing *Preliminary Results* PDM at 16).
[131] *Id.* (citing PMS Allegation at Exhibit 1.1).
[132] *Id.* (citing PMS Allegation at 46, 55 and 98).
[133] *Id.* at 56-58.
[134] *Id.* at 58.

model. Countervailable subsidies are important to include because with them, domestic and imported prices of HRC converge to a lower market equilibrium price.[135]

- The petitioner fails to update the uneconomic capacity data for 2017, resulting in a data error that leads to an overstatement of the PMS adjustment. Therefore, Commerce should reject the petitioner's regression-based PMS adjustment in the final results because it contains flawed data.[136]

- The time period used by the petitioner in the regression model is flawed, because it begins in 2008, during a global recession, and ends in 2017, when the POR covers eight months of 2018. It would be better to use a longer time period that begins in 2003 or 2004 or a shorter time period that begins in 2010 or 2011 in order to avoid the distortive effects that an outlier year (*i.e.*, 2008) has on the data. The petitioner also fails to explain why 2018 data released by the OECD were not used in the regression model.[137] The petitioner appears to be selecting the time period which results in the highest PMS adjustment and, therefore, the adjustment should be rejected by Commerce.[138]

- The petitioner's assumption of an 85 percent capacity utilization rate in the regression model is unreasonable and not supported by record evidence. The petitioner has presented no evidence that global capacity utilization has reached 85 percent in the past 10 years or that it is the level at which global steel producers achieve sustained profitability. Commerce has found in its Section 232 investigation of steel imports that the industry benchmark to achieve operational efficiencies is an 80 percent capacity utilization.[139] The courts have spoken against using data that Commerce knows are incorrect, since it could lead to erroneous results.[140] Therefore, if Commerce continues to use the regression-based method, the capacity utilization rate assumption should be either 80 or 78 percent, consistent with OECD and World Steel Association 2018 data.[141]

- There is a lack of consistency in the petitioner's regression analysis, since slight changes in variables, assumptions, and data series produce wide-ranging results. This enables the petitioner to choose results based on their favored assumptions.[142] The petitioner chose, out of more than one hundred iterations, the one which resulted in the highest cost adjustment of 49.35 percent. The petitioner's data points include influential observations, which are explanatory variables that are outliers (*i.e.*, the 2008 and 2009 data sets in view of the financial crisis) and that also have a strong influence on the estimate of the coefficients.[143]

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[135] *Id.* at 58-59 (citing *WLP from Korea 2016-2017 Final Results* IDM at Comment 3).
[136] *Id.* at 59-60.
[137] *Id.* at 60-61 (citing Kukje Steel PMS Allegation Rebuttal at Attachment P).
[138] *Id.* at 61 (citing Kukje Steel PMS Allegation Rebuttal at Attachment P.3)
[139] *Id.* at 62 (citing PMS Allegation at 47-48 and Exhibit 89).
[140] *Id.* at 62-63 (citing *Co-Steel Raritan Inc. v. Int'l Trade Comm'n*, 357 F.3d. 1294, 1315-1316 (Fed. Cir. 2004); *see also Anshan Iron & Steel Co. v. United States*, 358 F. Supp. 2d 1236, 1242 (CIT 2004)).
[141] *Id.* at 63 (citing Kukje Steel's PMS Allegation Rebuttal at Attachment P.1).
[142] *Id.* at 63 (citing Kukje Steel's PMS Allegation Rebuttal at Attachment Q and Attachment O).
[143] *Id.* at 64 (citing Kukje Steel's PMS Allegation Rebuttal at Attachment Q).

- In addition, academic literature warns about the possibility of bias in fixed effects regressions.[144] Therefore, the question is whether each of the countries in the data has the same relationship with the explanatory variables.

- Any cost adjustment that Commerce makes as the result of a PMS finding should be related to commercial reality and be supported by evidence on the record. That being said, the petitioner's proposed regression framework is unsuitable for multiple reasons. First, the regression model accounts for various demand and supply side variables, but it excludes variables such as coking coal, which is essential in steel production, and, instead, includes prices for aluminum, which is not a material input into HRC production.[145] Second, the 85 percent capacity utilization rate is higher than Commerce's finding in its Section 232 investigation that 80 percent is a healthy capacity utilization rate for the steel industry.[146]

- Kukje Steel proposed numerous alternative regression analyses which demonstrate that changing certain assumptions (*i.e.*, using available 2018 capacity utilization data, changing the time period to begin after the global recession, using a lower capacity utilization rate, excluding the aluminum variable, and including an oil variable) results in a lower PMS adjustment.[147]

- Therefore, Commerce should not have used the petitioner's PMS adjustment in the *Preliminary Results* and should not use it for the final results. If Commerce uses a regression-based model to quantify a PMS adjustment in the final results, then the following adjustments to the petitioner's assumptions should be made: (1) use updated capacity and production figures for 2018; (2) assume a capacity utilization rate of 80 or 78 percent; (3) use a time period that begins in either 2003, 2004, 2010, or 2011; (4) add oil as an explanatory variable; and (5) exclude aluminum as an explanatory variable.[148]

- Another reason to reject the petitioner's proposed PMS adjustment is that its application would result in theoretically high profit margins for Kukje Steel's HRC supplier.[149] The petitioner provided no evidence to demonstrate that an HRC supplier has such high profit margins. Therefore, the proposed PMS adjustment would result in adjusted costs which would be incurred outside the ordinary course of trade.[150]

- Commerce is legally obligated to calculate AD margins as accurately as possible and, therefore, should correct the error of using the petitioner's regression-based PMS adjustment

[144] *Id.* (citing Kukje Steel's PMS Allegation Rebuttal at Attachment Q).
[145] *Id.* at 65.
[146] *Id.* at 65-66.
[147] *Id.* at 66-67 and Attachment 2 (citing Kukje Steel's PMS Allegation Rebuttal at Attachment P).
[148] *Id.* at 67-68.
[149] *Id.* at 68-69 (citing Kukje Steel's PMS Allegation Rebuttal at Attachment M.1).
[150] *Id.* at 69 (citing 19 CFR 351.102(35)).

in the *Preliminary Results* by making a much smaller or no PMS adjustment in the final results.[151]

Petitioner's Rebuttal Brief

- Commerce should continue to apply the petitioner's proposed regression analysis and PMS adjustment for the final results.[152] The proposed analysis regresses country-specific HRC AUVs against a variety of predictor variables in order to calculate a reasonable PMS adjustment. The PMS adjustment can be applied to the respondents' COP to eliminate the distortive impact of steel overcapacity on the Korean HRC market.[153] In *CWP from India AR 17-18*, Commerce recognized the inverse relationship between steel overcapacity and HRC prices as an empirical fact.[154] The petitioner's methodological choices, variables, and specifications are econometrically sound.[155]

- Kukje Steel's claim that there is no PMS with respect to Korea given that the petitioner's analysis relies on global overcapacity is misleading.[156] The global overcapacity crisis has a unique impact at the national level, resulting in different government and industry responses. Therefore, even though the crisis is global, it causes a PMS in Korea.[157]

- In *CWP from India AR 17-18*, Commerce rejected a respondent's argument that a global steel overcapacity crisis cannot be found to be particular to a national market.[158] Global steel overcapacity distorts steel prices and the petitioner's regression analysis quantifies the specific effects the crisis has on the Korean market.[159]

- Commerce previously recognized that the petitioner's regression analysis identifies and quantifies the effects of the global steel overcapacity crisis at the national level; the result of which is an adjustment that is country-specific, product-specific, and company-specific.[160] The petitioner's fixed effects parameter ensures that the model is particular to a given country and quantifies price distortions caused by global uneconomic capacity.[161]

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[151] *Id.* at 70. In its rebuttal brief, Kukje Steel argues that if Commerce accepts the petitioner's proposed regression framework, then the same adjustments made in *CWP from Korea AR 17-18* and *CWP from India AR 17-18 (e.g.*, lowering the capacity utilization rate to 80 percent) should be made in this review using 2018 data. *See* Kukje Steel Rebuttal Brief at 6-11 (citing *CWP from India AR 17-18* IDM at Comment 7 and *CWP from Korea AR 17-18* PDM at 13-14).
[152] *See* Petitioner's Rebuttal Brief at 36 (citing PMS Allegation at 40-60; *see also* Petitioner's Letter, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Pre-Preliminary Comments on CV Profit Information," dated October 31, 2019 (Petitioner Pre-Preliminary Comments)).
[153] *Id.* at 36 (citing PMS Allegation at 40-60).
[154] *Id.* at 37 (citing *CWP from India AR 17-18* IDM at Comment 7).
[155] *Id.* (citing PMS Allegation at Exhibit 4.2)
[156] *Id.* at 38 (citing PMS Allegation at 41-42; *see also* Kukje Steel Case Brief at 50-52).
[157] *Id.* (citing PMS Allegation at 41-42).
[158] *Id.* at 39 (citing *CWP from India AR 17-18* IDM at Comment 7).
[159] *Id.* (citing PMS Allegation at 40-60 and Exhibit 62).
[160] *Id.* at 40 (citing *CWP from India AR 17-18* IDM at Comment 1; *see also* PMS Allegation at 45 and 60).
[161] *Id.* (citing PMS Allegation at 47-48 and 57-58).

- Lastly, section 504 of the TPEA and the SAA accompanying the URAA indicate that there is no requirement that a PMS be unique to a country or that a PMS analysis focus on a single country.[162]

- Kukje Steel argues that the record evidence does not support finding a negative correlation between excess capacity and HRC import AUVs.[163] In *CWP from India AR 17-18*, Commerce confirmed that there was a global overcapacity crisis.[164] Commerce has rejected similar arguments in other cases by confirming a link between overcapacity and depressed steel prices.[165] The respondents offer no evidence to dispute the inverse relationship between uneconomic capacity and HRC prices.[166]

- Kukje Steel argues that the petitioner's OLS methodology contains econometric flaws and that the regression produces biased coefficient estimates.[167] Kukje Steel incorrectly assumes that the petitioner uses measures of global steel overcapacity as a proxy variable for capacity utilization in Korea; the analysis does not use proxy variables but, instead, examines the effect of global steel overcapacity on Korean steel prices. [168]

- HiSteel argues that the petitioner's regression model fails to adhere to the hierarchical principle and to account for intemporal endogeneity, autocorrelation, multicollinearity, and heteroskedasticity.[169] These assertions are incorrect.

    - First, HiSteel argues that the petitioner's model fails to apply the hierarchical principle, because it multiplies the explanatory variables rather than considering their separate impact on the AUVs. However, this is incorrect since the relationships in the petitioner's OLS modeling are based on a linear equation that adds the independent variables.[170] Commerce confirmed in *CWP from India AR 17-18* that the OLS model is recognized in econometrics as being the best unbiased model for determining a linear relationship between variables.[171] HiSteel incorrectly assumes that the petitioner's model includes interaction terms and is mistaken in its understanding that the petitioner's use of logs indicates that the explanatory variables are being multiplied.[172] Therefore, because the

[162] *Id.* at 40-41 (citing *CWP from India AR 17-18* IDM at Comment 1; *see also* Sec. 504 of the TPEA; and SAA at 822).
[163] *Id.* at 41 (citing Kukje Steel Case Brief at 53-54).
[164] *Id.* (citing *CWP from India AR 17-18* IDM at Comment 1).
[165] *Id.* at 41-42 (citing *Welded Line Pipe from Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 1023 (January 9, 2018) (*WLP from Korea AR 15-16 Prelim*); *see also CWP from India AR 17-18* IDM at Comment 7).
[166] *Id.* at 42 (citing Kukje Steel Case Brief at 54; *see also* PMS Allegation at 40-60).
[167] *Id.* at 42-43 (citing Kukje Steel Case Brief at 54-56).
[168] *Id.* at 43 (citing Kukje Steel Case Brief at 54-56; *see also* PMS Allegation at 40-60; and Petitioner Pre-Preliminary Comments at 7-11).
[169] *Id.* (citing HiSteel Case Brief at 18-27).
[170] *Id.* at 44 (citing HiSteel Case Brief at 18-27;
[171] *Id.* (citing *CWP from India AR 17-18* IDM at Comment 1).
[172] *Id.* (citing HiSteel Case Brief at 18).

hierarchical principle applies to regression frameworks relying on interaction terms, HiSteel's claims are irrelevant.[173]

- Second, HiSteel claims that the petitioner's model fails to account for endogeneity bias.[174] However, the petitioner's model avoids endogeneity bias, reverse causation, and circularity.[175] The petitioner's definition of excess capacity (*i.e.*, uneconomic capacity) does not rely on current steel production, thus avoiding any reverse causality. The petitioner's additional analysis revealed that the degree of endogeneity bias is statistically insignificant.[176] The petitioner also compared results from the OLS and a 2SLS regression to address any outstanding concerns about reverse causality.[177]

- Third, HiSteel claims that the petitioner's model suffers from multicollinearity and, therefore, cannot be estimated by an OLS regression. This claim is flawed because virtually all econometric models contain a degree of multicollinearity.[178] While multicollinearity can be a legitimate concern, it is not relevant for determining the effect of uneconomic capacity or the statistical significance of that effect. Multicollinearity also does not bias or invalidate estimated coefficients, but rather impacts the variance of the estimators.[179] Multicollinearity becomes an issue when it involves the explanatory variable of interest (*i.e.*, uneconomic capacity) and has no relevance when it exists between control variables (*i.e.*, global fixed capital formation (GFCF), iron ore prices, scrap prices, and aluminum prices). Therefore, HiSteel's argument is invalid because it applied the variance inflation factor (VIF) test to the petitioner's control variables and failed to demonstrate that the explanatory variable is affected by multicollinearity.[180]

- Fourth, HiSteel's claims with respect to autocorrelation and serial correlation in the petitioner's model are merely conjecture.[181] Autocorrelation and temporal issues have no impact on the estimated effect of uneconomic capacity.[182] While HiSteel applied the Durbin-Watson test, the petitioner used the Prais-Winsten regression, which accounts for serial correlation. When applied, the results were nearly identical to the petitioner's model, which indicates that serial correlation is not an issue.[183]

- Lastly, HiSteel uses the Breusch-Pagan test to claim that the petitioner's model does not satisfy homoskedasticity requirements.[184] This claim is misplaced because similar to multicollinearity and autocorrelation, heteroskedasticity is an issue that relates to

[173] *Id.* at 44-45 (citing PMS Allegation).
[174] *Id.* at 45 (citing HiSteel Case Brief at 20-22).
[175] *Id.* (citing PMS Allegation at 40-60).
[176] *Id.* (citing PMS Allegation at 44).
[177] *Id.* (citing PMS Allegation at 42-43)
[178] *Id.* at 45-46 (citing HiSteel Case Brief at 22; *see also* PMS Allegation at Exhibit 1.1).
[179] *Id.* at 46 (citing PMS Allegation at Exhibit 1.1).
[180] *Id.* at 46-47 (citing HiSteel Case Brief at 22).
[181] *Id* at 47 (citing HiSteel Case Brief at 22-25).
[182] *Id.* (citing PMS Allegation at 40-60).
[183] *Id.* at 48 and Attachment 1.
[184] *Id.* at 48 (citing HiSteel Case Brief at 24-25).

statistical significance. The petitioner demonstrates that heteroskedasticity does not undermine the reliability of its model by generating three versions: (1) the original model; (2) a version of the model with heteroskedasticity-robust standard errors; and (3) a version of the model with year-clustered standard errors.[185] The result of each version is that the effect of uneconomic capacity is highly significant, indicating that heteroskedasticity is not an issue.

- It is standard to account for macroeconomic conditions in a regression analysis with a measure such as the gross domestic product (GDP).[186] In its model, the petitioner uses GFCF, since that variable includes economic activities that use HRC.[187]

- Kukje Steel's claim that the petitioner's model has a statistically insignificant negative correlation between GFCF and HRC import AUVs is not supported by evidence.[188] In addition, Kukje Steel's recommendation to select a steel-user industry, such as the construction sector, is not a superior approach. The construction sector covers many non-steel items and excludes other steel-user industries, like machinery.

- Lastly, Kukje Steel argues that the petitioner's regression model cannot capture factors such as fiscal, monetary, and taxation policies which impact steel production. However, those policies impact steel demand and are, therefore, captured within the GFCF variable in the petitioner's model. Commerce has stated that evaluating the appropriateness of variables based on correlation coefficients, such as Kukje Steel does with respect to GFCF, is contradictory to scientific methods.[189]

- It seems that Kukje Steel expected the GFCF variable to have a positive and statistically significant impact on HRC prices. However, the petitioner's analysis indicates that there is a statistically significant inverse relationship between global overcapacity and HRC prices, which is not impacted by a macroeconomic measure, such as GFCF.[190]

- GFCF is highly positively correlated with steel consumption. Therefore, Kukje Steel's claim that GFCF is not an appropriate demand driver is not valid.[191] Further, in *CWP from India AR 17-18*, Commerce recognized GFCF as an appropriate demand driver.[192]

- Kukje Steel questions the validity of the petitioner's regression model based on the claim that the direction of the correlation between aluminum prices and HRC prices is different from the direction of the regression coefficient.[193]

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[185] *Id.* at 48-49 and Attachment 1.
[186] *Id.* at 49 (citing PMS Allegation at 45-47).
[187] *Id.*
[188] *Id.* at 50 (citing Kukje Steel Case Brief at 56-58).
[189] *Id.* at 51 (citing Kukje Steel Case Brief at 56-58; *see also CWP from India AR 17-18* IDM at Comment 7).
[190] *Id.* at 51-52 (citing Kukje Steel Case Brief at 56-58; *see also* PMS Allegation at 45-47 and Exhibit 1.4).
[191] *Id.* at 52 and Attachment 1 (citing Kukje Steel Brief at 56-58).
[192] *Id.* at 52-53 (citing *CWP from India AR 17-18* IDM at Comment 7).
[193] *Id.* at 53 (citing Kukje Steel Case Brief at 58).

- In its assertion, Kukje Steel is conflating the definitions of a regression coefficient and of a correlation coefficient. It is a well-established principle that a multivariate regression coefficient can differ in direction from a correlation coefficient.[194] Moreover, Commerce determined that the aluminum coefficient is consistent with economic theory in *CWP from India AR 17-18*.[195] Lastly, it is important to note that the inclusion or exclusion of the aluminum price variable does not change the outcome of the regression analysis, as long as the coefficient for uneconomic capacity remains strongly negative statistically significant.[196]

- Kukje Steel incorrectly claims that the petitioner's regression analysis does not account for countervailable subsidies.[197] Import AUVs are intrinsically linked to domestic steel prices.[198] Kukje Steel acknowledges that domestic and imported prices converge at an equilibrium; however, the respondent fails to understand that since the petitioner's model relies on import AUVs, it captures the impact of countervailable subsidies as well as other dynamics in the steel market.[199]

- Kukje Steel claims that the petitioner's assumption of an 85 percent capacity utilization rate is flawed. In addition, HiSteel argues that the petitioner cannot properly extrapolate the AUVs during the 2008 through 2017 time period because capacity utilization never reached 85 percent.[200] These arguments are incorrect.

- In *CWP from India AR 17-18*, Commerce used an 80 percent capacity utilization rate.[201] However, for the model, the petitioner's assumption of an 85 percent capacity utilization rate is reasonable. Multiple studies, including Commerce's Section 232 report, indicate that a global rate above 80 percent is necessary for the steel industry's viability.[202]

- The purpose of the petitioner's regression analysis is to identify a global capacity utilization rate. It would, therefore, be inappropriate to apply a rate that is specific to a U.S. industry benchmark. The U.S. industry has a higher proportion of electric arc furnace (EAF) mills while internationally, steel mills rely more on blast oxygen furnaces (BOFs). China, in particular, is dominated by integrated production, which incurs higher fixed costs.[203] A study from a time when the U.S. industry was more integrated found that an 85 percent capacity utilization rate was necessary for higher profitability.[204]

[194] *Id.* (citing PMS Allegation at 45-47 and Exhibit 1.4).
[195] *Id.* (citing *CWP from India AR 17-18* IDM at Comment 7).
[196] *Id.* at 54 (citing PMS Allegation at Exhibit 1.7).
[197] *Id.* (citing Kukje Steel Case Brief at 58-59).
[198] *Id.* (citing PMS Allegation at 52-53).
[199] *Id.* at 54-55 (citing Kukje Steel Case Brief at 59).
[200] *Id.* at 55 (citing Kukje Steel Case Brief at 61-63; *see also* HiSteel Case Brief at 28-31).
[201] *Id.* (citing *CWP from India AR 17-18* IDM at Comment 7).
[202] *Id.* at 56 (citing PMS Allegation at 55, Exhibit 1.8, and Exhibit 6).
[203] *Id.* (citing PMS Allegation at Exhibit 1.9).
[204] *Id.* at 56 (citing PMS Allegation at Exhibit 1.8).

- Commerce accepts that there are lingering effects of global steel overcapacity in 2017 and 2018 and confirms that the crisis has impacted the Korean steel market.[205] The record data demonstrate that the estimated global capacity utilization rate for 2018 is 78.1 percent.[206] However, Commerce also recognizes that the global steel industry has not yet reached a healthy operating level. Therefore, 80 percent is not an appropriate benchmark for this analysis. During 2008 to 2017, global capacity utilization rates ranged from 64.4 to 80 percent. The fact that the global capacity utilization rate did not reach 85 percent does not impact the regression model's predictive power.[207]

- Kukje Steel and HiSteel object to using 2008 as the starting point for the time period. However, the petitioner's regression framework includes all years for which overcapacity crisis data are available, which includes 2008 and 2009.[208] In previous cases, Commerce defended the inclusion of data from 2008 and 2009 in order to capture the relationship between global uneconomic capacity and HRC prices.[209]

- It is clear that the global excess capacity crisis increased from 2008 to 2015. Therefore, the alternate iterations of the OLS model provided by Kukje Steel and HiSteel, which exclude 2008 and 2009, should not be used.[210]

- Commerce has found that the primary cause of increased global excess capacity was the expansion of China's steel industry and that the relationship between global capacity and global production fundamentally changed beginning in 2008.[211]

- Commerce should reject the respondents' recommendations to exclude data from 2008 and 2009 because: (1) by excluding two years of data, approximately 20 percent of the data is removed and Commerce should be wary of sample size reductions;[212] and (2) HiSteel's analysis of the R-squared values in an attempt to demonstrate that a 2013 to 2017 time frame better fits the data is misleading.[213]

- While the petitioner does not advocate removing data, an analysis using quarterly time periods indicates that removing time periods, while maintaining an adequate sample size, results in the same large, negative, statistically significant relationship between uneconomic capacity and Korean steel prices.[214]

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[205] *Id.* at 57-58 (citing *CWP from India AR 17-18* IDM at Comment 1).
[206] *Id.* at 58 (citing Kukje Steel PMS Allegation Rebuttal at Exhibit 3).
[207] *Id.* at 58-59 (citing PMS Allegation at Exhibit 1.11).
[208] *Id.* at 59 (citing Kukje Steel Case Brief at 60; *see also* HiSteel Case Brief at 34; and PMS Allegation at 50-51).
[209] *Id.* (citing *CWP from India AR 17-18* IDM at Comment 7; *see also CWP from Turkey AR 17-18* IDM at Comment 2).
[210] *Id.* at 59-61 (citing Kukje Steel Case Brief at 60 and Attachment 2; *see also* HiSteel Case Brief at 32-34; and PMS Allegation at Exhibit 1.5).
[211] *Id.* at 61 (citing *LDWP from Korea* IDM at Comment 2; *see also WLP from Korea AR 15-16 Prelim* PDM at 15).
[212] *Id.* at 63 (citing PMS Allegation at Exhibits 1.2, 1.5, and 4.5; *see also CWP from India AR 17-18* IDM at Comment 7).
[213] *Id.* at 63-64 (citing HiSteel Case Brief at 34-35).
[214] *Id.* at 64-65 and Attachment 2 (citing PMS Allegation at Exhibit 1.10).

- In order to assess the predictive power of a model, one can perform an out-of-sample prediction or out-of-sample testing.[215] These tests result in out-of-sample AUVs which can then be compared to the actual model's AUVs to assess accuracy. When applied to the petitioner's model, these tests revealed that there is a strong, statistically significant relationship between the out-of-sample AUVs and the actual AUVs. The results indicate that the petitioner's model has accurate predictive power with respect to Korea.[216] It is important to note that the model's explanatory power is substantially more accurate than the predictive power, because it incorporates all available data.

- Kukje Steel and HiSteel claim that the petitioner ignored 2018 data and Kukje Steel further claims that the petitioner did not use updated uneconomic capacity data for 2017.[217] In the petitioner's model, the time-variant variables must reflect the same period. When collecting data, certain data for 2018 were not available. Therefore, in order to have a full dataset for each time-variant variable, the petitioner used the most recent annual figures for 2017.[218] Kukje Steel's iteration of the model where it claims to use updated data for 2018 actually uses only partially updated data, which is a flawed approach.[219] Commerce should find that the data in the petitioner's OLS regression and the subsequent analysis and resulting PMS adjustment are contemporaneous to the period.[220]

- Kukje Steel suggests modifications to the petitioner's model and provides alternative iterations.[221] In *CWP from India AR 17-18* and *CWP from Turkey AR 17-18*, Commerce did not use the petitioner's PMS adjustment calculation methodology and, instead, used a technically flawed approach. Specifically, Commerce applied the regression coefficient for uneconomic capacity to the percent difference between current uneconomic capacity and a counterfactual uneconomic capacity.[222] On the other hand, the petitioner calculates the PMS adjustment by determining what the HRC price would be if uneconomic capacity were at a certain level and what the percent difference is in that expected price and the actual price.[223] The robustness of the petitioner's model is proven with evidence on the record.[224]

- With respect to Kukje Steel's request to include oil prices, there is no benefit in including every raw material, but only those with the highest explanatory power. Therefore, the petitioner's model focuses on scrap and iron ore.[225]

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[215] *Id.* at 66-67.
[216] *Id.* at 67-68 and Attachments 1 and 2.
[217] *Id.* at 69 (citing HiSteel Case Brief at 36-37; *see also* Kukje Steel Case Brief at 59-61).
[218] *Id.* at 69-70 (citing PMS Allegation at 40-60).
[219] *Id.* at 70 (citing Kukje Steel PMS Allegation Rebuttal at Exhibits P.4 and P.8).
[220] *Id.* at 71.
[221] *Id.* at 71 and 72 (citing Kukje Steel Case Brief at 63-68 and Attachment 2).
[222] *Id.* at 72-73 (citing *CWP from India AR 17-18* IDM at Comment 7; and *CWP from Turkey AR 17-18* IDM at Comment 2).
[223] *Id.* at 72 (citing PMS Allegation at 40-60 and Exhibit 1.3).
[224] *Id.* at 73 (citing PMS Allegation at Exhibits 1.1, 1.2, 1.4, and 1.7).
[225] *Id.* at 73-74 and Attachment 1 (citing PMS Allegation at Exhibit 1.1).

- Kukje Steel argues that the petitioner has not explained why HRC suppliers would have high profit margins given the PMS adjustment.[226] The respondent's analysis, however, is based on a singular experience and is not representative of the entire Korean HRC market.

- Commerce stated in *CWP from Turkey AR 17-18* that, while the regression model under consideration was imperfect, it included an appropriate number of variables and had a reasonable approach.[227]

- The petitioner has compiled the best available data and has tested the model to prove its integrity.[228] The respondents critiqued the model, but they failed to answer why there is such a powerful statistical relationship between global overcapacity and declining steel prices if the former is not the cause of the latter. There is no doubt that the petitioner's model demonstrates a link between excess capacity and steel prices and sufficiently quantifies the impact of the PMS.[229] Commerce should adopt the petitioner's proposed PMS adjustment methodology for the final results and make an upward adjustment to the respondents' HRC input costs as determined by the regression analysis.

Commerce's Position:

As an initial matter, we note that neither section 773(e), section 771(15), nor any other provision of the Act mandates either what constitutes a cost-based PMS or how Commerce may "use another calculation methodology" to establish the "cost of materials and fabrication" of the merchandise covered by the scope of an order. As a result, Commerce has established "another calculation methodology," where it has adjusted the respondent's reported COP to account for distortions in input costs based on a determination of a cost-based PMS.

In the *Preliminary Results*, we quantified the impact of the PMS in Korea by making an upward adjustment to the respondents' reported HRC costs, basing that adjustment on the petitioner's regression analysis.[230] We continue to find that the regression analysis submitted by the petitioner is a reasonable method to quantify the relationship between global uneconomic capacity and the price of HRC inputs. For these final results, we continue to find that the adjustment factor resulting from the regression analysis, with certain adjustments adopted by Commerce, appropriately quantifies the impact of the PMS concerning the distortion in cost of HRC that we find to have existed in Korea during the POR.[231]

[226] *Id.* at 75 (citing Kukje Steel Case Brief at 68-69).
[227] *Id.* at 75-76 (citing *CWP from Turkey AR 17-18* IDM at Comment 2).
[228] *Id.* at 76 (citing PMS Allegation at 40-60).
[229] *Id.* at 77 (citing PMS Allegation at Exhibits 1.1, 1.2, 1.3, and 1.7).
[230] *See Preliminary Results* PDM at 16; *see also* PMS Allegation.
[231] *See* HiSteel Final Calculation Memo; *see also* Kukje Steel Final Calculation Memo.

Regression Analysis

Appropriate Beginning and End of Annual Time Series Data

Kukje Steel argues that data from 2008 and 2009 should not be included in the analysis because they correspond to the global financial crisis. Commerce notes that a period of ten years allows for an adequate amount of data and ensures consistency of the regression analysis from one proceeding to another. Furthermore, it is an appropriate length of time for quantification of the effect of overcapacity on steel prices. Moreover, Commerce finds that the financial crisis of 2008-2009 is the main event of interest in the analysis, because the subsequent decline in global steel demand resulting from the crisis instigated the Chinese stimulus, and increased GOC investment and spending to boost the steel industry. Therefore, in addition to the fact that the financial crisis falls within the ten year period preceding and including the POR, data from 2008-2009 should be included in the regression, because they account for the volatile period and price fluctuations in the defining years of the global overcapacity crisis that still affect steel import prices today.

The respondents argue that the regression should also include 2018, which covers eight months of the POR. However, using data from all of 2018 would clearly reflect costs associated with production subsequent to the POR, and even much of the production in the first half of 2018 would likely relate to sales occurring outside the POR. Since the POR ended on August 31, 2018, the 2018 data include information that falls subsequent to the POR and, thus, does not reflect the cost of goods that were sold during the POR. Therefore, we have accepted the model using data up to and including 2017.

Concerning using updated 2017 data for global production and capacity, the updated production figures for 2017 (1,729 MT) were published in the World Steel Association's World Steel in Figures Report in June 2019, after the PMS allegation by the petitioner was filed in April 2019. Additionally, the updated global steel capacity figures for 2017 were published by the OECD in its "Capacity Developments in the World Steel Industry" report in July 2019, also after the allegation was filed. Therefore, neither the updated 2017 capacity or 2017 production totals were available to the petitioner at the time the allegation was filed, and Commerce, therefore, disagrees with the respondents that the PMS regression and adjustment calculated by the petitioner should have included updated 2017 capacity and production data, since it included the most up-to-date data at the time the allegation was filed.

Choice of Independent Variables

Commerce finds that the regression used by the petitioner to make the PMS adjustment, although imperfect, includes a reasonable number of independent variables that include acceptable categories (*e.g.*, supply and demand side) of factors affecting steel prices. With respect to the respondents' argument that the model should include a price for coking coal as an input, rather than aluminum, we note that the model submitted does include prices for inputs (scrap and iron ore), and that aluminum is included in order to account for the effects of the costs of steel substitutes. We acknowledge that accounting for energy as a cost variable in the regression might be appropriate, if the evidence on the record contained the appropriate energy costs that

could be used in such a calculation. However, Kukje Steel has provided no explanation as to why Brent Crude oil, alone, is the most appropriate form of energy to include, rather than electricity, natural gas, or a combination of all (or some) of these forms of energy, for example. Therefore, making such an adjustment absent accurate energy cost information could in fact result in an overall less, not more, representative calculation.

Furthermore, even if more accurate energy data were included on the record, Commerce concludes that, in general, although energy costs (and a multitude of other factors) affect import AUVs, adding too many variables to a regression that already includes six independent variables risks overfitting the model. In other words, overstating the relationship between steel prices and raw material input costs may provide a higher R-squared value and a correspondingly high level of fit, but likely also mischaracterizes the relation by focusing on too many factors. This "overspecification," therefore, risks incorrectly quantifying the level of price distortion. Lastly, adding energy costs is not necessary because the petitioner's regression already accounts for the two most universal raw inputs in the steelmaking process (*i.e.* iron ore and scrap) and adding a third variable to account for every possible factor affecting national import prices could be problematic. For the above reasons, in these final results we reject the argument for use of energy costs as an explanatory variable in the regression used to quantify the PMS.

Potential Bias of Independent Variables

HiSteel argues that the petitioner's regression model fails to adhere to the hierarchical principle and to account for intemporal endogeneity, autocorrelation, multicollinearity, and heteroskedasticity.[232] Concerning endogeneity, Commerce notes that none of the variables in the petitioner's model is lagged or directly dependent on another lagged variable in the model. To ensure that the model minimizes endogeneity bias, the petitioner defines Uneconomic Capacity as current capacity minus the largest production of crude steel in the ten years prior to the current year. Moreover, Commerce's PMS calculation methodology now considers the average production of the past five years (*i.e.*, 2013-2017) instead of only 2017, which also reduces the probability of endogeneity in the model. Furthermore, common treatments for endogeneity include a first-difference or fixed-effect model,[233] as well as instrumental variables estimation through 2SLS. The 2SLS alternative model put on the record by petitioners produces coefficients similar to the ones produced by the OLS model, indicating that any endogeneity in the OLS model is not significant enough to invalidate its results.[234]

Concerning multicollinearity, autocorrelation, and heteroskedasticity[235] Commerce finds that multicollinearity does not bias or invalidate estimated coefficients, but rather impacts the variance of the estimators[236] and that virtually all-time series data contain a degree of multicollinearity. As such, the presence of multicollinearity in the model and the absence of

[232] *Id.* (citing HiSteel Case Brief at 18-27).
[233] *See* June 17 NFI Memo (containing part 3 of J.M. Wooldridge's textbook "Introductory Econometrics: A Modern Approach," 5th Edition 2013, advanced topics, chapters 14 and 15).
[234] *See* PMS Allegation, Exhibit 56.
[235] *See* HiSteel Case Brief at 18-27.
[236] *See* PMS Allegation at 47.

perfect exogeneity does not necessarily invalidate the model results, as the respondents claim. With regards to autocorrelation, in Commerce's view, a Durbin-Watson test is more appropriate for "pure" time-series models (*i.e.*, those without any cross sectional data) as opposed to a regression based on panel data such as the one put on the record by the petitioner in this review. Furthermore, Wooldridge explains that in cases where variables are not strictly exogenous, as is the case in this review, neither a t test nor Durbin-Watson statistic are valid.[237] Finally, although the petitioner's model may include some level of heteroskedasticity (as expected to some extent in all models that include time series data), the evidence on the record does not suggest that the level is high enough for the model output to be considered invalid.

Therefore, we have determined that the regression analysis submitted by the petitioner is a reasonable method to quantify the relationship between global uneconomic capacity and the price of steel inputs, and, using the methodology described below, have used it to calculate an adjustment for the purchase price of HRC to reflect the distortions in the HRC market that we found to exist during the POR. In our view, the regression analysis submitted by the petitioner, and the adjustments adopted by Commerce, sufficiently quantify the impact of the PMS on the material cost of HRC, and derive a corresponding adjustment factor that, when applied to the costs of purchased HRC, accounts for the distortions induced by the observed PMS.

Calculation of the PMS Adjustment

Beta Coefficient on the Uneconomic Capacity Variable

Commerce finds that use of the regression coefficient for uneconomic capacity as the basis for the PMS adjustment is directly related to the principal cause for a cost-based PMS in the Korean HRC market. The adjustment proposed by the petitioner is based on calculating a counterfactual HRC import AUV, which is dependent upon changes in uneconomic capacity as well as the other independent variables which are not directly related to the alleged cost-based PMS. Therefore, in order to isolate the factors contributing to the cost-based PMS in the Korean HRC market, and in order to capture the *ceteris paribus* effect (*i.e.*, holding all other factors constant) for global uneconomic capacity in the steel industry on HRC AUVs in Korea, Commerce has relied on the regression coefficient associated with uneconomic capacity to quantify the PMS adjustment to the respondents' reported HRC costs.

Capacity Utilization Rate

The petitioner maintains that an assumption of an 85 percent capacity utilization rate is reasonable.[238] However, we find here, as we did in *CORE from Korea 2017-2018*, that an 80 percent target capacity utilization rate is reasonable in the steel context.[239] Commerce recognizes that global capacity utilization rates have been no greater than 80 percent since 2007,[240] and that all the steel production and capacity data included in the model are from a period where the

[237] *See* Wooldridge 5th edition, (2013) chapters 10, 14 and 15.
[238] *See* PMS Allegation at Exhibit 90.
[239] *See CORE from Korea 2017-2018* IDM at 31.
[240] *See* PMS Allegation at Exhibit 108 (OECD Steel Market Developments 2018 Q4 report, dated January 11, 2019).

prevailing capacity utilization rate was substantially lower than the level assumed by the petitioners as being "healthy." Commerce has in the past also endorsed an 80 percent capacity utilization rate as being sufficient for profitable operations of the steel industry and has used the 80 percent target in its Section 232 investigations.[241] As a result, we have determined for these final results to rely on a target capacity utilization rate of 80 percent.

Use of a five-year average of global production to calculate counterfactual global capacity

In addition to our decision to apply an 80 percent capacity utilization rate as a reasonable counterfactual for these final results, in light of the many arguments provided to Commerce on this issue, we have determined to revisit the period of time which we analyze for purposes of determining counterfactual global production capacity. As a result of our reconsideration of that period, we have determined that there are legitimate concerns with a methodology that measures the economic health of the entire steel industry using the experience of the industry during a single year.

Upon consideration of the arguments of the parties, we concluded that it was important to place certain steel reports and other information on the record which we believe provide additional guidance on the record as to factors which the steel industry normally uses in analyzing sales and production trends, and we asked for parties to comment on that information and provide rebuttal information.[242]

After further consideration of those sources, as well as the submissions of the parties, we have concluded that the 80 percent target should be based on an average rate calculated over a number of years, and not just a single year. We do not believe that data indicating that an 80 percent target has been reached for a single year necessarily implies that more than a decade of price suppression in the steel industry has suddenly been ameliorated. The global crisis in steel excess capacity has been severe, and we agree with the petitioner, who has argued that its effects cannot be undone by a one-off increase in global production.[243]

Looking to the record information, we conclude that a more rational, industry-specific period of consideration for purposes of determining the economic health of the steel industry is one that takes into account five years worth of data.

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[241] *Id.* at Exhibit 1.8 (U.S. Department of Commerce, Bureau of Industry and Security Office of Technology Evaluation, "The Effect of Imports of Steel on the National Security - An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, As Amended," dated January 11, 2018).

[242] *See* June 17 NFI Memo (containing part 3 of J.M. Wooldridge's textbook "Introductory Econometrics: A Modern Approach," 5th Edition 2013); *see also* June 19 NFI Memo (containing reports by the Korean Iron and Steel Association (2019), The Japan Iron and Steel Federation (2020), Asociacion LatinoAmericana del Acero (2019), and EUROFER (2019-2024)).

[243] *See* Petitioner Rebuttal Brief at 58 ("In adopting 80 percent as indicative of a healthy industry, the Department implicitly assumes the global steel industry in 2018, operating a rate very close to, if not at 80 percent, is essentially a healthy industry that no longer suffers from any impact of the global steel overcapacity crisis or its price suppression effects . . . .").

A five-year average represents a rational, medium term perspective for assessing the economic health of the industry which takes into consideration some fluctuation in the market and provides a reasonable basis on which to assess future prospects. A five-year average is frequently relied upon in the steel industry for statistical reporting to show trends in production and capacity.[244] Five years is a typical timeframe for strategic planning to outline the operational and financial objectives of an enterprise, including in the steel industry.[245] In addition, a five-year average for capacity utilization has been used in other steel policy initiatives of the U.S. government.[246]

Thus, we find that a counterfactual global production capacity based on a longer, 5-year time frame is more consistent with steel industry planning and considerations, the capital-intensive nature of the steel industry, and susceptibilities to market fluctuations that accompany steel production, purchases, and sales. Accordingly, the counterfactual global production capacity we are relying on in our determination is based on the average of global production during a five-year period, including the contemporaneous year, rather than just on the production of steel during the contemporaneous year alone.

Reliance on the Information Placed on the Record on June 17th and June 19th

As explained in prior proceedings that sought to quantify a PMS adjustment, Commerce has, and will continue to, refine and adapt its methodology for quantifying the impact of a cost-based PMS.[247] In this case, as well as prior cases, in which the regression analysis has been challenged by multiple parties, one of the primary challenges has been selecting the appropriate factors to determine the level of capacity utilization considered by Commerce in that analysis.[248] Thus, as we have explained, in response to those expressed concerns, Commerce placed information on the record and invited comments and rebuttal information.[249] Some of the interested parties have argued that Commerce was legally prohibited from putting that information on the record late in

[244] For example, five-year averages are used to show trends by the Korean Iron and Steel Institute, the Japan Iron and Steel Federation, and ALACERO, the Latin American Steel Association. *See* June 19 NFI Memo.
[245] A recently released strategic plan presented by EUROFER, the European Steel Association, uses a five-year period. *See* June 19 NFI Memo.
[246] Treasury looked at five-year averages when establishing a minimum "fair" import price as part of the Trigger Price Mechanism, (*e.g.*, *Imported Steel Mill Products Trigger Price Mechanism: First Quarter 1980 Revision of Trigger Prices*, 44 Fed. Reg. 67,748 (1979)).
[247] *See CORE from Korea 2017-2018* IDM at 32-33 (explaining that Commerce intends to continue refining and adapting its methodology to quantify the impact of a cost-based PMS); *Large Diameter Welded Pipe from the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 83 FR 43651 (August 27, 2018), and accompanying PDM at 16-17 (explaining that Commerce will continue to develop its analysis necessary to address PMS allegations) (unchanged in *LDWP from Korea*).
[248] Specifically, interested parties have raised numerous arguments about the appropriate level of global steel capacity utilization to be relied on in calculating an adjustment. *See* Kukje Steel Case Brief at 61-63; HiSteel Case Brief at 27-31; and Petitioner's Rebuttal Brief at 55-59; *see also CWP India 2017-2018 Final Results* IDM at 2-3 and Comment 7; and *CWP from Turkey 2017-2018 Final Results* IDM at Comment 2.
[249] *See* June 17 NFI Memo and June 19 NFI Memo. Kukje Steel claims that Commerce did not allow for comment. Kukje NFI Rebuttal Submission at 2-3. However, we disagree with Kukje Steel, and there is zero evidence supporting such a claim. Commerce invited parties to "submit factual information to rebut, clarify, or correct" the information, in accordance with 19 CFR 351.301(c)(4), and in their filings, interested parties, did, in fact, provide comments as well. Furthermore, Commerce stated in its June 19, 2020 memorandum that it would "not accept sur-rebuttal comments," but at no time made the same claim as to initial comments.

the proceeding and argue that they were deprived of due process because of the placement of that data on the record late in the proceeding.[250] We disagree.

First of all, with respect to the pages of the textbook which Commerce added on June 19, 2020, the parties already had placed pages from that textbook on the record,[251] and the parties were aware that in this case the textbook was relevant to Commerce's developing methodology in quantifying a PMS adjustment. Accordingly, we disagree that there were any procedural deficiencies which would have surprised or otherwise inconvenienced the parties by Commerce placing that data on the record.

Second, Commerce has fully complied with its regulations, specifically 19 CFR 351.301(c)(4), which states that Commerce "may place factual information on the record of {a} proceeding at any time" and provides that "an interested party is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information placed on the record of the proceeding" by Commerce. Commerce acted in accordance with that regulation in placing the steel reports and excerpts from the Wooldridge textbook on the record and inviting comments and rebuttal information.

Third, Commerce acted consistent with its past practice when Commerce has realized, upon consideration of arguments made by the parties later in a proceeding, that supplemental data might be beneficial.[252] Commerce's regulation and practice both are in accordance with Commerce's procedural requirements under the Act.

Finally, section 782(g) of the Act provides parties with an opportunity to "comment on the information obtained by {Commerce} upon which the parties have not previously had an opportunity to comment." We have satisfied the requirements of that provision by allowing interested parties to respond to the June 17th and June 19th memoranda. We understand that HiSteel and Kukje Steel argue that, although they were given an opportunity to comment on the steel reports and excerpts from the Wooldridge textbook, they did not know the specific capacity

[250] HiSteel's Letter, "Administrative Review of the Antidumping Order on Heavy Walled Rectangular Steel Pipe and Tube from Korea for the 2017-2018 Review Period – Request that the Department Remove New Factual Information from the Record or Extend the Deadline for Rebuttal Information," dated June 23, 2020 (HiSteel June 23 Letter) at 3; Kukje Steel's Letter, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Objection to June 17th and 19th Information Releases and Submission of Rebuttal Factual Information," dated June 24, 2020 (Kukje Steel June 24 Letter) at 2-4.

[251] *See* PMS Allegation at Exhibit 1.6.

[252] *See, e.g.*, *WLP from Korea 15-16 Final* (unchanged in *Welded Line Pipe from the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 39682 (August 10, 2018)); *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Rescission of New Shipper Review; 2015-2016*, 83 FR 1238 (January 10, 2018), and accompanying IDM at 2 (Commerce placed factual information in the form of customs entry documents on the record on September 7, 2017, when the preliminary results were issued on July 6, 2017); and *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2013-2014*, 80 FR 55328 (September 15, 2015), and accompanying IDM at 1-2 (Commerce paced factual information in the form of import statistics on August 6, 2015, when the preliminary results were issued on March 9, 2015) (unchanged in *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Notice of Court Decision Not In Harmony With Final Results of Administrative Review and Notice of Amended Final Results*, 82 FR 39565 (August 21, 2017)).

in which Commerce was considering using these documents, so, therefore, they had no opportunity to provide a refined comment in that regard.[253] However, HiSteel and Kukje Steel argue for requirements in section 782(g) of the Act that do not exist.

When Commerce placed the steel reports and excerpts from the Wooldridge textbook at issue on the record, Commerce did so clearly in reconsideration of its regression analysis. Indeed, all of the parties which commented on that information and/or provided rebuttal information understood from the content of their submissions that the information placed on the record was intended to be considered by Commerce in applying a potentially modified regression analysis.[254] Kukje Steel argues that Commerce was required by section 782(g) of the Act to be even more specific as to the sections of that information, and the capacity in which it was considering those sections, for purposes of its analysis. We do not agree with Kukje Steel that in providing information on the record during a proceeding, including late in the proceeding, which Commerce believes might add value to an issue under consideration (in this case, the regression analysis used in Commerce's PMS determination), section 782(g) requires Commerce to spell out with specificity and explicitly how it might hypothetically apply that information in its forthcoming determination. Indeed, when Commerce placed in the information on the record and invited responses, there was no indication that Commerce had concluded that it would use any of the attached data. Instead, what was at issue was the validity and the value of that information in light of all of the arguments and information which were already placed on the administrative record by the interested parties, and Commerce's analysis in the *Preliminary Results*. Parties had an opportunity to comment on the data and could have submitted comments and information that addressed the legitimacy of the steel reports or provided arguments regarding the representativeness, *vis-à-vis* the industry, of the information contained within those sources. Commerce would have considered such comments in refining its regression analysis. No party, however, provided such comments or information, despite being given the opportunity under section 782(g) of the Act.

For the foregoing reasons, Commerce finds that its determination to place the June 19, 2020 factual information on the record was lawful and consistent with the Act, regulations, and practice, has considered that data in light of the comments and factual information placed on the record by the parties in response, and has considered that data in these final results.

Arguments Based on Factual Information Rebutting the June 17th and June 19th Information

In response to the factual information we placed on the record on June 17 and 19, 2020, the respondents placed rebuttal factual information on the record.[255] However, none of the information submitted on the record would alter our determination that five years represents a reasonable period of time to assess the economic health of the steel industry.

[253] *See* HiSteel June 23 Letter; *see also* Kukje Steel June 24 Letter.
[254] *See* Petitioner Comments on NFI; *see also* Kukje Steel June 24 Letter; HiSteel NFI Rebuttal Submission.
[255] *See* HiSteel NFI Rebuttal Submission; Kukje NFI Rebuttal Submission.

Kukje Steel's response includes a 2020 OECD Report, "Latest Developments in Steelmaking Capacity."[256] Kukje Steel argues that this shows that global steelmaking capacity has been stable from 2015 through 2019 and that global capacity utilization for crude steel production in 2019 was 78.2%, which is the peak level in the 2000-2019 period.[257] However, the OECD report does not support the observation that steelmaking capacity was stable from 2015 through 2019. According to the report, global steelmaking capacity decreased from 2015 through 2018, "but the latest data suggests capacity increased in 2019 for the first time since 2014."[258] As shown in Figure 2, capacity grew precipitously in 2019 by more than 35 MMT from 2018 levels, a fluctuation contributing to already unsustainable levels of excess capacity.[259] For comparison, this 2018-2019 global capacity growth figure is more than the 2019 nominal capacity figures listed by the OECD for Canada (15.3 MMT), Mexico (27.7 MMT) or Italy – Europe's second largest steel producer (34.3 MMT). [260]

Kukje Steel's rebuttal submission also contains another OECD Report, "Steel Market Developments: Q2 2020,"[261] which, Kukje Steel submits, confirms the peak of crude steel production as a percentage of capacity achieved in 2019 and that global unused capacity declined between 2018 and 2019.[262] However, assessing the steel industry over a five-year period would capture the fluctuations which took place between 2018 and 2019. Although the gap between capacity and production narrowed slightly between 2018 and 2019, substantial excess capacity still remains, causing distortions in the market. [263]

Kukje Steel's rebuttal submission includes Commerce's "Steel Industry Executive Summary: February 2020," which provides information on the U.S. steel industry situation.[264] Kukje Steel asserts that Commerce's report confirms that U.S. imports of steel products declined in 2019 as compared to 2018, and at the same time, the U.S. steel industry's production and capacity utilization in 2019 was higher than in 2018. [265] We note that assessing the steel industry over a five-year period would capture the experience in the U.S. steel industry in 2018–2019. Even though U.S. steel imports declined in 2019, the report shows that import penetration/percentage of steel demand captured by imports, at 24.6 percent, was significant.

Kukje Steel's rebuttal submission also includes an April 2020 news report, "World Steel Association delays release of April Short Range Outlook,"[266] citing the Covid-19 global

[256] *Id.* at Attachment A.
[257] *Id.* at 4.
[258] *Id.* at Attachment A, page 9.
[259] *Id.*
[260] *Id.* at Attachment A, pages 34-36.
[261] *Id.* at Attachment B.
[262] *Id.* at 4.
[263] *Id.* at Attachment B, page 7.
[264] *Id.* at Attachment C.
[265] *Id.* at 4.
[266] *See* Kukje NFI Rebuttal Submission at Attachment D.

pandemic and the ensuing economic crisis as impacting U.S. steel demand and supply.[267] We note that a delay in WorldSteel's release of the April 2020 short range outlook is not material to our determination, given that it pertains to the situation in the spring of 2020 and beyond.

HiSteel's submission focuses on the underlying data and trends in the documents Commerce added to the record. HiSteel provides additional information that shows the experience of the steel industry during the POR; as such, these documents do not change our determination that five years represents a reasonable period of time to assess the economic health of the steel industry. Appendix 2 is an Inside U.S. Trade article highlighting the U.S. industry's achieving capacity utilization greater than 81.9 percent during one week in February 2019, "roughly what is needed to make the industry viable over the long term" according to the section 232 report on steel.[268] Appendices 3 (the 232 Report), 4 (SIMA Executive Summary from June 2019), 5 (AISI's This Week in Raw Steel Production from July 2019) and 7 (SIMA's Global Steel Report dated September 2019) all provide support for the Inside U.S. Trade Article and/or describe the market situation during the POR.[269] Therefore, this information does not change our decision that five years is a reasonable time frame over which to evaluate the health of the steel industry.

Calculation of the PMS Adjustment

The regression model used by petitioners to quantify the PMS is based on the following equation:

$$ln(y_{i,t}) = \beta_0 + \sum_{k=1}^{n}[\beta_k \times ln(x_{k,i,t})] + \alpha_i + \varepsilon_{i,t}$$

where y is the dependent variable, $x_1 \ldots x_n$ is the set of independent variables, i is the country, t is the time period, and k is an index for the n number of independent variables. The results of the regression analysis provide the following values: a y-intercept (β_0), regression coefficients ($\beta_1 \ldots \beta_n$), a country-specific, fixed-effects coefficient (α_i),[270] and the error term (ε_i).[271] Each of the regression coefficients (*i.e.*, the slope coefficient or "beta") measures the relationship between the dependent variable and the respective independent variable where all other variables are held constant. For the regression model used in this review, the dependent variable is import AUV, and the set of independent variables are global uneconomic capacity, global aluminum prices, global iron ore prices, global scrap prices, the country-specific US$ exchange rate, and country-specific GFCF.[272]

[267] *Id.* at 4.
[268] *See* HiSteel NFI Rebuttal Submission at Appendix 2.
[269] *Id.* at Appendix 3.
[270] The country-specific, fixed-effects coefficient captures the time-invariant variables affecting the dependent variable.
[271] The error term captures the unobserved factors affecting the dependent variable that are uncorrelated with the independent variables.
[272] *See* PMS Allegation at Exhibit 25.

In recent reviews, Commerce's approach has been to view the beta coefficient as the linear slope of the dependent variable relative to the independent variable. In the regression model used here, both the dependent variable and the independent variables are log-transformed. With all other variables held constant, and the 2017 counterfactual (cf) of uneconomic capacity is adjusted to reflect an 80 percent capacity utilization rate, the following equality exists based on the regression model defined above:

$$ln(AUV_{cf}) - ln(AUV_{2017}) = \beta_{UneconCap} \times ln(UneconCap_{cf}) - \beta_{UneconCap} \times ln(UneconCap_{2017})$$

which simplifies to

$$ln\left(\frac{AUV_{cf}}{AUV_{2017}}\right) = \beta_{UneconCap} \times ln\left(\frac{UneconCap_{cf}}{UneconCap_{2017}}\right)$$

$$ln\left(\frac{AUV_{cf}}{AUV_{2017}}\right) = ln\left(\left(\frac{UneconCap_{cf}}{UneconCap_{2017}}\right)^{\beta_{UneconCap}}\right)$$

$$\frac{AUV_{cf}}{AUV_{2017}} = \left(\frac{UneconCap_{cf}}{UneconCap_{2017}}\right)^{\beta_{UneconCap}}$$

When 1 (one) is subtracted from each side of the equation, then the relative change in the AUV is determined:

$$\frac{AUV_{cf} - AUV_{2017}}{AUV_{2017}} = \left(\frac{UneconCap_{cf}}{UneconCap_{2017}}\right)^{\beta_{UneconCap}} - 1$$

The Uneconomic Capacity in year *t* in the regression model is defined as:

$$UneconCap_t = GlobalCap_t - GlobalProd_{max}$$

where $GlobalCap_t$ is the Global Production Capacity in year *t* and $GlobalProd_{max}$ is the maximum level of Global Production during the years prior to the current year for which the regression analysis is performed.

The counterfactual Uneconomic Capacity is calculated for the most contemporaneous year which does not extend past the end of the period under examination and is defined based on a counterfactual Global Capacity for the same year. As mentioned above, the counterfactual Global Capacity is based on a specified Capacity Utilization Rate and the average of annual Global Production in the contemporaneous year and the previous four years:

$$GlobalCap_{cf} = GlobalProd_{5YearAvg} \div CapUtilRate$$

$$UneconCap_{cf} = GlobalCap_{cf} - GlobalProd_{max}$$

In the instant review, 2017 is the most contemporaneous year for which there is complete annual data on the record. Using the production and capacity data (with units in MT) that were available at the time of the PMS allegation and the results of the regression analysis,[273]

$GlobalCap_{2017}$	2,251.20
$GlobalProd_{2017}$	1,690.48
$GlobalProd_{2016}$	1,626.95
$GlobalProd_{2015}$	1,620.00
$GlobalProd_{2014}$	1,669.45
$GlobalProd_{2013}$	1,650.35
$GlobalProd_{max}$	1,669.45
$CapUtilRate$	0.80
$\beta_{UneconCap}$	-0.5883

Using the equations defined above:

$$GlobalCap_{cf} = 1{,}651.45 \div 0.80 = 2{,}064.31$$

$$UneconCap_{cf} = 2{,}064.31 - 1{,}669.45 = 394.86$$

$$UneconCap_{2017} = 2{,}251.20 - 1{,}669.45 = 581.75$$

$$change\ in\ AUV = \left(\frac{394.86}{581.75}\right)^{-0.5883} - 1 = 0.2561$$

Thus, for the final results, Commerce will adjust upward respondents' cost of hot-rolled steel inputs by a rate of 25.61 percent.

[273] *See* Kukje Steel PMS Allegation Rebuttal at Attachment P.2 (Production data from WSA Steel Statistical Yearbook 2018, and Attachment E.1 for capacity data from OECD 2018 Steelmaking Capacity, UEC Beta taken from Petitioner Regression Output).

Comment 3: Application of PMS Adjustment

Petitioner's Case Brief

- While Commerce properly found in the *Preliminary Results* that an adjustment was warranted to account for a PMS in Korea that distorts the COP of HWR pipe and tube, Commerce should apply the adjustment to the respondents' direct material costs (*i.e.*, DIRMAT), rather than to their total costs of manufacturing (*i.e.*, TOTCOM), to fully account for the cost distortions caused by the PMS in Korea.[274]

- The application of an average adjustment factor to TOTCOM fails to account for variations in the cost of HRC across CONNUMs. Specifically, applying a single, average adjustment to the respondents' TOTCOM overstates the PMS adjustment for certain CONNUMs and understates the adjustment for others therefore affecting the sales below cost test and the value of total variable costs used in the "DIFMER" test for non-identical matches. As such, it is a more accurate calculation of both the direct material and total costs of manufacturing for the PMS adjustment to be applied to DIRMAT, rather than TOTCOM, and doing so does not otherwise distort the margin calculations.

- Applying the PMS adjustment directly to DIRMAT is consistent with Commerce's approach in other cases where Commerce directly applied a PMS adjustment factor quantified by the regression analysis to the respondent's direct material costs.[275]

- Alternatively, if Commerce continues to apply the PMS adjustment to the respondents' TOTCOMs, it should use the full cost of direct materials reported in DIRMAT, unadjusted by any scrap offsets, to calculate the percentage of HRC in TOTCOM.[276]

HiSteel's Rebuttal Brief

- Commerce should reject the petitioner's proposed revision to the PMS adjustment applied in the *Preliminary Results* because there is no basis for a PMS in this review and because the petitioner's regression analysis is flawed and should not be used for the final results.[277]

Kukje Steel's Rebuttal Brief

- Commerce should reject the petitioner's argument to revise the manner in which it applies the PMS adjustment for the final results because Commerce's application of the PMS

[274] *See* Petitioner's Case Brief at 2-8. The petitioner notes that HiSteel and Kukje Steel reported the full cost of HRC in the field DIRMAT in their cost databases (citing to HiSteel's September 23, 2019 Supplemental Section D Response (HiSteel's September 23, 2019 SDQR) at Appendix SD-1; and Kukje Steel's March 6, 2019 Sections B-D Response (Kukje Steel's March 6, 2019 BCDQR) at D-33.
[275] *Id*. at 3 (*citing Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 33916 (July 16, 2019) (*CWP from India 17-18 Prelim*), and accompanying PDM).
[276] *Id*. at 6-8.
[277] *See* HiSteel Rebuttal Brief at 2-3.

adjustment in the *Preliminary Results* correctly estimates the portion that HRC actually consumed in the production of the merchandise under consideration comprises of TOTCOM.[278]

- The petitioner made no effort to argue that Commerce's approach was unreasonable; instead it merely states that Commerce used a different approach in *CWP from India 17-18 Prelim*, without demonstrating which methodology is the most reasonable.

- The petitioner seeks only to maximize the blow struck against Kukje Steel, and Commerce should refrain from adopting such results-oriented arguments.

Commerce's Position:

We agree with the petitioner that the PMS adjustment should be applied directly to the respondents' reported cost of purchased HRC (*i.e.*, DIRMAT for Histeel and ADJ_DIRMAT for Kukje Steel), rather than to TOTCOM. Commerce strives to determine margins as accurately as possible. In this regard, the application of the PMS adjustment to DIRMAT is more accurate and precise as it ensures that the adjustment is applied as intended, *i.e.*, only to the cost of purchased HRC. Conversely, the application of the PMS adjustment to TOTCOM can introduce additional distortions to the calculation in the form of adjusting other manufacturing costs (*e.g.*, other materials and conversion costs) included in TOTCOM.

Notwithstanding the method of how the PMS adjustment factor was calculated, it was intended to be applied to the respondents' cost of HRC only, and as discussed above, the application of the adjustment directly to the cost field that includes only the cost of HRC is the most accurate and precise application of the adjustment. Therefore, for the final results we applied the PMS adjustment factor to the cost of purchased HRC reported in the respondents' DIRMAT fields.[279]

HiSteel-Specific Issues

Comment 4: Credit Expenses

Petitioner's Arguments

- Commerce erroneously used HiSteel's U.S. dollar short-term borrowing rate to recalculate HiSteel's home market credit expenses (*i.e.*, CREDITH) when accounting for billing adjustments and early payment discounts. Given that HiSteel reports that its home market sales are in Korean won, Commerce should recalculate HiSteel's home market credit expenses using HiSteel's Korean won short-term borrowing rate.

- Further, when HiSteel updated payment date for some of its sales, it did not revise its reported U.S. credit expenses (*i.e.*, CREDITU) for those sales. Therefore, Commerce should revise the credit expenses for those sales.

[278] *See* Kukje Steel's Rebuttal Brief at 11-12.
[279] *See* HiSteel Final Calculation Memo and Kukje Steel Final Calculation Memo.

HiSteel's Rebuttal

- HiSteel does not object to the recalculations proposed by the petitioner.

Commerce's Position:

We agree with the petitioner and HiSteel. Accordingly, we have recalculated: (1) HiSteel's home market credit expenses using HiSteel's Korean won short-term borrowing rate; and (2) HiSteel's U.S. credit expenses for certain sales based upon updated payment dates.[280]

Comment 5: Differential Pricing

In the *Preliminary Results*, we found that 77.00 percent of Kukje Steel's U.S. sales passed the Cohen's *d* test, which confirmed the existence of a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. Further, Commerce also preliminarily determined that there was no meaningful difference between the weighted-average dumping margin calculation using the average-to-average (A-to-A) method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction (A-to-T) method to all U.S. sales. Thus, for the preliminary results, Commerce applied the A-to-A method for all U.S. sales to calculate the weighted-average dumping margin for Kukje Steel.[281]

Commerce also preliminarily found that 94.85 percent of HiSteel's U.S. sales passed the Cohen's *d* test, which confirmed the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce also preliminarily determined that there was no meaningful difference between the weighted-average dumping margin calculation using the average-to-average (A-to-A) method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction (A-to-T) method to all U.S. sales. Thus, for the preliminary results, Commerce applied the A-to-A method for all U.S. sales to calculate the weighted-average dumping margin for HiSteel.[282]

HiSteel's Case Brief

- HiSteel agrees with Commerce's preliminary decision to apply the A-to-A method to U.S. sales in calculating HiSteel's dumping margin. However, Commerce's use of the differential pricing analysis is mathematically and legally improper.[283]

- Commerce may adopt a rule that establishes numerical cut-offs that follows the notice and comment requirements of the Administrative Procedure Act (APA), but it has not done so in this case. If Commerce applies the differential pricing analysis as a numerical cut-off on a case-by-case basis, it must provide evidence and analysis demonstrating why the cut-offs for

[280] *See* HiSteel Final Calculation Memo.
[281] *See Preliminary Results* PDM at 8.
[282] *Id.* at 7-8.
[283] *See* HiSteel Case Brief at 37-38 (citing *Preliminary Results* PDM at 6-7).

the Cohen's *d* test and ratio test are suitable in this case, in keeping with the CIT's and Court of Appeals for the Federal Circuit's (CAFC's) past rulings that Commerce must provide substantial evidence to establish such bright-line thresholds.[284] Even though the CIT has rejected this argument, the decisions are incorrect and will be appealed to the CAFC at the appropriate time.[285]

- Commerce cannot rely on an allegedly "widely adopted" statistical test when it is not using that test in the context for which it was proposed.[286]

- While Commerce agrees that Professor Cohen placed limitations on his analysis, it argues that the limitations apply to the "T-Test for Means," which is irrelevant to Commerce's differential pricing analysis.[287] However, the "T-Test for Means" was very relevant to Professor Cohen's development and presentation of his *d* statistic and the various cut-offs he proposed for establishing whether *d* is small, medium or large.

- Despite Commerce's acknowledgment that the subject of Professor Cohen's book is "statistical power analysis," Commerce argues that it does not intend to be conducting a "power analysis" in its differential pricing analysis. However, this argument is not convincing.[288]

- Commerce has applied a statistical tool in its differential pricing analysis in situations that are inconsistent with the limitations described by Professor Cohen. It is relying on the cut-offs that Professor Cohen used for situations that are statistically different from price distributions in a competitive market. Commerce's assertions regarding its use of the Cohen's test are mathematically untenable, as a respondent's U.S. sales do not have the mathematical characteristics of normal distributions.[289]

- Commerce has not cited any evidence on the record that supports its novel assertion that a parametric test designed for the analysis of two normally-distributed data sets with roughly equal number of data points can be used when none of those conditions exist. [290]

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[284] *Id.* at 38-41 (citing *Antidumping and Countervailing Duties; De Minimis Dumping Margins and De Minimis Subsidies*, 52 FR 30660 (August 17, 1987); *see also* Public Law 103-465; Section 733(b)(3) of the Act; *Carlisle Tire v. United States*, 634 F. Supp. 419, 423 (CIT 1986) (*Carlisle Tire*); and *Washington Red Raspberry Comm'n. v. United States*, 859 F.2d 898, 903-904 (CAFC 1988) (*Washington Red Raspberry*)).
[285] *Id.* at 41 (citing *Apex Frozen Foods v. United States*, 144 F.Supp.2d 1308, 1320-21 (CIT 2016) , *affirmed* in *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1322 (Fed. Cir. 2017) (*Apex I*); *see also Nexteel I*, 355 F. Supp. 3d at 1356).
[286] *Id.* (citing *Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 46647 (July 18, 2016), and accompanying IDM at Comment 4).
[287] *Id.* at 41-42 (citing *OCTG from Korea 14-15 AR* IDM at Comment 2 (citing Cohen, STATISTICAL POWER ANALYSIS FOR THE BEHAVIORAL SCIENCES (2nd ed. 1988) (STATISTICAL POWER) at 19-20)).
[288] *Id.* at 42-44 (citing *OCTG from Korea 14-15 AR* IDM at Comment 2; *WLP Korea CVD Final Determination* IDM at Section VI.B.1 and Comment 1; and *Preliminary Results* PDM at 6).
[289] *Id.* at 44-45 (citing *Preliminary Results* PDM at 5; *see also OCTG from Korea 14-15 AR* IDM at Comment 2).
[290] *Id.* at 45-46.

- Commerce never explained or provided support as to why 33 and 66 percent should be the thresholds for this test, or why a ratio between 33 and 66 percent or over 66 percent calls for consideration of a methodology other than the A-to-A comparison method. Without justification, these thresholds are arbitrary and improper. In previous determinations, Commerce used circular reasoning to explain that the thresholds are reasonable, when numerical thresholds should be supported by record evidence.[291]

- Commerce has failed to satisfy the statutory requirements that permits Commerce to depart from the normal A-to-A comparison to account for targeting dumping. This departure is allowed only if Commerce "explains why such differences cannot be taking into account using" an A-to-A or transaction-to-transaction (T-to-T) methodology. There is no reason to believe that price differences support a finding of "targeted dumping" that would necessitate the use of comparison methodologies. Rather, the different results are primarily a function of the different treatment of negative dumping margins under Commerce's standard methodology. Further, Commerce provided no support for its assertion that the difference in weighted-average dumping margins is "meaningful" when there is a weighted-average dumping margin that crosses the *de minimis* threshold when using the alterative calculation instead of the A-to-A calculation method. Therefore, Commerce's use of the *de minimis* measure to decide which margin calculation is apply is arbitrary and improper.[292]

- In general, the Act does not permit Commerce to compare an average NV to U.S prices for individual transactions in an investigation. While the statute provides an exception, it only applies when: (1) there is a pattern of EPs or CEPs for comparable merchandise that differs significantly among purchasers, regions, or periods of time; and (2) Commerce explains why such differences cannot be taken into account using section 777A(d)(1)(A)(i) and (ii) of the Act. Those conditions are not satisfied in this case, so the exception set forth in the Act does not apply.[293]

Petitioner's Rebuttal Brief

- HiSteel challenges Commerce's differential pricing analysis, specifically the numerical thresholds used in the Cohen's *d* test and the ratio test. However, Commerce has rejected the same claims raised by HiSteel and other respondents in prior cases, including the 2016-2017 administrative review of the underlying order. In past cases, Commerce explained that the numerical thresholds in the differential pricing analysis are reasonable and consistent with the requirements of the statute.[294]

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[291] *Id.* at 46-48 (citing *Differential Pricing Analysis; Request for Comments*, 79 FR 26720, 26722-23 (May 9, 2014); *see also OCTG from Korea 14-15 AR* IDM at Comment 2; *Carlisle Tire*; *Washington Red Raspberry*; and *IPSCO v. United States*, 687 F. Supp. 614, 630-31 (CIT 1988)).
[292] *Id.* at 48-50 (citing section 777A(d)(1)(B) of the Act).
[293] *Id.* at 50-51 (citing sections 777A(d)(1)(A) and (B) of the Act).
[294] *See* Petitioner's Rebuttal Brief at 77-78 (citing HiSteel Case Brief at 37-51; *see also HWR from Korea 2016-2017 Final Results* IDM). The petitioner also argued that HiSteel's case brief should be rejected, as it contained new factual information (NFI). *Id.* at 11 and 78. Commerce rejected HiSteel's case brief on February 18, 2020, and allowed HiSteel to refile after removing the NFI. *See* Letter, "Heavy Walled Rectangular Welded Carbon Steel

- In the investigation, as well as other cases, Commerce has explained it is entitled to make changes and adopt a new approach in the context of its proceedings, provided it explains the basis for the change and the change is a reasonable interpretation of the statute.[295]

- In other cases, the courts have upheld key aspects of Commerce's differential pricing analysis. In addition, in past proceedings, Commerce has similarly dismissed arguments that Professor Cohen did not intend his test used for this purpose and that U.S. sales data does not meet the cut-off requirements of his test. It explained that the Cohen's *d* test is a recognized measure to gauge the extent of the differences between the means of two groups and a simple way of quantifying those differences. Commerce has previously explained that HiSteel's reliance on Professor Cohen's statement about when proposed cut-offs can be used is misplaced, as it was made in the context of "the statistical significance of the difference in the means for two sampled sets of data, and is not relevant when considering whether this difference has a practical difference."[296] HiSteel has not provided any meaningful new arguments regarding the use of the Cohen's *d* test that would warrant a different decision from previous cases.

- While HiSteel claims Commerce has never explained why the thresholds should be 33 percent and 66 percent, Commerce has already directly responded to these claims in other cases, including in the *HWR Korea LTFV Final*.[297]

- Commerce has already considered and dismissed the arguments by HiSteel that Commerce has not explained why any patterns of price differences cannot be taken into account using an A-to-A or T-to-T calculation methodology or that Commerce has not provided support for its assertion that the difference in the weighted-average dumping margins is meaningful when

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Pipes and Tubes from the Republic of Korea: Rejection of Case Brief," dated February 18, 2020. Therefore, we have not summarized, or further addressed, the petitioner's comments on this issue.

[295] *Id.* at 78-79 (citing HiSteel Case Brief at 38-48; *see also Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 47347 (July 21, 2016) (*HWR Korea LTFV Final*), and accompanying IDM at Comment 4; *OCTG from Korea 15-16 AR* IDM at Comment 8; *OCTG 2014-2015 Final Results* IDM at Comment 2; *WLP from Korea 15-16 AR* IDM at Comment 4; and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Changed Circumstances Review and Reinstatement of Shanghai General Bearing Co., Ltd. in the Antidumping Duty Order*, 82 FR 4853 (January 17, 2017) (*TRBs from China 14-15*), and accompanying IDM at Comment 5).

[296] *Id.* at 80-81 (citing *LDWP from Korea Preliminary Determination* PDM at 10-11 (citing *Apex I*); *see also OCTG from Korea 15-16 AR* IDM at Comment 8; HiSteel Case Brief at 41-45; *OCTG from Korea 14-15 AR* IDM at Comment 2; *Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 82 FR 22970 (May 19, 2017) (*Welded Pipe from Korea 14-15*), and accompanying IDM at Comment 4; and *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2014-2015*, 81 FR 62717 (September 12, 2016) (*Shrimp from Vietnam*), and accompanying IDM at Comment 1).

[297] *Id.* at 82-83 (citing HiSteel Case Brief at 47; *OCTG from Korea 15-16 AR* IDM at Comment 8 (citing *Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods from India*, 79 FR 41981 (July 18, 2014) (*OCTG from India*), and accompanying IDM at Comment 1); and *HWR Korea LTFV Final* IDM at Comment 4).

there is a certain measure between the A-to-A and the alternative calculation methodology. Further, the CAFC has upheld Commerce's decision on this issue.[298]

- HiSteel appears to argue that the A-to-T comparison methodology is only an exception to the normal calculation methodology and is not appropriate here. However, as Commerce has explained in other proceedings, this argument is meritless as Commerce's differential pricing analysis complies with the statutory criteria.[299]

Commerce's Position:

We disagree with HiSteel that Commerce improperly applied the differential pricing analysis. As an initial matter, we note that there is nothing in section 777A(d) of the Act that mandates how Commerce measures whether there is a pattern of prices that differs significantly or explains why the A-to-A method or the T-to-T method cannot account for such differences. On the contrary, carrying out the purpose of the statute[300] here is a gap filling exercise properly conducted by Commerce.[301] As explained in the *Preliminary Results*, as well as in various other proceedings,[302] Commerce's differential pricing analysis is reasonable, including the use of the Cohen's *d* test as a component in this analysis, and it is in no way contrary to the law.

We note that the CAFC has upheld key aspects of Commerce's differential pricing analysis, including: the application of the "meaningful difference" standard, which compares the calculated weighted-average dumping margins using the A-to-A method without zeroing and an alternative comparison method based on the A-to-T method with zeroing; the reasonableness of

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[298] *Id* at 83-84 (citing HiSteel Case Brief at 48-50; *see also HWR Korea LTFV Final* IDM at Comments 4 and 5; *OCTG from Korea 15-16 AR* IDM at Comment 8; *OCTG from Korea 14-15 AR* IDM at Comment 2; and *Apex I* 1322, 1330-1331).

[299] *Id.* at 84-86 (citing HiSteel Case Brief at 50-51; *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2013-2014, 81 FR 39908 (June 20, 2016), and accompanying IDM at Comment 1; *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2012-2013, 79 FR 54264 (September 11, 2014), and accompanying IDM at Comment 1; *Certain Steel Nails from the People's Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014) (*Steel Nails from China 11-12*), and accompanying IDM at Comment 7; section 777A(d)(1)(B) of the Act; and *Preliminary Results* PDM at 7-8).

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

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

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

Commerce's comparison method in fulfilling the relevant statute's aim; Commerce's use of a "benchmark" to illustrate a meaningful difference; Commerce's justification for applying the A-to-T method to all U.S. sales; Commerce's use of zeroing in applying the A-to-T method; that Congress did not dictate how Commerce should determine if the A-to-A method accounts for "targeted" or masked dumping; that the "meaningful difference" test is reasonable; and that Commerce may consider all sales in its "meaningful difference" analysis and consider all sales when calculating a final rate using the A-to-T method.[303]

A. APA Rulemaking Is Not Required

Commerce disagrees with HiSteel that it is obligated to follow the APA in establishing the differential pricing methodology. The notice and comment requirements of the APA do not apply "to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice."[304] Further, Commerce normally makes these types of changes in practice (*e.g.*, the change from the targeted dumping analysis to the current differential pricing analysis) in the context of its proceedings, on a case-by-case basis.[305] As the CAFC has recognized, Commerce is entitled to make changes and adopt a new approach in the context of its proceedings, provided it explains the basis for the change, and the change is a reasonable interpretation of the statute.[306] The CAFC has also held that Commerce's meaningful difference analysis was reasonable.[307] Moreover, the CIT in *Apex II* recently held that Commerce's change in practice (from targeted dumping to its differential pricing analysis) was exempt from the APA's rule making requirements, stating:

> Commerce explained that it continues to develop its approach with respect to the use of {A-to-T} "as it gains greater experience with addressing potentially hidden or masked dumping that can occur when {Commerce} determines weighted-average dumping margins using the {A-to-A} comparison method. Commerce additionally explained that the new approach is "a more precise characterization of the purpose and application of {19 U.S.C. § 1677f-1(d)(1)(B)}" and is the product of Commerce's "experience over the last several years . . . further research, analysis and consideration of the numerous comments and suggestions on what guidelines, thresholds, and tests should be used in determining whether to apply an alternative comparison method based on the {A-to-T} method." Commerce developed its approach over time, while gaining experience and obtaining input. Under the standard described above, Commerce's explanation is sufficient. Therefore, Commerce's adoption of the differential pricing analysis was not arbitrary.[308]

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[303] *See Apex I.*
[304] *See* 5 U.S.C. § 553(b)(3)(A).
[305] *See Differential Pricing Analysis; Request for Comments*, 79 FR 26720, 26722 (May 9, 2014) (*Differential Pricing Comment Request*).
[306] *See Saha Thai Steel Pipe Company v. United States*, 635 F.3d 1335, 1341 (Fed. Cir. 2011); *Washington Raspberry*, 859 F. 2d at 902-03; *see also Carlisle Tire*, 634 F. Supp. at 423 (discussing exceptions to the notice and comment requirements of the APA).
[307] *See Apex I*, 862 F.3d 1337, 1347-1351.
[308] *See Apex Frozen Foods Private Ltd. v. United States*, 144 F. Supp. 3d 1308, 1322 (CIT 2016) (*Apex II*).

Moreover, as we noted previously, the CIT acknowledged in *Apex II* that as Commerce "gains greater experience with addressing potentially hidden or masked dumping that can occur when {Commerce} determines weighted-average dumping margins using the average-to-average comparison method, {Commerce} expects to continue to develop its approach with respect to the use of an alternative comparison method."[309] Further developments and changes, along with further refinements, are expected in the context of our proceedings based upon an examination of the facts and the parties' comments in each case.

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

As stated in the *Preliminary Results*, the purpose of the Cohen's *d* test is to evaluate "the extent to which the prices to a particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise."[310] The Cohen's *d* coefficient is a recognized measure which gauges the extent (or "effect size") of the difference between the means of two groups and provides "a simple way of quantifying the difference between two groups and has many advantages over the use of tests of statistical significance alone."[311] "Effect size quantifies the size of the difference between two groups, and may therefore be said to be a true measure of *the significance of the difference*."[312] As stated in the *OCTG from Korea 15-16 AR*, Commerce relies on the Cohen's *d* test to measure whether a difference is significant, as required by the Act.[313]

Further, in describing "effect size" and the distinction between effect size and statistical significance, Commerce stated in *Shrimp from Vietnam*: [314]

> Dr. Paul Ellis, in his publication *The Essential Guide to Effect Sizes*, introduces effect size by asking a question: "So what? Why do this study? What does it mean for the man on the street?" Dr. Ellis continues:
>
> > A statistically significant result is one that is unlikely to be the result of chance. But a practically significant result is meaningful in the real world. It is quite possible, and unfortunately quite common, for a result to be statistically significant and trivial. It is also possible for a result to be statistically nonsignificant and important. Yet scholars, from PhD candidates to old professors, rarely distinguish between the statistical and the practical significance of their results.

[309] *Id.*
[310] *See Preliminary Results* PDM at 6.
[311] *See OCTG from Korea 15-16 AR* IDM at Comment 8 (quoting Coe, Robert, "It's the Effect Size, Stupid: What effect size is and why it is important," (September 2002) (Coe's Paper)).
[312] *Id.*
[313] *Id.*
[314] *See Shrimp from Vietnam* IDM at Comment 1 (quoting Ellis, Paul D., *The Essential Guide to Effect Sizes*; Cambridge University Press (2010) (*Ellis*) at 3-5); *see also OCTG from Korea 15-16 AR* IDM at Comment 8.

> In order to evaluate whether such a practically significant result is meaningful, Dr. Ellis states that this "implies an estimation of one or more effect sizes."
>
> > An effect size refers to the magnitude of the result as it occurs, or would be found, in the population. Although effects can be observed in the artificial setting of a laboratory or sample, effect sizes exist in the real world.

Commerce further stated in *Shrimp from Vietnam*: [315]

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

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

> Dr. Ellis also states in his publication that the "best way to measure an effect is to conduct a census of an entire population but this is seldom feasible in practice."[316]

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

The second measurement is whether there is a practical significance of the difference between the means of the two sets of data, as measured by an "effect size" such as Cohen's *d* coefficient.

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[315] *See Shrimp from Vietnam* IDM at Comment 1; *see also OCTG from Korea 15-16 AR* IDM at Comment 8.
[316] *Id.*

As noted above, this quantifies the real-world relevance of this difference "and may therefore be said to be a true measure of the significance of the difference."[317] This is the basis for Commerce's determination whether prices in a test group differ significantly from prices in a comparison group.

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

> could only appropriately be applied in specific circumstances – where 'samples, each of *n* cases, have been randomly and independently drawn from normal populations,' and where the two samples do not have 'substantially unequal variances' or 'substantially unequal sample sizes (whether small or large).'[318]

HiSteel's claim is misplaced. HiSteel's quotation is from section 2.1 of Dr. Cohen's text, "Introduction and Use" of "The T Test for Means."[319] As described above, this concerns the statistical significance of the difference in the means for two sampled sets of data and is not relevant when considering whether this difference has a practical difference. This is not to say that sample size and sample distribution have no impact on the description of "effect size" for sampled data,[320] but that is not the basis for Commerce's analysis of HiSteel's U.S. sale price data.

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

> The arithmetic mean is by far the most frequently used measure of location by behavioral scientists, and hypotheses about means the most frequently tested. The tables have been designed to render very simple the procedure for *power analysis* in the case where two samples, each of *n* cases, have been randomly and independently drawn from normal populations, and the investigator wishes to test the null hypothesis that their respective population means are equal….[321]

Again, Commerce is not conducting a "power analysis" which guides researchers in their construction of a project in order to obtain a prescribed "power" (*i.e.*, confidence level, certainty in the researchers' results and conclusions). This incorporates a balance between sampling technique, including sample size and potential sampling error, with the stipulated effect size. The Cohen's *d* test in this final determination only measures the significance of the observed

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[317] *See OCTG from Korea 15-16 AR* IDM at Comment 8 (citing Coe's Paper).
[318] *See* HiSteel Case Brief at 41-42 (*citing OCTG from Korea 14-15 AR* IDM at Comment 2 (quoting Cohen, Jacob, *Statistical Power Analysis for the Behavioral Sciences, Second Edition* (1988) (*Cohen*) at 19-20)).
[319] *Id.*
[320] *See OCTG from Korea 15-16 AR* IDM at Comment 8 (citing, *e.g.*, *Cohen* at 21-23, section 2.2.1).
[321] *Id*. (quoting Cohen at 19 (emphasis in italics, HiSteel's quotation underlined)).

differences in the mean prices for the test and comparison groups with no need to draw statistical inferences regarding sampled price date or the "power" of Commerce's results and conclusions.

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

> Deosen's claim that the Cohen's *d* test's thresholds of "small," "medium," and "large" are arbitrary is misplaced. In "Difference Between Two Means," the author states that "there is no objective answer" to the question of what constitutes a large effect. Although Deosen focuses on this excerpt for the proposition that the "guidelines are somewhat arbitrary," the author also notes that the guidelines suggested by Cohen as to what constitutes a small effect size, medium effect size, and large effect size "have been widely adopted." The author further explains that Cohen's *d* is a "commonly used measure{}" to "consider the difference between means in standardized units." At best, the article may indicate that although the Cohen's *d* test is not perfect, it has been widely adopted. And certainly, the article does not support a finding, as Deosen contends, that the Cohen's *d* test is not a reasonable tool for use as part of an analysis to determine whether a pattern of prices differ significantly.[322]

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

> can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.[323]

Commerce has relied on the most conservative of these three thresholds to determine whether the difference in prices is significant. Dr. Cohen further provided examples which demonstrate "real

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[322] *See Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) (*Xanthan Gum from China*), and accompanying IDM at Comment 3 (quoting Dave Lane *et al*., Chapter 19 "Effect Size," Section 2 "Difference Between Two Means"); *see also Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013), and accompanying IDM at Comment 4; *Steel Nails from China 11-12* at Comment 7; and *OCTG from Korea 15-16 AR* IDM at Comment 8.

[323] *See Preliminary Results* PDM at 6. Nonetheless, these thresholds, as with the approach incorporated in the differential pricing analysis itself, may be modified given factual information and argument on the record of a proceeding. *See, e.g.*, *Preliminary Results* PDM at 14-16.

world" understanding of the small, medium and large thresholds where a "large" difference "is represented by the mean IQ difference estimated between holders of the Ph.D. degree and typical college freshmen, or between college graduates and persons with only a 50-50 chance of passing an academic high school curriculum. These seem like grossly perceptible and therefore large differences, as does the mean difference in height between 13- and 18-year-old girls…."[324] In other words, Dr. Cohen was stating that it is obvious on its face that there are differences in intelligence between highly educated individuals and struggling high school students, and between the height of younger and older teenage girls. Likewise, the "large" threshold is a reasonable yardstick to determine whether prices differ significantly.

Therefore, Commerce disagrees with HiSteel's arguments that its application of the Cohen's *d* test in this administrative review is improper. As a general matter, Commerce finds that the U.S. sales data which HiSteel has reported to Commerce constitute a complete population. As such, sample size, sample distribution, and the statistical significance of the sample are not relevant to Commerce's analysis.[325] Furthermore, Commerce finds that Dr. Cohen's thresholds are reasonable, and the use of the "large" threshold is reasonable and consistent with the requirements of section 777A(d)(1)(B) of the Act.[326]

Finally, we note that, in the PDM, we requested that interested parties "present arguments and justifications in relation to the above-described differential pricing approach used in the preliminary results, including arguments for modifying the group definitions used in this proceeding."[327] HiSteel has submitted no factual evidence or argument that these thresholds should be modified or that any other aspects of the differential pricing analysis should be changed for HiSteel in this administrative review. Accordingly, HiSteel's arguments at this late stage of the administrative review are unsupported by the record and appear only to convey HiSteel's disagreement with the results of Commerce's application of a differential pricing analysis in this administrative review, rather than to truly identify some aspect of this approach which is unreasonable or inconsistent with the statute.

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

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

> In the differential pricing analysis, {Commerce} reasonably established a 33 percent threshold to establish whether there exists a pattern of prices that differ significantly. {Commerce} finds that when a third or less of a respondent's U.S.

[324] *See OCTG from Korea 15-16 AR* IDM at Comment 8 (citing Cohen at 27).
[325] *See, e.g., Xi'an Metals & Materials Imp. & Exp. Co. v. United States*, 256 F. Supp. 3d 1346, 1364-65 (CIT 2017) ("'statistical significance' is irrelevant where, as here, the agency has a complete set of data to consider . . . {I}f Congress wanted ITA to measure 'statistical significance,' it would have included the word 'statistical' {when it drafted the statute}"); and *Stanley Works Langfang Fastening Sys. Co. v. United States*, 333 F. Supp. 3d 1329, 1346 (CIT 2018) (*Stanley Works*) (similar).
[326] *See Stanley Works*, 333 F. Supp. 3d at 1346-46 ("Commerce lawfully used these thresholds to help it determine which sales 'pass' its Cohen's *d* test").
[327] *See Preliminary Results* PDM at 7.

> sales are not at prices that differ significantly, then these significantly different prices are not extensive enough to satisfy the first requirement of the statute….
>
> Likewise, {Commerce} finds reasonable, given its growing experience of applying section 777A(d)(1)(B) of the Act and the application of the A-to-T method as an alternative to the A-to-A method, that when two thirds or more of a respondent's sales are at prices that differ significantly, then the extent of these sales is so pervasive that it would not permit {Commerce} to separate the effect of the sales where prices differ significantly from those where prices do not differ significantly. Accordingly, {Commerce} considered whether, as an appropriate alternative comparison method, the A-to-T method should be applied to all U.S. sales. Finally, when {Commerce} finds that between one third and two thirds of U.S. sales are at prices that differ significantly, then there exists a pattern of prices that differ significantly, and that the effect of this pattern can reasonably be separated from the sales whose prices do not differ significantly. Accordingly, in this situation, {Commerce} finds that it is appropriate to address the concern of masked dumping by considering the application of the A-to-T method as an alternative to the A-to-A method for only those sales which constitute the pattern of prices that differ significantly.[328]

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

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

We disagree, in part, with HiSteel that "the mere existence of different results is plainly insufficient, by itself, to satisfy the statutory requirements"[329] of whether the A-to-A method can account for significant price differences which are imbedded in HiSteel's pricing behavior in the U.S. market. We do agree with HiSteel that this difference is due to zeroing, because weighted-average dumping margins calculated using the A-to-A method without zeroing and the A-to-T method without zeroing will always yield the identical results. This is evidenced with the calculation results for HiSteel in these final results where the total sum of comparison results for each comparison method (*i.e.*, the A-to-A method, the A-to-T method and the mixed method) are

[328] *See Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods from India*, 79 FR 41981 (July 18, 2014) (*OCTG from India*), and accompanying IDM at Comment 1.
[329] *See* HiSteel Case Brief at 49.

identical when offsets are granted.[330] Only the denial of offsets, *i.e.*, zeroing, results in differences between the three comparison results.

The difference in the calculated results specifically reveals the extent of the masked dumping which is being concealed when applying the A-to-A method.[331] The difference in these two results is caused by higher U.S. prices offsetting lower U.S. prices where the dumping, which may be found on lower-priced U.S. sales, is hidden or masked by higher U.S. prices,[332] such that the A-to-A method would be unable to account for such differences.[333] Such masking or offsetting of lower prices with higher prices may occur implicitly within the averaging groups or explicitly when aggregating the A-to-A comparison results. Therefore, in order to understand the impact of the unmasked dumping, Commerce finds that the comparison of each of the calculated weighted-average dumping margins using the standard and alternative comparison methodologies exactly quantifies the extent of the unmasked dumping.

The simple comparison of the two calculated results belies the complexities in calculating and aggregating individual dumping margins (*i.e.*, individual results from comparing export prices, or constructed export prices, with normal values). It is the interaction of these many comparisons of export prices or constructed export prices with normal values, and the aggregation of these comparison results, which determine whether there is a meaningful difference in these two calculated weighted-average dumping margins. When using the A-to-A method, lower-priced U.S. sales (*i.e.*, sales which may be dumped) are offset by higher-priced U.S. sales. Congress was concerned about offsetting and that concern is reflected in the SAA which states that so-called "targeted dumping" is a situation where "an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions."[334] The comparison of a weighted-average dumping margin based on comparisons of weighted-average U.S. prices that also reflects offsets for non-dumped sales, with a weighted-average dumping margin based on comparisons of individual U.S. prices without such offsets (*i.e.*, with zeroing) precisely examines the impact on the amount of dumping which is hidden or masked by the A-to-A method. Both the weighted-average U.S. price and the individual U.S.

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[330] *See* HiSteel Final Calculation Memo at Attachment 2, where the calculation results of the A-to-A method, the A-to-T method and the "mixed" method are summarized (pages 197, 198 and 199, respectively, of the SAS output for the Margin program). The sum of the "Positive Comparison Results" and the "Negative Comparison Results" for each of the three comparison methods are identical, *i.e.*, with offsets for all non-dumped sales (*i.e.*, negative comparison results); the amount of dumping is identical. As such, the difference between the calculated results of these comparison methods is whether negative comparison results are used as offsets or set to zero (*i.e.*, zeroing) when using the A-to-T method.

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

[332] *See* SAA at 842.

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

[334] *See* SAA at 842.

prices are compared to a normal value that is independent from the type of U.S. price used for comparison, and the basis for normal value will be constant because the characteristics of the individual U.S. sales[335] remain constant whether weighted-average U.S. prices or individual U.S. prices are used in the analysis.

Consider the simple situation where there is a single, weighted-average U.S. price, and this average is made up of a number of individual U.S. sales which exhibit different prices, and the two comparison methods under consideration are the A-to-A method with offsets (*i.e.*, without zeroing) and the A-to-T method with zeroing.[336] The normal value used to calculate a weighted-average dumping margin for these sales will fall into one of five scenarios with respect to the range of these different, individual U.S. sale prices:

1) the normal value is less than all U.S. prices and there is no dumping;

2) the normal value is greater than all U.S. prices and all sales are dumped;

3) the normal value is nominally greater than the lowest U.S. prices such that there is a minimal amount of dumping and a significant amount of offsets from non-dumped sales;[337]

4) the normal value is nominally less than the highest U.S. prices such that there is a significant amount of dumping and a minimal amount of offsets generated from non-dumped sales;

5) the normal value is in the middle of the range of individual U.S. prices such that there is both a significant amount of dumping and a significant amount of offsets generated from non-dumped sales.

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

[335] These characteristics include items such as product, level-of-trade, time period, and whether the product is considered as prime- or second-quality merchandise.
[336] The calculated results using the A-to-A method with offsets (*i.e.*, no zeroing) and the calculated results using the A-to-T method with offsets (*i.e.*, no zeroing) will be identical. Accordingly, this discussion is effectively between the A-to-T method with offsets and the A-to-T method with zeroing. *See* HiSteel Final Calculation Memo.
[337] As discussed further below, please note that scenarios 3, 4 and 5 imply that there is a wide enough spread between the lowest and highest U.S. prices so that the differences between the U.S. prices and normal value can result in a significant amount of dumping and/or offsets, both of which are measured relative to the U.S. prices.

de minimis, and again there is not a meaningful difference in the weighted-average dumping margins calculated using offsets or zeroing and the A-to-A method will be used. Lastly, under scenario (5), there is a significant, non-*de minimis* amount of dumping and a significant amount of offsets generated from non-dumped sales such that there is a meaningful difference in the weighted-average dumping margins calculated using offsets or zeroing. Only under the fifth scenario can Commerce consider the use of an alternative comparison method.

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

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

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

Therefore, Commerce finds that the meaningful difference test reasonably fills the gap in the statute to consider why, or why not, the A-to-A method (or T-to-T method) cannot account for the significant price differences in HiSteel's pricing behavior in the U.S. market. Congress's

intent of addressing so-called "targeted dumping," when the requirements of section 777A(d)(1)(B) of the Act are satisfied,[338] would be thwarted if the A-to-T method without zeroing were applied because this will always produce the identical results when the standard A-to-A method without zeroing is applied. Under that scenario, both methods would inherently mask dumping. It is for this reason that Commerce finds that the A-to-A method cannot take into account the pattern of prices that differ significantly , *i.e.*, Commerce identified conditions where "targeted" or masked dumping "may be occurring" in satisfying the pattern requirement, and Commerce demonstrated that the A-to-A method could not account for the significant price differences, as exemplified by the pattern of prices that differ significantly.

In this review, Commerce continues to find that there is no meaningful difference between the weighted-average dumping margin calculated using the A-to-A method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the A-to-T method to all U.S. sales. Thus, Commerce continues to find that application of the A-to-A method is an appropriate method for calculating the weighted-average dumping margin for HiSteel in these final results.

E. Application of the A-to-A Method Is Supported by Record Evidence and Commerce's Analysis

Commerce disagrees with HiSteel that it has failed to satisfy the statutory requirements of section 777A(d)(1)(B) of the Act and considers the application of an alternative comparison method based on the A-to-A method appropriate. As set forth in the *Preliminary Results*,[339] Commerce's differential pricing analysis for HiSteel in this administrative review is both lawful, reasonable, and completely within Commerce's discretion in executing the trade statute.

[338] *See* SAA at 842-843.
[339] *See Preliminary Results* PDM at 7-8.

VI. RECOMMENDATION

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

☒	☐
Agree	Disagree

7/6/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance