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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 Certain Cold-Rolled Steel Flat Products from the Republic of Korea

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I. SUMMARY

The Department of Commerce (Commerce) has analyzed the comments submitted by the interested parties in the administrative review of the antidumping duty (AD) order on certain cold-rolled steel flat products (cold-rolled steel) from the Republic of Korea (Korea) covering the period of review (POR) September 1, 2017 through August 31, 2018.

Based upon our analysis of the comments received, we made certain changes from the *Preliminary Results*.[1] We continue to find that POSCO and POSCO Daewoo Co., Ltd. (collectively, POSCO/PDW) and Hyundai Steel Company (Hyundai) did not sell subject merchandise in the United States at prices below normal value (NV). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

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

Below is the list of issues for which we received comments from interested parties in this administrative review:

Comment 1: Existence of a Particular Market Situation
Comment 2: Quantification of Particular Market Situation Adjustment
Comment 3: Applicability of Particular Market Situation Adjustment to Self-Produced Inputs
Comment 4: POSCO/PDW CEP Offset
Comment 5: Hyundai Manufacturer Codes

II. BACKGROUND

On November 18, 2019, Commerce published the *Preliminary Results* of this administrative review.[2] In accordance with 19 CFR 351.309, we invited interested parties to comment on the *Preliminary Results*.[3] On January 3, 2020, the following parties submitted case briefs: (1) POSCO/PDW;[4] (2) Hyundai;[5] (3) United States Steel Corporation (U. S. Steel);[6] and (4) ArcelorMittal USA LLC (AMUSA).[7] On January 13, 2020, the following parties submitted rebuttal briefs: (1) POSCO/PDW;[8] (2) Hyundai;[9] (3) AMUSA;[10] and (4) U.S. Steel and AMUSA (collectively, the Domestic Interested Parties or DIPs).[11] On February 12, 2020, at the request of interested parties,[12] Commerce held a public hearing.[13]

On June 19, 2020, Commerce placed additional factual information on the record of this review.[14] On June 24, 2020, U.S. Steel, POSCO/PDW, and Hyundai commented on that factual

[2] *See Preliminary Results* and accompanying PDM.
[3] *Id.*
[4] *See* POSCO/PDW's Letter, "Second Administrative Review of Cold-Rolled Steel Products from Korea: POSCO's Affirmative Case Brief," dated January 3, 2020 (POSCO/PDW Case Brief).
[5] *See* Hyundai's Letter, "Second Administrative Review of Cold-Rolled Steel Flat Products from the Republic of Korea: Hyundai Steel Company's Affirmative Case Brief," dated January 3, 2020 (Hyundai Case Brief).
[6] *See* U.S. Steel's Letter, "Cold-Rolled Steel Flat Products from the Republic of Korea: Case Brief of United States Steel Corporation," dated January 3, 2020 (U.S. Steel Case Brief).
[7] *See* AMUSA's Letter, "Cold-Rolled Steel Flat Products from the Republic of Korea: AMUSA Case Brief," dated January 3, 2020 (AMUSA Case Brief).
[8] *See* POSCO/PDW's Letter, "Cold-Rolled Steel Flat Products from Korea: POSCO's Rebuttal Brief," dated January 13, 2020 (POSCO/PDW Rebuttal Brief).
[9] *See* Hyundai's Letter, "Cold-Rolled Steel Flat Products from Korea: Hyundai Steel's Rebuttal Brief," dated January 13, 2020 (Hyundai Rebuttal Brief).
[10] *See* AMUSA's Letter, "Cold-Rolled Steel Flat Products from the Republic of Korea: Arcelor Mittal USA LLC's Rebuttal Brief," dated January 13, 2020 (AMUSA Rebuttal Brief).
[11] *See* Domestic Interested Parties' Letter, "Cold-Rolled Steel Flat Products from South Korea: Rebuttal Brief of Domestic Producers," dated January 13, 2020 (Domestic Interested Parties Rebuttal Brief).
[12] *See* POSCO/PDW's Letter, "Cold-Rolled Steel Flat Products from Korea: POSCO's Request for Hearing," dated December 17, 2019; Hyundai's Letter, "Cold-Rolled Steel Flat Products From Korea: Hyundai Steel's Request for a Hearing," dated December 17, 2019; AMUSA's Letter, "Cold-Rolled Steel Flat Products from the Republic of Korea - Petitioner's Request for a Hearing," dated December 17, 2019; U.S. Steel's Letter, "Cold-Rolled Steel Flat Products from the Republic of Korea: U.S. Steel Request for Public Hearing," dated December 18, 2019.
[13] *See* Memorandum, "Administrative Review of the Antidumping Duty Order on Certain Cold-Rolled Steel Flat Products from the Republic of Korea," dated February 12, 2020.
[14] *See* Memorandum, "Placing New Factual Information on the Record," dated June 19, 2020.

information and placed information on the record to rebut, clarify, or correct the information in Commerce's June 19, 2020 memorandum.[15]

On March 12, 2020, we extended the time limit for issuing the final results of this review, until 60 days from the publication of the *Preliminary Results*.[16] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending these final results until July 6, 2020.[17]

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

III. SCOPE OF THE ORDER

The products covered by the order are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (width) of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc*.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

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

Steel products included in the scope of the order are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by

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[15] *See* U.S. Steel's Letter, "Cold-Rolled Steel Flat Products from the Republic of Korea: Information to Rebut, Clarify, or Correct Aspects of Commerce's New Factual Information," dated June 24, 2020; POSCO/PDW's Letter, "Cold-Rolled Steel Flat Products from the Republic of Korea: Factual Information in Response to the Department's June 19, 2020 Memorandum Placing New Factual Information on the Record," dated June 24, 2020; Hyundai's Letter, "Cold-Rolled Steel Flat Products from the Republic of Korea: Factual Information in Response to the Department's June 19, 2020 Memorandum Placing New Factual Information on the Record," dated June 24, 2020.
[16] *See* Memorandum, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated March 12, 2020.
[17] *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.

weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), 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

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

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the cold-rolled steel.

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

- Ball bearing steels;[18]

[18] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor

- Tool steels;[19]
- Silico-manganese steel;[20]
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in *Grain-Oriented Electrical Steel from Germany, Japan, and Poland*.[21]
- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan*.[22]

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050.

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more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

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

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

[21] *See Grain-Oriented Electrical Steel from Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances*, 79 FR 42501, 42503 (July 22, 2014). This determination defines grain-oriented electrical steel as "a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths."

[22] *See Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders*, 79 FR 71741, 71741-42 (December 3, 2014). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied."

The products subject to the order may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

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

IV. CHANGES SINCE THE *PRELIMINARY RESULTS*

For the final results, we used the same methodology as stated in the *Preliminary Results*, with the exception of the following: (1) we revised the particular market situation adjustment rate to 17.13 percent for Hyundai;[23] and (2) we revised the manufacturing codes used in Hyundai's margin calculation programs.[24]

V. RATE FOR NON-EXAMINED COMPANIES

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

For these final results, we have calculated weighted-average dumping margins for both mandatory respondents that are 0.00 percent. We have not calculated any weighted-average dumping margins which are not zero, *de minimis*, or determined entirely on the basis of facts available. Accordingly, we have continued to assign to the companies not individually examined a margin of 0.00 percent, which is the average of Hyundai's and POSCO/PDW's calculated 0.00-percent weighted-average dumping margins.[25]

[23] *See* Memorandum, "Final Determination Calculations for Hyundai" dated July 6, 2020 (Hyundai Final Calculation Memorandum); *see also* Memorandum, "Final Determination Calculations for POSCO/PDW" dated July 6, 2020 (POSCO Final Calculation Memorandum).
[24] *See* Hyundai Final Calculation Memorandum.
[25] *See Preliminary Results* and accompanying PDM at 7.

VI. DISCUSSION OF THE ISSUES

Comment 1: Existence of a Particular Market Situation

In the *Preliminary Results*, Commerce determined that a particular market situation (PMS) existed in Korea that distorted the cost of production (COP) of cold-rolled steel. We preliminarily found that the PMS resulted from the collective impact of the continued effects of global steel overcapacity, the unfairly traded Chinese hot-rolled coil (HRC) contributing to it, and the resulting steel industry restructuring effort by the Government of Korea (GOK); the GOK's subsidization of HRC; strategic alliances between Korean HRC suppliers and Korean cold-rolled steel producers; and the GOK's distortive involvement in the Korean electricity market.[26]

Evidence of a Cost-Based PMS

POSCO/PDW and Hyundai's Comments:[27]

- The statute limits adjustment for PMS to a constructed value context and does not authorize such PMS adjustments in a sales-below-cost context. [28]
- By its plain language, Section 504 of the Trade Preference Extension Act (TPEA) only authorizes Commerce to make adjustments to CV under 19 USC §1677b(e) and authorizes no similar adjustments under 19 USC §1677b(b). The amendment did not change the statutory provisions regarding the calculation of COP or application of the sales-below-cost test of the Tariff and Trade Act of 1930. By not making a change to the Tariff and Trade Act of 1930 while at the same time making changes to 19 USC 1677(15)(C) and 19 USC 1677b(e), Congress signaled that it did not intend Commerce to modify its sales below-cost analysis or COP approach based on any PMS finding.[29]
- There is no legal basis for Commerce to adjust POSCO's reported cost of production for purposes of the sales below-the-cost test. [30]
- There is no "cost-based" PMS with respect to HRC inputs in the production of subject merchandise. Commerce should reject the PMS allegation in light of the CIT's holdings in *NEXTEEL I* and *NEXTEEL II*.[31] As the CIT affirmed in its recent rulings on Commerce's PMS determinations in the first administrative review of OCTG from Korea and the subsequent second administrative review of OCTG, the record materials to which

[26] *See* Memorandum, "2017-2018 Administrative Review of the Antidumping Duty Order on Cold-Rolled Steel from the Republic of Korea: Decisions on Particular Market Situation Allegations," dated November 8, 2019 (Preliminary PMS Memorandum).
[27] *See* Hyundai Case Brief at 2-25; POSCO/PDW Case Brief at 2-25.
[28] *See* Hyundai Case Brief at 2-5; POSCO/PDW Case Brief at 2-4.
[29] *See* Hyundai Case Brief at 2-5; POSCO/PDW Case Brief at 2-4.
[30] *See* Hyundai Case Brief at 2-5; POSCO/PDW Case Brief at 2-4.
[31] *See* Hyundai Case Brief at 2-5; POSCO/PDW Case Brief at 2-4. (citing *NEXTEEL Co., Ltd. v. United States*, 355 F. Supp. 3d 1336 (CIT 2019) (*NEXTEEL I*) and *NEXTEEL Co., Ltd. v. United States*, 392 F. Supp. 3d 1276 (CIT 2019) (*NEXTEEL II*)).

Commerce pointed in its *Preliminary Results* do not constitute substantial record evidence.[32]

- Commerce has historically recognized that any finding that a PMS exists must rely on strong, substantial evidence that the respondents' actual data is unusually and extensively distorted and thus sales were not made in the "ordinary course of trade."[33] An analysis under Section 773(e) of the Act leads to the conclusion that there is no particular market situation with respect to Hyundai's or POSCO/PDW's purchases of hot-rolled steel in this administrative review.[34]
- In *NEXTEEL I*, which arose out of *OCTG Korea 2014-2015 Final Results*, the CIT concluded that it "does not stand to reason that individually, the facts would not support a particular market situation, but when viewed as a whole, these same facts could support the opposite conclusion."[35]
- In *NEXTEEL I* the CIT found that Commerce's finding of a PMS based on the "cumulative effect" of the same underlying four factors of a PMS allegation was unreasonable and instructed Commerce "to reverse the finding of a particular market situation and recalculate the dumping margin for the mandatory respondents and non-examined companies."[36]
- In the appeal arising out of *OCTG Korea 2015-16 Final Results,* that is *NEXTEEL II*, the CIT held that because Commerce relied on its first review determination as a basis for finding a PMS and that finding was not supported by substantial evidence, Commerce's finding in the subsequent administrative review was also not supported by substantial evidence.[37]
- In *NEXTEEL I*, the CIT also stated that Commerce "acknowledged a rise in exports of steel products (including HRC) from China but found that {the petitioner} had not demonstrated that the trend was unique to Korea."[38]
- The CIT also concluded that "the potential broad effect on prices creates a situation outside the scope of a particular market situation, as the impact of Chinese exports in the Korean market are also reflected in other markets across the world."[39]
- The term "ordinary course of trade" means "the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind."[40]
- The DIPs have not shown that the particular market situation in Korea is not "ordinary." The circumstances in Korea do not represent a novel or unusual situation, but instead now reflect a normal situation that even Commerce recognizes has been ongoing for many years.[41]

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[32] *See* Hyundai Case Brief at 6-15; POSCO/PDW Case Brief at 6-15.
[33] *See* Hyundai Case Brief at 6-15; POSCO/PDW Case Brief at 6-15.
[34] *See* Hyundai Case Brief at 6-15; POSCO/PDW Case Brief at 6-15.
[35] *See* Hyundai Case Brief at 6-15; POSCO/PDW Case Brief at 6-15 (citing *NEXTEEL I*, 355 F. Supp. 3d at 1351).
[36] *See* Hyundai Case Brief at 6-15; POSCO/PDW Case Brief at 6-15.
[37] *See* Hyundai Case Brief at 6-15; POSCO/PDW Case Brief at 6-15 (citing *NEXTEEL II*, 382 F. Supp. 3d at 1287-88).
[38] *See* Hyundai Case Brief at 6-15; POSCO/PDW Case Brief at 6-15 (citing *NEXTEEL I*, 355 F. Supp. 3d at 1350).
[39] *See* Hyundai Case Brief at 6-15; POSCO/PDW Case Brief at 6-15.
[40] *See* Hyundai Case Brief at 11; POSCO/PDW Case Brief at 9-10.
[41] *See* Hyundai Case Brief at 11; POSCO/PDW Case Brief at 9-10.

- If Commerce concludes that a PMS existed in Korea affecting the costs of manufacturing the merchandise under consideration, Commerce must base its determination on an empirical analysis and calculate any PMS cost adjustment accordingly.[42]
- In prior cases such as *Rebar from Taiwan*, Commerce has used a data-driven methodology for benchmarking costs of production to determine whether they were incurred in the ordinary course of trade. In contrast, the DIPs would have Commerce undertake no benchmarking in this case.[43]
- Without addressing record data regarding HRC purchase prices or POSCO/PDW's costs of self-production, Commerce cannot make a reasoned, fact-based determination on the basis of substantial evidence as to what constitutes a market price in Korea. Failure to do so would render Commerce's determination arbitrary and, thus, contrary to law.[44] Benchmarking inputs is the correct method of ascertaining whether or not a PMS adjustment is needed, as Commerce did in *Rebar from Taiwan*[45] and *Biodiesel from Argentina*.[46]
- Commerce's current practice emphasizes applying market principles to PMS adjustments when it finds that an adjustment is necessary.[47] In both *Biodiesel from Argentina* and *Biodiesel from Indonesia*,[48] after conducting quantitative empirical analyses, Commerce made adjustments to costs using a "market determined source."[49] In fact, in *Biodiesel from Indonesia*, Commerce did not use a CVD rate as an adjustment even though there was a concurrent CVD case examining the same input. Instead, Commerce used a market price as a substitute for the respondent's actual costs.[50]
- There is no factual justification to find that a particular market situation exists with respect to POSCO/PDW's and Hyundai's HRC costs.[51]
- Record evidence undermines the DIPs' arguments that "significant" steel production overcapacity globally, and especially in China and Korea, caused a PMS in Korea during the POR.[52]
    - By focusing on the broad impact of global overcapacity on global markets, Commerce's analysis fails to show that a particular market - specifically the Korean HRC market - has been distorted. There is no "particular" market situation if the

[42] *See* Hyundai Case Brief at 11; POSCO/PDW Case Brief at 9-10.
[43] *See* Hyundai Case Brief at 11; POSCO/PDW Case Brief at 9-10. (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 (*Rebar from Taiwan*)).
[44] *See* POSCO/PDW Case Brief at 10-13; Hyundai Case Brief at 13.
[45] *See* POSCO/PDW Case Brief at 10-13; Hyundai Case Brief at 13 (citing *Rebar from Taiwan*).
[46] *See* POSCO/PDW Case Brief at 10-13; Hyundai Case Brief at 13 (citing *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*)).
[47] *See* POSCO/PDW Case Brief at 10-13; Hyundai Case Brief at 13 (citing *Biodiesel from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 50379 (October 31, 2017) and accompanying PDM at 23; *Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018) and accompanying IDM at Comment 3 (*Biodiesel from Indonesia*)).
[48] *See* POSCO/PDW Case Brief at 12-13 and Hyundai Case Brief at 13.
[49] *See* POSCO/PDW Case Brief at 12-13 and Hyundai Case Brief at 14.
[50] *See* POSCO/PDW Case Brief at 12-13 and Hyundai Case Brief at 14.
[51] *See* POSCO/PDW Case Brief at 14-18 and Hyundai Case Brief at 15-19.
[52] *See* POSCO/PDW Case Brief at 14-18 and Hyundai Case Brief at 15-19.

market factors cited by the DIPs are impacting the steel market in every country (and in fact for practically every steel product), in the same way.[53]

  - For instance, Commerce found that the Korean Government's failure to address "subsidized, dumped, and tainted" Chinese steel products by means of imposing trade remedy measures contributed to a PMS impacting the entire Korean market for hot-rolled coil. This statement is factually wrong.[54] The respondents in their rebuttal PMS submission demonstrated that there were at least two trade measures in place against steel products from China.[55]
  - The DIPs have claimed that steel plant closures and shutdowns in China have been "offset" by new plant commissions.[56] But the DIPs ignore that the Chinese government has instituted numerous measures to link the replacement with the reduction of capacity. For example, the Chinese Ministry of Industry and Information published a "replacement measure" in 2015 that established a "replacement" ratio of a minimum of 1.25 tons of backward capacity to be reduced for each ton of new capacity in the Beijing, Tianjin, and Hebei areas and the Yangtze and Pearl River deltas.[57] The 2018 revision of this measure added that in other areas the capacity to be phased out should be larger than the amount of any new capacity.[58] As such, any capacity increases because of new plant commissions are always counteracted by additional reductions in capacity.[59]
  - The DIPs undertook no objective, empirical analysis to show that the prices that Hyundai Steel and POSCO paid for their inputs, either from Korean or foreign suppliers, to manufacture subject cold rolled steel were inconsistent with market prices or were below the suppliers' production costs.[60]

- There is no evidence of Korean Government "intervention" to any significant degree in the Korean steel market.[61]
  - There is no evidence of "government interference" or "active government involvement." The conclusion that there is government involvement and interference in the market is speculative and not supported by the record, as Commerce pointed to no steps the Korean government actually took or allegedly took to interfere in the market.[62]
  - Commerce relies on an outdated, September 30, 2016 "Proposal for Strengthening the Competitiveness of the Steel Industry" document to conclude that the Korean government utilizes programs such as the "One Shot Act" to promote voluntary

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[53] *See* POSCO/PDW Case Brief at 14-18 and Hyundai Case Brief at 15-19.
[54] *See* POSCO/PDW Case Brief at 14-18 and Hyundai Case Brief at 15-19.
[55] *See* Hyundai Case Brief at 16 (citing Preliminary PMS Memorandum at 14).
[56] *Id.* at 17 (citing Domestic Interested Parties' Cost-Based PMS Allegation at 7).
[57] *Id.* (citing Hyundai POSCO PMS Rebuttal Comments at Exhibit CAP-2, page 12).
[58] *Id*.
[59] *See* POSCO/PDW Case Brief at 16.
[60] *Id*. at 18.
[61] *See* POSCO/PDW Case Brief at 18-20; Hyundai Case Brief at 19-21.
[62] *See* POSCO/PDW Case Brief at 18-20; Hyundai Case Brief at 19-21.

corporate restructuring."[63] As just noted above, Commerce has explicitly found that this program is not utilized by Korean steel producers.[64]

- There are no "strategic alliances" within the steel industry distorting production costs.[65]
  - Commerce relies on irrelevant and outdated Korea Fair Trade Commission (KFTC) materials to imply that strategic alliances "may have" affected prices in the period covered by the original LTFV investigation and prior administrative reviews.[66]
  - None of these materials implicate POSCO/PDW or Hyundai. Further, none of these allegations relate to hot-rolled steel, cold-rolled steel, input costs, or the POR.
  - Commerce has not cited any empirical data or undertaken any effort to show that any alleged alliances, if they exist, have influenced, directly or indirectly, the hot rolled steel costs or more generally the costs to produce subject cold rolled steel (which they did not).[67]
  - Moreover, Commerce does not address, nor it can show, that POSCO/PDW has strategic alliances with its suppliers -- the crux of Commerce's prior determinations on the "strategic alliance" question.[68]
- The record does not support any claim that Korean domestic electricity costs are not market-based.[69]
  - Commerce found that the GOK's interest in, and involvement with, the electricity market in Korea, contributes to the distortion of the respondents' COM of cold-rolled steel.[70]
  - KEPCO's unprofitability has nothing to do with electricity pricing in Korea or the respondents' electricity costs.[71] POSCO/PDW produces its own electricity and uses self-produced electricity for most of its hot-rolled and cold-rolled production.[72]
  - Further, Commerce's analysis fails to show that: (1) electricity pricing resulted from GOK intervention in electricity price setting and not the result of Korean supply and demand; (2) the GOK involvement in the domestic electricity market has affected the electricity prices that respondents paid; or (3) the respondents' actual reported electricity cost data in this review is somehow inaccurate.[73]

U.S. Steel's Comments:

- The DIPs alleged a cost-based PMS based on seven factors and proposed adjustments for six of the seven factors. Commerce preliminarily found that five of the seven factors

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[63] *See* POSCO/PDW Case Brief at 18-20; Hyundai Case Brief at 19-21.
[64] *See* POSCO/PDW Case Brief at 18-20; Hyundai Case Brief at 19-21.
[65] *See* POSCO/PDW Case Brief at 20-22; Hyundai Case Brief at 21-23.
[66] *See* POSCO/PDW Case Brief at 20-22; Hyundai Case Brief at 21-23.
[67] *See* Hyundai Case Brief at 21 (citing Preliminary PMS Memorandum at 16).
[68] *Id*. at 22 (citing, *e.g. Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 10784 (March 22, 2019) and accompanying Issues and Decision Memorandum at Comment 1).
[69] *See* POSCO/PDW Case Brief at 22-24; Hyundai Case Brief at 23-25.
[70] *See* POSCO/PDW Case Brief at 22-24; Hyundai Case Brief at 23-25.
[71] *See* POSCO/PDW Case Brief at 22-24; Hyundai Case Brief at 23-25.
[72] *See* POSCO/PDW Case Brief at 22.
[73] *Id.* at 22.

were sufficient to constitute a PMS, but that distortion of Korean iron ore and inbound bulk shipping markets did not contribute to a PMS. Commerce should continue to find a cost-based PMS for the final results and should expand its cost-based PMS finding to account for steel industry restructuring and distortions in the Korean iron ore and inbound bulk freight markets. These factors either contributed to the single PMS preliminarily identified by Commerce or constituted one or more separate particular market situations.[74]

- Steel industry restructuring efforts by the GOK contributed to a PMS during the POR.[75]
  - Commerce's PMS determination in the preliminary results of the 2017-2018 administrative review of OCTG from Korea found that "Steel Industry Restructuring Efforts by the Korean Government" contributed to a PMS, but its *Preliminary Results* in the instant review, with the same relevant evidence on the record, did not find that this factor contributed to the Korean PMS.[76]
  - Given the identical evidence, Commerce should find that Korean steel industry restructuring efforts contributed to a PMS that distorted CRS input costs for the final results.[77]
- Shipping rates for inbound iron ore and coal were distorted over the POR.[78]
  - Massive subsidization in the shipbuilding industry, an industry upstream of shipping, has impacted the latter by increasing the supply of uneconomic ships on the water. The resulting overcapacity in the global dry bulk shipping industry is well-established, as is the resulting depression in bulk freight rates.[79]
  - Hyundai Merchant Marine (HMM), Korea's largest shipping company, and a lossmaking enterprise whose top creditor and main shareholder is the Korean government, received billions of dollars in bailouts, distorting pricing on Korea-bound iron ore and coal routes. HMM allocates its largest dry bulk vessels to iron ore and coking coal routes, and repeatedly indicates that it serves Korean steelmakers.[80]
- The cost of iron ore used to produce Korean HRC was distorted over the POR.[81]
  - In the *Preliminary Results*, Commerce did not find that the cost of Australian iron ore was a factor which contributed to a PMS in Korea.[82]
  - Commerce did not address the DIPs' additional evidence of distortion in the Korean iron ore market. The evidence does not support Commerce's understanding of how shipping costs are reflected in iron ore prices.[83]

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[74] *See* U.S. Steel Case Brief at 4-24.
[75] *Id.* at 5-6.
[76] *Id.*
[77] *Id.*
[78] *Id.* at 6-14.
[79] *Id.*
[80] *Id.*
[81] *Id.* at 14-24.
[82] *Id.*
[83] *Id.*

POSCO/PDW and Hyundai's Rebuttal Comments:

- There is no basis to adjust POSCO/PDW's or Hyundai's production costs, and the DIPs have failed to explain how the alleged distortions with respect to HRC pricing are related to POSCO/PDW's or Hyundai's reported cost of producing cold-rolled steel.[84]
- There is no basis to adjust the respondents' costs for HRC because the reported costs in this case are not for HRC, but the inputs to produce CRC in their integrated facilities and operations. Even assuming there is a particular market situation in the hot rolled steel market, such distortions in hot rolled steel pricing would be irrelevant to the costs at issue here.[85]
- The relevant question here is whether "the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade."[86] In essence, by advancing a PMS allegation with respect to HRC, the DIPs are seeking to insert a surrogate methodology into Commerce 's calculations to re-cast the respondents' costs as they see fit; however, to do so, they also have to completely disregard POSCO/PDW's and Hyundai's actual production operations and substitute their own preferred factors of production.[87]
- The statute only authorizes PMS adjustments in a CV context, not in a sales-below-cost context.
- The DIPs argue that if Commerce found a PMS, "the overarching statutory requirement to ensure a 'fair comparison' must guide {Commerce}'s exercise of discretion in adjusting reported costs." This argument fails because nothing in the DIPs' allegation or Commerce's *Preliminary Results* indicate that home market prices cannot form the basis of a fair comparison to U.S. price, and any claimed distortion would appear to lower costs and prices on both sides of the less than fair value equation. Commerce does not need to address this issue because, as the CIT has recently held in several cases, any PMS adjustments are squarely limited to constructed value calculations performed under 19 USC 1677b(e).[88]
- The DIPs failed to demonstrate a reasonable relationship between KEPCO's profit level and the alleged distortion with respect to electricity cost. Although the DIPs argue that Commerce should make an adjustment for electricity costs, they do not attempt to quantify the adjustment factor. [89]
- KEPCO's unprofitability is unrelated to electricity pricing in Korea. The DIPs did not show that electricity pricing resulted from Korean Government intervention in electricity price-setting and not the result of Korean supply and demand.[90]
- The DIPs point to no record evidence to suggest that POSCO/PDW's and Hyundai's actual reported electricity cost data in this review is inaccurate, and there is no evidence

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[84] *See* POSCO/PDW Case Brief at 2-4; Hyundai Rebuttal Brief at 2-4.
[85] *See* POSCO/PDW Case Brief at 2-4; Hyundai Rebuttal Brief at 2-4.
[86] *See* POSCO/PDW Case Brief at 2-4; Hyundai Rebuttal Brief at 2-4.
[87] *See* POSCO/PDW Rebuttal Brief at 3; Hyundai Rebuttal Brief at 3.
[88] *See* POSCO/PDW Rebuttal Brief at 4-5; Hyundai Rebuttal Brief at 4-5.
[89] *See* POSCO/PDW Rebuttal Brief at 10-12; Hyundai Rebuttal Brief at 9-11.
[90] *See* POSCO/PDW Rebuttal Brief at 10-12; Hyundai Rebuttal Brief at 9-11.

on the record that those prices are aberrant. Commerce must reject the DIPs' suggestion to increase the respondents' reported electricity costs.[91]

- The DIPs failed to show that a PMS exists with respect to shipping rates, or that a PMS impacted POSCO/PDW's or Hyundai's costs, and the DIP's argument concerning inbound shipping rates is unpersuasive. The DIPs provide no evidence to show that actual inbound shipping costs were distorted in any way.[92]
- The DIPs point to HMM's unprofitability, but record evidence reveals that HMM is not a major service provider in the Australia-Korea route used to transport iron ore and coal to Korea. Commerce only applies a PMS methodology where distortions in a market price are so pervasive that pricing or cost do not operate on market principles.[93] One shipping company's unprofitability and a government's bailout solely for the sake of the company's going concern falls outside the definition of a PMS, especially where it had no discernible or measurable impact on the market shipping rate where such rates are determined by global supply and demand factors.[94]
- As evidence of subsidization, the DIPs state that HMM accumulated a loss and avoided bankruptcy through a bailout from the Korean Development Bank. However, this bailout had nothing to do with competitive shipping rates, but only helped ensure the company remained a going concern. The bailout had no impact on global market shipping rates, and the DIPs have provided nothing more than speculation.[95]
- There is no basis to adjust the respondents' reported iron ore costs. Commerce correctly concluded in the *Preliminary Results* that the DIPs failed to provide sufficient evidence that iron ore costs from Australian input iron ore were distortive or contributed to a PMS in Korea. The DIPs failed to demonstrate any reasonable link between the alleged PMS in the Australian iron ore market and the respondents' iron ore purchases.[96]
- that this PMS factor encompasses both the cost of Australian iron ore and the subsidization and tax evasion that distorts the cost of iron ore production in Australia. This argument still does not establish that the respondents' purchase costs of iron ore are distorted or not in the ordinary course of business. To the that any distortions do exist in the Australian iron ore market, they did not impact the respondents' actual purchase prices of iron ore.[97] The DIPs continue to rely on a single table in an OECD statistical report arguing that the difference between the price shown for Australian iron ore and Brazilian iron ore is a reasonable adjustment factor, but these data contain fundamental flaws that make it unusable for any comparison purpose.[98] For example, the Australian price includes transportation, and the Brazilian price is for a higher grade of ore.[99]

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[91] *See* POSCO/PDW Rebuttal Brief at 10-12; Hyundai Rebuttal Brief at 9-11.
[92] *See* POSCO/PDW Rebuttal Brief at 12-14; Hyundai Rebuttal Brief at 11-14.
[93] *See* POSCO/PDW Rebuttal Brief at 12-14; Hyundai Rebuttal Brief at 11-14 (citing, *e.g., 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 Korea 2016-2017 Final Results*) and accompanying IDM at Comment 1-B).
[94] *See* POSCO/PDW Rebuttal Brief at 12-14; Hyundai Rebuttal Brief at 11-14.
[95] *See* POSCO/PDW Rebuttal Brief at 12-14; Hyundai Rebuttal Brief at 11-14.
[96] *See* POSCO/PDW Rebuttal Brief at 14-16; Hyundai Rebuttal Brief at 14-16.
[97] *See* POSCO/PDW Rebuttal Brief at 14-16; Hyundai Rebuttal Brief at 14-16.
[98] *See* POSCO/PDW Rebuttal Brief at 14-16; Hyundai Rebuttal Brief at 14-16.
[99] *See* POSCO/PDW Rebuttal Brief at 14-16; Hyundai Rebuttal Brief at 14-16. (citing Domestic Interested Parties' Cost-Based PMS Allegation at 80, Exhibit 197).

- The DIPs pick and choose ocean freight and delivery expenses from the record to construct prices of Australian and Brazilian iron ore, but these do not provide any reliable method for determining whether respondents' actual purchase costs for iron ore were distorted, because the record already contains respondents' actual purchase data.[100]

Domestic Interested Parties' Rebuttal Comments:

- Commerce should continue to find that a PMS exists in Korea, which impacted costs of production in this POR.[101]
- The CIT's substantial evidence rulings concerning OCTG do not compel a reversal of the *Preliminary Results. Nexteel* did not address substantive arguments concerning Commerce's PMS determination, and the record of this review contains evidence specific to distortions in the Korean steel market during this POR.[102]
- Chinese and global HRC overcapacity still exist, and government intervention in the HRC market need not have been found countervailable to distort the market. The evidence continues to show government intervention in the electricity market, as well as anti-competitive practices.[103]
- Commerce has considerable discretion and flexibility to find a cost-based PMS and is not limited to pre-TPEA examples of a PMS.[104]
- In enacting the TPEA, Congress reiterated Commerce's flexibility in finding a PMS, intending that the amendments would enhance Commerce's "flexibility in calculating a duty that is not based on distorted pricing or costs."[105] Thus, Commerce need not – and was nowhere encouraged to – merely reapply its pre-TPEA price-based PMS practice. To the contrary, Commerce has "considerable discretion" and "flexibility" in making cost-based PMS determinations.[106]
- The passage of time does not render market distortion "ordinary"[107] Respondents misconstrue the definition of ordinary course of trade, in arguing that the passage of time renders once-distortive factors "normal."[108] 19 USC 1677(15) defines "Ordinary Course of Trade" as "the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal…with respect to merchandise of the same class or kind."[109] Normalcy and the passage of time are two *separate, cumulative* requirements for a condition to be considered within the ordinary course of

[100] *See* POSCO/PDW Rebuttal Brief at 14-16; Hyundai Rebuttal Brief at 14-16.
[101] *See* Domestic Interested Parties Rebuttal Brief at 4-6.
[102] *Id.* at 4-8.
[103] *Id.*
[104] *Id.* at 8-13.
[105] *Id.* (citing S. Rep. No. 114-45 (2015) at 37 (Senate Finance Committee); 161 Congressional Record S2902 (May 14, 2015)).
[106] *See* Domestic Interested Parties Rebuttal Brief at 8-13.
[107] *Id.* at 13-14.
[108] *Id.*
[109] *Id.*

trade.[110] The global overcapacity crisis is far from "normal;" moreover, the passage of time does not render it so.[111]

- "Ordinary Course of Trade" means "the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal…with respect to merchandise of the same class or kind."[112] The respondents' interpretation pays no heed to the structure of the statutory sentence.[113]
- Commerce is not required to separately find that prices are outside the ordinary course of trade.[114] The respondents' case briefs rely on the flawed assumption that Commerce's qualitative inquiry must find both that a PMS exists and that "costs of manufacturing" do not accurately reflect the cost of production in the ordinary course of trade.[115]
- Commerce is not separately obligated to find costs outside the ordinary course of trade. Such an obligation would amount to a nonsensical presumption that costs set in a market distorted by a PMS nevertheless "accurately reflect" the ordinary course of trade.[116] The Court has repeatedly confirmed that Commerce may adjust respondents' costs where a PMS exists, stating "the amended statute gives Commerce discretion to adjust the cost of production calculation methodology when determining constructed value if Commerce finds that a particular market situation exists.[117]
- Commerce is not required to undertake a benchmarking analysis to identify a PMS.[118] Commerce's prior PMS decisions have acknowledged that "the lack of appropriate data on the record with which to quantify an adjustment does not constitute evidence that the underlying condition does not exist."[119] In other words, the lack of a benchmark does not preclude a PMS finding.[120]
- Subsidization or government interference does not need to be countervailable to create a PMS.[121] Respondents continue to suggest that any allegations of distortion by subsidy can only be dealt with in a separate countervailing duty proceeding.[122] Respondents' argument is devoid of statutory support, is affirmatively contradicted by both legislative history and subsequent administrative practice, and has been rejected by the CIT.[123]

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[110] *Id.*
[111] *Id.*
[112] *Id.*
[113] *Id.*
[114] *See* Domestic Interested Parties Rebuttal Brief at 14-15.
[115] *Id.*
[116] *Id.*
[117] *Id.*
[118] *See* Domestic Interested Parties Rebuttal Brief at 16-18.
[119] *Id.*
[120] *Id.*
[121] *Id.* at 18-19.
[122] *Id.*
[123] *Id.* (citing 166 Cong. Rec. H4690 (daily ed. June 25, 2015) (statement of Sen. Meehan); *Final Determination in the Countervailing Duty Investigation of Biodiesel from the Republic of Indonesia*, November 6, 2017 and accompanying IDM at Comment 3; *Circular Welded Non-Alloy Steel Pipe from Korea*, 83 FR 27541 (June 13, 2018) and accompanying IDM at Comment 1; *Vicentin S.A.I.C. v. United States*, 404 F. Supp. 3d 1323, 1336 (CIT 2019) (quoting section 773(e) of the Act) ("when Commerce finds that a PMS exists, it 'may use…any other calculation methodology.'")).

- Commerce should not adjust U.S. sales prices to account for a PMS. Respondents suggest that if Commerce adjusts normal value for PMS related distortion, it should likewise adjust U.S. price, without explaining what statutory authority would permit such an adjustment. Regarding the latter, plainly, the cost-based PMS provision is a creature of the normal value statute, 19 USC 1677b, and grants no authority for adjusting U.S. price under 19 USC 1677a. As for the former, the crux of respondents' argument appears to be that PMS distortions, *e.g.*, overcapacity induced by cheap Chinese HRC imports, equally impact the home market prices (or the costs used to calculate constructed value) and the price of subject merchandise sold to the United States.[124]
- A market-wide PMS analysis is correct and has been sustained by the CIT.[125] Respondents' PMS submissions rely on the flawed assumption that Commerce's qualitative inquiry must focus on whether, *e.g.*, "Hyundai Steel's costs are distorted." Respondents cite no statutory or regulatory support for this position, and the very phrase "particular *market* situation" authorizes a market-wide, rather than respondent-specific analysis.[126]
- The evidence in the Cost-Based PMS Allegation is more voluminous, more contemporary, and more probative than that which is discussed and summarized in the respondents' rebuttal factual information submissions. The respondents' case briefs retreat from their earlier contention that the Cost-Based PMS Allegation contains "obsolete" sources,[127] now arguing that Domestic Producers "provided limited POR-specific information."[128] The respondents have provided no supporting citation, and the evidence proves otherwise. [129]
- The factor of overcapacity and price suppression was only one of four factors that Commerce preliminarily found to contribute to a PMS. The presence of additional distortive factors in Commerce's "totality of the circumstances" analysis suffices to particularize the situation in the Korean market as a whole, due to their combined presence.[130]
- Commerce's Preliminary PMS Memorandum recognized record evidence establishing GOK subsidization of Korea's largest HRC producers above *de minimis* levels in response to the steel overcapacity crisis.[131] Commerce observed that this exerted downward pressure on HRC prices in Korea. Commerce additionally recognized that the "One Shot Act" was designed and implemented to help Korean steelmakers address oversupply.[132]

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[124] *See* Domestic Interested Parties Rebuttal Brief at 19-20.
[125] *Id.*
[126] *See* Domestic Interested Parties Rebuttal Brief at 20-21.
[127] *See* Domestic Interested Parties Rebuttal Brief at 21 (citing POSCO/PDW's and Hyundai's Letter, "Cold Rolled Steel Flat Products from the Republic of Korea: Particular Market Situation Comments and Rebuttal Factual Information," dated October 7, 2019 (Respondents PMS Rebuttal Submission) at 21).
[128] *See* Domestic Interested Parties Rebuttal Brief at 21.
[129] *Id.* (citing Cost-Based PMS Allegation at Exhibits 7, 13, 17-18, 21,24-28, 30-31, 35-36, 41-45, 47-51, 74-76, 90, 93, 96-108, 115-16, 120-29, 134-41, 143, 147-48, 154-56, 158, 160, 163-64, 181, 187, 190-99, 211, 216-19, and 224-25).
[130] *See* Domestic Interested Parties Rebuttal Brief at 20-28.
[131] *Id.* at 28-35(citing Preliminary PMS Memorandum).
[132] *Id.*

- Anticompetitive behavior among Korean steel producers contributed to a PMS in Korea. Commerce concluded that "strategic alliances and price fixing schemes may…impact HRC pricing in a distortive manner during the instant POR and in the future."[133]
- Distorted electricity input costs contributed to a PMS in Korea. Commerce preliminarily found that the GOK owns over 50 percent of KEPCO, and"{t}his GOK control of KEPCO allows the GOK to exercise control over the prices that KEPCO charges."[134] Moreover, KEPCO's massive operating losses for 2018 and 2019 indicated that KEPCO sold electricity at prices that were not sufficient to cover its costs, something "implausible…without government control," given the extensive price regulation.[135]

<u>Evidence of a Price-Based PMS</u>

U.S. Steel Comments:

- Commerce should find a price-based PMS and base normal value on constructed value.[136]
- The factors that would constitute a cost-based PMS for an input would likewise constitute a price-based PMS for the final product.[137]
- Commerce's observations in the *Preliminary Results* employ an improper legal standard.[138]
- Commerce has discretion and flexibility to find a price-based PMS, and any situation that prevents a proper comparison with U.S. price constitutes a price-based PMS.[139]
- Any home market situation "outside the ordinary course of trade" will prevent a proper comparison with U.S. price, thus constituting a price-based PMS.[140]
- The DIPs can show the existence of a price-based PMS in the Korean CRS market without resorting to price benchmarking.[141]
- Commerce's pre-TPEA analysis of single-factor PMS allegations are of little instructive value and cannot counter Commerce's repeated post-TPEA determinations that overcapacity, subsidization, and strategic alliances constitute a PMS.[142]
- The DIPs have adduced evidence for each alleged distortion in the Korean CRS market, and Commerce's observations in the *Preliminary Results* are factually incorrect.[143]
- The Korean HRC and cold-rolled coil (CRC) markets are closely related and, thus, distortion of the HRC market has a distortive impact on the CRC market.[144]

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[133] *Id.* at 35-37 (citing Preliminary PMS Memorandum at 16).
[134] *Id.* at 37-41 (citing Preliminary PMS Memorandum at 16-17).
[135] *Id.* at 37-41.
[136] *See* U.S. Steel Case Brief at 44.
[137] *Id.* at 45-55.
[138] *Id.*
[139] *Id.*
[140] *Id.*
[141] *Id.*
[142] *Id.*
[143] *Id.* at 59-74.
[144] *Id.*

- The DIPs have substantiated allegations of distortive factors affecting the Korean CRS market with record evidence, specifically concerning distortions related to Chinese overcapacity, Korean overcapacity, GOK subsidization and restructuring efforts, and strategic alliances.[145]
- The GOK offered both financial and institutional support for steel industry restructuring and subsidized Korean CRC production. Through the "Special Act on the Corporate Revitalization," or "One-Shot Act," state and local governments were permitted to provide financial and institutional support in the form of tax support, subsidies, loans, direct funding, research and development support, freedom from regulatory burdens, and training, advice, and education for business renovation and aptitude development to companies suffering from oversupply, including CRC production.[146] The GOK deemed a trial period successful and stated that it would continue,[147] specifically noting that "the number of companies importing/manufacturing low-priced, improved quality Chinese hot rolled steel sheets {is} increasing," including those turning Chinese HRC into CRC.[148]
- The DIPs' evidence of distortion in the Chinese steel market stands unrebutted.[149] These include both local and national tax exemptions, energy and land subsidization, subsidized lending, preferential access to steelmaking and processing inputs, and access to government data[150] These interventions have distorted the cost of CRS production in China, and have led to capacity expansion.[151] Widespread distortions in the Chinese market have, moreover, resulted in an overcapacity crisis that impacted the Chinese (and global) CRC markets just as it did the Chinese (and global) HRC markets.[152]
- This excess production spilled into the global market, as CRC export volumes for 2017-18 remained, on average, over eleven percent higher than export volumes for 2015.[153]
- Upon finding a price-based PMS for the final results, Commerce should calculate financial ratios using financial statements submitted by the DIPs.[154]

POSCO/PDW and Hyundai's Rebuttal Comments:

- The DIPs' arguments would have Commerce ignore the agency's long history in addressing particular market situation allegations under 19 USC 1677b(a)(1)(B)(III), and their arguments ignore the factual differences between the hot-rolled steel and cold-rolled steel markets. Moreover, the DIPs point to no new evidence or considerations since the

[145] *Id.*
[146] *Id.* (citing Price-Based PMS Allegation at 30).
[147] *Id.* (citing Price-Based PMS Allegation at Exhibit 77).
[148] *Id.* (citing Price-Based PMS Allegation at Exhibit 92).
[149] *Id.* (citing Price-Based PMS Allegation at 12-17).
[150] *Id.* (citing Price-Based PMS Allegation at Exhibit 3 and Cost-Based PMS Allegation at Exhibits 13, 15-16).
[151] *Id.* (citing Price-Based PMS Allegations at Exhibit 23 (describing completion of a 2.1 million MT capacity cold-rolling mill in southern China, "a geographically advantageous location for exporting to Southeast Asia and Korea.")).
[152] *Id.* (citing Price-Based PMS Allegations at 19).
[153] *Id.* (citing Price-Based PMS Allegations at Exhibit 33 and Price-Based PMS Allegation at Exhibit 69).
[154] *Id.* at 74.

Preliminary Results that would justify Commerce reversing its decision to reach the exact opposite conclusion.[155]

- The DIPs appear to largely abandon their prior factual arguments that a PMS exists in the cold-rolled steel market and instead simply assert that a PMS in the hot-rolled steel market equates to a PMS in the cold-rolled steel market. However, this is not the analytical framework set forth in the statute.[156]
- The claimed PMS with respect to hot-rolled steel did not meaningfully impact the respondents' costs, and there is no basis to conclude that the same PMS distorted sales prices.[157]
- While the DIPs argue that Commerce should automatically find a PMS in the Korean cold-rolled steel market after finding a PMS in the Korean hot-rolled steel market, the threshold problem with this reasoning is that it requires Commerce to assume that input costs are distorted and, therefore, downstream prices are distorted.
- However, Hyundai and POSCO/PDW each produce their own hot-rolled steel, and POSCO/PDW purchases no hot-rolled steel at all.[158] Commerce must determine that no price-based PMS exists based on non-existent distortions in production costs.[159]
- Any claimed PMS does not impact price comparability between the home market and U.S. market.[160]
- The DIPs argue that a global overcapacity has led to a drop in hot-rolled steel prices; however, there is nothing to suggest that the forces are unique to Korea or would have a disproportionate impact on prices in the home market compared to export prices to the United States.[161]
- Commerce may decline to use home market or third country sales as the basis for normal value calculations if it finds that a PMS in the country in question prevents a "proper comparison" with export price or constructed export price. The DIPs have not alleged any concerns that would render the *comparison* of home market and U.S. sales inappropriate or distorted – the same factors underpinning the DIPs' allegation impact both markets. Because the factors do not prevent a proper comparison, Commerce cannot disregard home market sales as a result of any PMS.[162]
- In *Certain Pasta from Italy*, Commerce emphasized that its inquiry to enable a proper comparison was whether the sales in the home market (or third country market) are indicative of the respondent's actual selling practices and prices in the market in question, in or outside of the ordinary course of trade, or otherwise in line with the respondent's normal activity in the market in question.[163]

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[155] *See* POSCO/PDW Rebuttal Brief at 16-20; Hyundai Rebuttal Brief at 16-20.
[156] *See* POSCO/PDW Rebuttal Brief at 16-20; Hyundai Rebuttal Brief at 16-20.
[157] *See* POSCO/PDW Rebuttal Brief at 16-20; Hyundai Rebuttal Brief at 16-20.
[158] *See* POSCO/PDW Rebuttal Brief at 18; Hyundai Rebuttal Brief at 18.
[159] *See* POSCO/PDW Rebuttal Brief at 18-20; Hyundai Rebuttal Brief at 18-20.
[160] *See* POSCO/PDW Rebuttal Brief at 18-20; Hyundai Rebuttal Brief at 18-20.
[161] *See* POSCO/PDW Rebuttal Brief at 18-20; Hyundai Rebuttal Brief at 18-20.
[162] *See* POSCO/PDW Rebuttal Brief at 18-20; Hyundai Rebuttal Brief at 18-20.
[163] *See* POSCO/PDW Rebuttal Brief at 18-20; Hyundai Rebuttal Brief at 18-20 (citing *Certain Pasta from Italy*, 72 FR 7011 (February 14, 2007) and accompanying IDM at Comment 1.

- To the extent the DIPs argue that a global steel overcapacity impacts the Korean market, the DIPs have not explained how such a global phenomenon would prevent a proper comparison, as it would certainly impact sales to the United States as well. [164]
- Commerce must act consistently with its practice to determine whether market conditions prevent a proper comparison with sales to the United States.[165]

Commerce's Position: We continue to find that a PMS exists in Korea that distorts the COP of CRS. This PMS results from the collective impact of the factors described below.

Section 504 of the TPEA[166] added the concept of "particular market situation" in the definition of the term "ordinary course of trade" for purposes of constructed value (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 may use another calculation methodology under this subtitle or any other calculation methodology." Thus, under section 504 of the TPEA, Congress has given Commerce the authority to determine whether a PMS exists within the foreign market from which the subject merchandise is sourced and to determine whether the cost of materials, fabrication, or processing of such merchandise fail to accurately reflect the COP in the ordinary course of trade.[167]

In *NEXTEEL I* and *NEXTEEL II*, the CIT upheld our "totality of the circumstances" approach, finding only that our decision was not supported by substantial evidence.[168] Although the factors between the instant case and N*EXTEEL I* and *NEXTEEL II* are similar, additional evidence (*e.g.*, HRC prices) that are relevant to this proceeding were not on the record in either *NEXTEEL I* or *NEXTEEL II*. Here, we have performed an analysis of the evidence on the record of this administrative review, including evidence that was not on the record of prior administrative reviews. Accordingly, the CIT's decisions in *NEXTEEL I* and *NEXTEEL II*, that evaluated evidence on the record of prior reviews have not examined the totality of the evidence on the record of this review.[169] Moreover, because *NEXTEEL II* is still ongoing and the decisions are not final and conclusive, the impact of that litigation is not yet known, and in any event it is not binding on the agency in this segment of the administrative proceeding.

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[164] *See* POSCO/PDW Rebuttal Brief at 18-20; Hyundai Rebuttal Brief at 18-20.
[165]*See* POSCO/PDW Rebuttal Brief at 18-20; Hyundai Rebuttal Brief at 18-20 (citing *Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 62 FR. 18404, 18411 (April 15, 1997).
[166] *See* Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).
[167] *See* Section 773(e) of the Act.
[168] *See NEXTEEL I*, 355 F. Supp. 3d at 1349 (The statute's language and legislative history permit Commerce's chosen methodology in this investigation, which was to consider allegations of a particular market situation based on the cumulative effect and the totality of the conditions in the foreign market."); *NEXTEEL II*, 392 F. Supp. 3d at 1287 ("The statute's language and legislative history permit Commerce's chosen methodology in this investigation, which was to consider allegations of a particular market situation based on the cumulative effect and the totality of the conditions in the foreign market.").
[169] *See generally*, Cost Based PMS Allegation.

We find the respondents' interpretation of the Act to be impermissibly narrow and contrary to the intent of the Statute. As Commerce stated in the Preliminary PMS Memorandum, contrary to the respondents' assertion, the Act permits Commerce to address distortions in reported costs through various calculation methodologies, including cost adjustments for purposes of the sales below cost test.[170] Nonetheless, in applying a cost adjustment, Commerce must achieve a "fair comparison" between NV and U.S. price, regardless of how NV is calculated.[171] Further, in stipulating the manner in which NV is to be calculated, the Act also requires that NV reflect home market prices that are in the "ordinary course of trade."[172]

We further note that the TPEA generally expanded the meaning of "ordinary course of trade" to include "situations in which the administering authority determines that the particular market situation prevents a proper comparison {of NV} with the export price or constructed export price."[173] 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 EP or CEP with NV based on home market prices just as with NV based on CV. Respondents claim that an examination of a PMS for purposes of the sales-below-cost test goes beyond the plain language of the Act and fails to consider part of section 773(e) of the Act that specifically includes the term "ordinary course of trade." Thus, the definition of that term, found in section 771(15) of the Act, is integral to PMS provisions in the Act.

We continue to find that a cost-based PMS existed in Korea during the POR concerning the cost of HRC as a component of the COP. The PMS that we find to have existed in Korea during the POR results from the collective impact of the continued effects of global steel overcapacity, the unfairly-traded Chinese HRC contributing to it, and the resulting steel industry restructuring effort by the GOK; the GOK's subsidization of HRC; strategic alliances between Korean HRC suppliers and Korean cold rolled producers; and the GOK's distortive involvement in the Korean electricity market.[174] In this review, we considered the components of the PMS allegation as a whole, under a totality of the circumstances approach, based on their cumulative effect on the Korean market for HRC.[175] Based on the totality of the conditions in the Korean HRC market, Commerce finds that the factors described above represent aspects of

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[170] *See* section 773(e) of the Act; *see also Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 10784 (March 22, 2019) and accompanying IDM at Comment 1; and *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*) and accompanying IDM at Comment 1. While we acknowledge that in *Saha Thai Steel Pipe Pub. Co. Ltd. v. United States*, 422 F. Supp. 3d 1363 (CIT 2019) (*Saha Thai*), the CIT held that Commerce was not permitted to apply a cost-based PMS adjustment to a respondent's COP when applying the sales-below-cost test under section 773(b)(3) of the Act, *Saha Thai*, as well as *Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. v. United States*, 426 F. Supp. 3d 1395 (CIT 2020) (*Borusan*), and *Husteel Co. v. United States*, 426 F. Supp. 3d 1376 (CIT 2020) (*Husteel*), are not final and conclusive and remain subject to appeal. Furthermore, the CIT's conclusions in those cases do not bind our analysis in this administrative review.

[171] *See* Section 773(a) of the Act.

[172] *See* Section 773(a)(1)(B)(i) of the Act.

[173] *See* Section 771(15)(C) of the Act (Commerce "shall consider" such transactions outside ordinary course of trade).

[174] *See* Preliminary PMS Memorandum at 12-17.

[175] *See generally* Preliminary PMS Memorandum.

a single PMS. As clearly stated, our PMS finding is with respect to the entire market, rather than individual companies, and our PMS adjustment for HRC serves to correct the distortions in the Korean market as a whole. Accordingly, we continue to find that that there is no need to establish a direct linkage between respondents' purchase price for HRC and the alleged distortions during the POR.

Hyundai and POSCO/PDW contend that under the TPEA, Congress did not define a PMS and, as such, Commerce must interpret this term as applying only to extraordinary circumstances. We agree with the respondents that Congress did not provide an exhaustive definition of the term "PMS," but we disagree that it must be applied only in extraordinary circumstances. The Act, the Statement of Administrative Action of the Uruguay Round Agreements Act (SAA) and Commerce's regulations do not define what constitutes a "particular market situation." However, the SAA provides a non-exhaustive list of examples of what might be considered a particular market situation. For instance, a particular market situation might exist where the home market consists of a single sale, where there is government control over pricing to such an extent that home market prices cannot be considered to be competitively set, or where the demand patterns in the foreign market are different from those in the United States (*e.g.*, where substantial price changes are closely correlated with holidays occurring at different times of the year in the two markets).[176]

Even prior to the TPEA, the list was not exhaustive, which suggests that Congress intended to preserve Commerce's flexibility in addressing on a case-by-case basis various circumstances that could potentially result in a particular market situation. By enacting the TPEA, Congress expanded Commerce's authority to apply the concept of particular market situation. There is no indication in the TPEA nor in the legislative history that Congress intended to limit Commerce's ability to find a particular market situation with respect to costs to some unspoken extraordinary circumstances. In fact, even some of the examples of the particular market situation that the SAA provides, such as different holiday seasons in different countries, are not rare or extraordinary circumstances.

Moreover, we are not persuaded by Hyundai's and POSCO/PDW's argument that the passage of time normalized the particular market situation in Korea and made the distorted costs accurately reflect the costs of production within the ordinary course of trade. Section 771(15) of the Act defines "Ordinary Course of Trade" as "the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal…with respect to merchandise of the same class or kind." As a matter of grammar and logic, when interpreting this provision, it is clear that conditions must have been "normal" for a reasonable time prior to the exportation. Normalcy and passage of time are two separate requirements and the passage of time alone does not transform a market with significant distortions into a normal market. For example, if the government controls the prices of certain inputs to such an extent that they cannot be considered to be competitively set (such as mandating that all inputs be sold at a particular price), the passage of time alone does not render such pricing practices consistent with normal market conditions and practices.

While Hyundai and POSCO/PDW point to *Steel Rebar from Taiwan* in which Commerce made a

[176] *See* SAA, H.R. Doc. 103-316, vol 1 (1994) at 822.

negative PMS determination using a "benchmarking analysis," we disagree with the respondents' contention that a benchmarking analysis is required in each case. Each case has its own facts and arguments and particular market determinations are inherently case specific. Depending on the facts and arguments raised, the benchmarking analysis could be appropriate for one case, but not necessary or required for other cases. First, the benchmarking analysis is not mentioned, let alone mandated, in the particular market provisions of the statute or their legislative history. Nor does Commerce have a practice of employing benchmarking in every case where particular market situation analysis is employed. In *NEXTEEL I* and *NEXTEEL II*, the CIT upheld Commerce's methodology of considering the totality of circumstances. We continue to rely upon this same methodology for the PMS determination in this segment, which is fully supported by a plethora of record information.

Section 773(e) of the Act states that "if a {PMS} exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, {Commerce} may use another calculation methodology under this subtitle or any other calculation methodology." Our analysis of the evidence on the record of this review indicates that costs are distorted such that they do not "accurately reflect the cost of production in the ordinary course of trade," which, by definition, is unusual. Having found that a PMS exists based on the totality of the evidence on the record, Commerce is authorized by statute to use any other calculation methodology to calculate the COP of the subject merchandise.

Further, contrary to the respondents' claim, there is no additional requirement under the statute for Commerce to determine whether the circumstances are "ongoing" or "most unusual" prior to making a PMS adjustment. Moreover, we disagree with the respondents' assertion that the circumstances for a PMS finding resulting from distorted acquisition costs of HRC during the POR do not represent a novel or unusual situation in Korea. The respondents' argument, contending these events reflect normal market conditions that even Commerce recognizes have been ongoing from July 2014 through June 2018, does not hold water. Congress specifically defined a PMS to be outside the ordinary course of trade, and the Act does not set a time period when market distortions become normalized. We also reject respondents claim that acknowledging steel overcapacity to be a global problem undermines the central proposition that a "unique" or "particular" market situation had arisen in the Korean market due to such global overcapacity.

Furthermore, contrary to respondents' contention that the Preamble to Commerce's antidumping regulations sets a high standard for a PMS finding,[177] the CIT has explicitly rejected this claim, stating that the Preamble to Commerce's regulations does not define the term PMS.[178] The CIT also rejected respondents' suggestion that the Statement of Administrative Action of the Uruguay Round Agreements Act (SAA) language can be employed to limit the boundaries of the cost-based PMS provision to the calculation of constructed value.[179]

[177] *See* POSCO/PDW Case Brief at 8 (citing *Antidumping Duties; Countervailing Duties*, 62 FR 27296 (May 19, 1997) (Preamble)); Hyundai Case Brief at 9-10 (citing same).
[178] *See Davis Wire Corp. v. United States*, 180 F. Supp. 3d 1187, 1193 (CIT 2016).
[179] *See Vicentin S.A.I.C. v. United States*, 404 F. Supp. 3d 1323 (CIT 2019).

Global Steel Overcapacity and Price Suppression

As we stated in the Preliminary PMS Memorandum,[180] the global steel overcapacity crisis and its far-reaching effects around the globe (including in Korea) is an issue that Commerce has addressed in several of its other proceedings.[181]

During the POR, China continued to be the largest manufacturer and exporter of steel globally, with estimates indicating that its capacity for steel production continues to grow.[182] Further, data indicate that Chinese steel capacity has actually risen since 2015, despite alleged efforts by the Chinese government to rein in its overcapacity problem.[183] The Chinese government also took steps during the POR to amplify Chinese steel overcapacity in the global market by implementing measures such as loosening lending requirements for steel, removing export taxes on steel, and allowing for provincial subsidization of steel producers' upgrades and restructuring.[184] Although record evidence indicates that steel overcapacity did decrease for the second year in a row in 2017, the OECD stated that this "modest reduction…still falls short of alleviating global excess capacity."[185] Accordingly, we find that while there may have been a modest reduction in steel overcapacity, as the OECD stated, it fell short of alleviating the excess capacity problem. Moreover, to the extent that there was some reduction in the steel overcapacity, our methodology for determining the amount of the PMS adjustment is designed to capture and account for any such reduction.

Further, the average unit value (AUV) for HRC imported from China into Korea was lower than the AUV of China's exports to most other countries, with AUVs for HRC imported from China into Korea in the bottom 15 percent of all 160 Chinese export destinations in 2017 and 2018.[186] In addition, imports from China have constituted at least 12 percent of Korean domestic production of hot-rolled steel from 2013 through 2017.[187] Contrary to the respondents' claims, we therefore continue to conclude, based on the supporting data, that imports of low-priced HRC from China contributed to the existence of a PMS during the POR.

HRC imports from China are subsidized, dumped, and tainted by other non-market distortions, but these distortions were not addressed by any Korean trade remedy measure during the POR. The failure to offset these unfair trade practices contributed to a PMS impacting the entire Korean market for HRC, and distorting the acquisition price for HRC during the POR. In *CWP from Turkey AR 2017-18*,[188] we explained a similar phenomenon affecting the Turkish market

[180] *See* Preliminary PMS Memorandum at 13-15.
[181] *See e.g.*, *CORE from Korea* and accompanying IDM at Comment 2.
[182] *See* DIPs' Letter "Cold Rolled Steel Flat Products from the Republic of Korea: Cost Based Particular Market Situation Allegation" dated August 15, 2019; (Cost Based PMS Allegation) at 7-18.
[183] *Id.* at 7.
[184] *Id.* at 9.
[185] *Id.* at 14.
[186] *Id.* at 16.
[187] *Id.*
[188] *See 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)

for HRC based, in part, on the non-payment of safeguard duties on injuriously low-priced Turkish imports of HRC, indicating that the Turkish Government's failure to offset such unfair trade practices distorted the acquisition price for HRC during the POR.[189]

Similar to our findings in other recent cases,[190] we find that evidence on the record of this review demonstrates that Chinese steel overcapacity and its effects influenced steel prices in general, and HRC prices in particular, causing them to be depressed due to global steel overcapacity during the POR. Moreover, the record shows that although during the POR world steel prices for flat products (which includes HRC) increased from a ten-year record low point achieved in 2015, they were still quite low in that they were similar to prices in the 2012-2013 period.[191]

Consistent with our recent findings that HRC prices in Korea were distorted in *CWP from Korea AR 16-17*, we find here that global steel overcapacity, and particularly, Chinese steel overcapacity, has had, and continues to have, both direct (from Chinese imports) and associative (from Japanese imports) effects on Korean steel markets.[192] Based on the foregoing, we determined that the associative effect of Japanese imports, impacted by Chinese imports into the Japanese market, further demonstrates that the Korean hot-rolled market was distorted by imports of hot-rolled products from China.[193]

GOK Subsidization of HRC

As stated in the Preliminary PMS Memorandum, Commerce found that the GOK subsidized the biggest HRC producers in Korea.[194] Moreover, the GOK subsidization of Korean steel producers exerted downward pressure on HRC prices in Korea, in connection with transactions involving consumers of HRC (*i.e.*, producers of CRS). To remain afloat, Korean HRC producers must necessarily adjust their prices in response to price suppression by the HRC import prices caused by the continued effects of the global steel overcapacity crisis, and the GOK provided assistance to Korean HRC producers.[195] The As DIPs noted in the Cost Based PMS allegation shortly before the onset of the POR, POSCO reported its smallest ever profit.[196] Additionally, as DIPs also note in their PMS Allegation HRC is the primary raw material input for the

(*CWP from Turkey AR 2017-18*) and accompanying IDM at Comment 1.
[189] *Id.*
[190] *See, e.g.*, *CORE from Korea* and accompanying IDM at Comment 1.*Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 24601 (June 6, 2019) (*CWP from Korea AR 16-17*) and accompanying IDM at Comments 1-A and 1-B; and *OCTG from Korea AR 16-17* and accompanying IDM at Comments 1-B.
[191] *See* Preliminary PMS Memorandum at 14.
[192] *See* Preliminary PMS Memorandum at 12; *see also* Cost Based PMS Allegation at 12-18 and Exhibits 37, 38, 42, 52-54 and 224.
[193] *Id* at 14.
[194] *Id.* at 15; c at 21-27 and Exhibits 15, 77-100.
[195] *See* Preliminary PMS Memorandum at 15; *see also* Cost Based PMS Allegation at 21-27 and Exhibit 92.
[196] *See* Cost Based PMS Allegation at 12 and exhibit 40 citing January 28, 2016 Bloomberg Article "POSCO Posts Smallest Ever Profit Amid Chinese Steel Deluge."

production of cold rolled steel.[197] Therefore, due to magnitude of HRC in the production of cold rolled steel, the resulting distortions of HRC costs flow directly to the COP of CRS.[198]

Furthermore, the GOK established the "Special Act on the Corporate Revitalization," also called the "One-Shot Act," to counter the effects of global steel overcapacity.[199] The program provides government financial and institutional support "to promote voluntary corporate restructuring" and is evidence of government intervention in the market.[200] Although we have found those programs not to confer a measurable benefit in the context of a CVD proceeding,[201] a PMS inquiry is not meant to determine whether a particular form of government assistance constitutes a countervailable subsidy; rather, we evaluate whether government interference in the market through assistance or otherwise has caused a distortion that contributes to a PMS.

Record evidence demonstrates that the combination of government programs, such as the One-Shot Act, established to counteract the effects of overcapacity, together with the GOK's subsidies to HRC producers, and further exacerbated by the presence of low-priced imports marked by unfair trade practices and driven by steel excess capacity, have all contributed to the creation of a PMS distorting the costs of HRC during the POR.

Anticompetitive Behavior Among Korean Steel Producers

Commerce continues to find that, as a result of the significant global overcapacity in steel production, which stems, in part, from the distortions and interventions prevalent in the Chinese economy, the Korean steel market has been flooded with imports of cheap steel products, including HRC, from multiple countries, including China and Japan. In the instant review, we continue to find that Korean steel producers attempt to compete by engaging in strategic alliances. Evidence supports the allegation that these strategic alliances may have affected prices in the period covered by the original less-than-fair-value investigation and subsequent administrative reviews, up to and including this POR.[202]

For example, on December 21, 2017, the Korean 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.[203] 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."[204]

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[197] *See* Cost Based PMS Allegation at 6 citing Hyundai April 15, 2019 Initial B-E Response at D-7.
[198] *See* Cost Based PMS Allegation at 6.
[199] *Id.*; Cost Based PMS Allegation at 21-22.
[200] *See* Preliminary PMS Memorandum at 15; *see also* Cost Based PMS Allegation at Exhibit 93.
[201] *See e.g.*, *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, 2016*, 83 FR 55517 (November 6, 2018), and accompanying PDM at 30 (unchanged in *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) and *Countervailing Duty Order on Certain Hot-Rolled Steel Flat Products from the Republic of Kore a: Amended Final Results of the First Administrative Review*, 84 FR 35604 (June 24, 2019).
[202] *See* Preliminary PMS Memorandum at 16.
[203] *Id.*; Cost Based PMS Allegation at 35-37 and Exhibits 101-120.
[204] *See* Preliminary PMS Memorandum at 16; *see also* Cost Based PMS Allegation at Exhibit 104.

Although the period for which Hyundai and five other Korean steel producers were punished 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 not a one-time event, but a long term "chronic" occurrence in the Korean market. Moreover, the KFTC has not made any findings that Hyundai and the other five companies discontinued their anticompetitive practices by the end of 2017, when the KFTC report was issued. This is consistent with our conclusion that strategic alliances and price fixing schemes 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 dispositive of a PMS, but it is part of Commerce's consideration of the totality of the circumstances in Korea, including the prior anticompetitive arrangements and practices that involved one mandatory respondent and a non-individually examined respondent, when evaluating the full effect of all of these elements on the Korean HRC market.

Distorted Electricity Input Costs

We continue to find that the price of electricity is set by the GOK and that electricity in Korea functions as a tool of the government's industrial policy. As the record demonstrates, the GOK acts as the majority shareholder in the Korean Electric Power Company (KEPCO).[205] Further, KEPCO has indicated that it acts "as an intermediate holding company in a vertical control structure involving the Government, us, and our generation subsidiaries."[206] This GOK control of KEPCO allows the GOK to exercise control over the prices that KEPCO charges.[207] Based upon the foregoing, we continue to conclude that the prices charged by KEPCO are set by the GOK and that electricity in Korea functions as a tool of the Korean government's industrial policy.

Further, we find that consistent with the SAA, a PMS may exist where there is government control over prices to such an extent that home-market prices cannot be considered to be competitively set.[208] Considering the government control over KEPCO, it is significant that KEPCO reported its first operating loss in six years for 2018, 208 billion won, and a 2.4 trillion won loss is expected for 2019.[209]

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.[210] Moreover, electricity constitutes a significant portion of the cost of manufacturing (COM) of cold rolled steel. Based on these facts,

[205] *Id.* at 16-17; Cost Based PMS Allegation at 30-35 and Exhibit 121.
[206] *See* Preliminary PMS Memorandum at 16-17; Cost Based PMS Allegation at 30-35 and Exhibit 121 page 166.
[207] *See* Preliminary PMS Memorandum at 16-17; Cost Based PMS Allegation at 30-35 and Exhibit 121.
[208] *See* SAA at 822.
[209] *See* Preliminary PMS Memorandum at 16; Cost Based PMS Allegation at 34 and Exhibits 217 to 219.
[210] *See* Preliminary PMS Memorandum at 16; Cost Based PMS Allegation at 34 and Exhibits 217 to 219.

we find that the GOK's interest in, and involvement with, the electricity market in Korea, contributes to the distortion to the price of electricity in Korea and the COM of cold rolled steel.

Steel Industry Restructuring Efforts by the Korean Government

U.S. Steel argues that Commerce has found in other proceedings that Korean steel industry restructuring efforts contributed to a PMS that distorted CRS input costs.[211] While the DIPs did not allege this as a separate factor in the Cost-Based PMS Allegation, they did discuss the Korean government's involvement in the restructuring of the Korean steel industry, which we have found to be a factor contributing to the existence of a PMS in a remand redetermination in the second administrative review of the antidumping duty order on OCTG from Korea. We agree with U.S. Steel that the evidence on the record of this review supports treating the Korean steel industry restructuring efforts as a factor in our PMS determination.

On August 30, 2017, the Korean Ministry of Trade, Industry, and Energy asked the domestic steel industry to "execute a voluntary restructuring."[212] According to a Boston Consulting Group report commissioned by the Korea Iron and Steel Association (KOSA), Korea will need to halt 4-5 million metric tons of annual steel plate rolling, which is roughly a third of Korea's approximate 12 million metric ton per year plate rolling capacity.[213]

Since 2016, the GOK has been trying to address the severe excess of steel supply in Korea through efforts to offer financial and institutional support for industry restructuring.[214] One way in which the GOK has sought to accomplish this restructuring is through its "Special Act on the Corporate Revitalization," or "One-Shot Act," in which state and local governments have been permitted to provide financial and institutional support in the form of tax support, subsidies, loans, direct funding, research and development support, freedom from regulatory burdens, and training, advice, and education for business renovation and aptitude development to companies suffering from oversupply.[215] Since 2016 and an initial trial period of this program, the GOK deemed it successful and stated that it would continue[216] and the steel industry, including mandatory respondent Hyundai, has taken advantage of this restructuring initiative since its implementation.[217]

The evidence on the record indicates that this restructuring has continued to grow throughout the POR and beyond. In 2017, the GOK initiated a separate "2017 Action Plan for Industrial

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[211] *See* U.S. Steel Case Brief at 5-6.
[212] *See* Cost-Based PMS Allegation at Exhibit 124 (containing Business Korea article, "Industry Minister Calls for Decisive Cut in Glut Products by Korean Steelmakers," dated August 31, 2017).
[213] *Id*. at 18-19.
[214] *Id*. at Exhibit 7 (containing a Kallanish Commodities article, "Korea should close 4-5m t/y plate capacity: BCG," dated September 19, 2017 (citing a Boston Consulting Group report on Korean steel overcapacity)).
[215] *Id*. at Exhibit 93 (containing the Special Act on the Corporate Revitalization, dated February 12, 2016 and amended March 18, 2016).
[216] *Id*. at 22-23 and Exhibits 77-78 (containing a Korea Joongang Daily article, "Restructuring to be Continued," dated December 27, 2016 and a Korea Times article, "One-shot act to take effect," dated August 11, 2016).
[217] *Id*. at Exhibit 81 (containing an Aju Business Daily article, "S. Korea Designates Two More Steel Firms for FastTrack Corporate Restructuring" dated November 22, 2016).

Restructuring," which was constructed to accelerate the steel industry, among others.[218] As part of this initiative, the GOK committed to help "accelerate business restructuring planned to manage oversupply, and promote the development of high value added materials" through the development of "ultra light, hybrid, and other advanced materials, as well as smart and eco-friendly manufacturing."[219] Further, in a press release from January 2019, the GOK stated that it had reserved 10 trillion won for business restructuring.[220]

This continued and ongoing involvement of the GOK in the steel industry's response to market overcapacity is indicative of a PMS. This is the precise type of interference that meets the definition of a PMS as stated in the TPEA.[221] The GOK's assistance, to accelerate the steel industry's response and restructuring, interferes with the normal functioning of the free market and alters the ordinary course of trade. Outside government interference in the steel industry in response to particular market conditions that affected such industry to the point that the industry needs to undergo restructuring is highly unusual and does not represent the ordinary course of trade. We recognize that some of the programs enacted by the GOK to restructure the steel industry were initiated before the POR; however, they continued throughout the POR and are still being expanded into the current day which shows that the restructuring efforts as well as the conditions leading to them were present during the POR.

Distorted Shipping Rates for HRC Inputs

In the *Preliminary Results*, Commerce did not find that distortions in the shipping industry contributed to the totality of the circumstances supporting its determination that a particular market situation existed in Korea.[222] Commerce determined that the evidence related to the shipbuilding industry and not the shipping industry.[223] Furthermore, Commerce determined that recent losses by Hyundai Merchant Marine Co., Ltd. (Hyundai Merchant Marine) do not support the conclusion that the entire Korean shipping industry is distorted.[224] Finally, Commerce determined that POSCO does not rely on Hyundai Merchant Marine and even Hyundai's input shipments by Hyundai Merchant Marine were minor when compared to its total shipments of all of its import purchases.[225]

DIPs argue that "global bulk shipping overcapacity," during the POR, and subsidies for Korean shipbuilders and Hyundai Merchant Marine distorted prices for raw materials that are inputs into

[218] *Id*. at Exhibit 94 (containing "9th Ministerial Meeting on Industrial Restructuring: 2017 Action Plan for Industrial Restructuring," *Ministry of Economy and Finance* (Jan. 25, 2017) at 2)
[219] *Id*.
[220] *Id*. at Exhibit 90 (containing "Sixth Ministerial Meeting on Boosting the Economy," *Ministry of Economy and Finance* (January 23, 2019) at 2).
[221] *See* TPEA, a PMS "exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade."
[222] *See* Preliminary PMS Memorandum at 17.
[223] *Id.*
[224] *Id.*
[225] *Id.*

hot-rolled coil.[226] However, evidence on the record supports the conclusion that shipbuilding prices have trended upward for the past three decades.[227]

Consistent with Commerce's Preliminary PMS Memorandum, Commerce continues not to rely on distorted shipping rates as contributing to the totality of the circumstances in finding a PMS for these final results. Although DIPs have made arguments regarding subsidies provided to the shipbuilding industry, the DIPs have not established a connection between the shipbuilding industry and shipping costs. Additionally, as we previously explained, (1) shipping and shipbuilding costs are not interchangeable, and (2) the information provided by DIPs is not specific to the shipping mode utilized by Respondents.[228]

Iron Ore Cost Distortions

In the *Preliminary Results*, Commerce did not rely on a finding that distortions of iron ore from Australia contributed to the totality of the circumstances supporting a finding of the particular market situation in Korea.[229] Commerce determined that the respondents did not source their iron ore inputs solely from Australia and that iron ore inputs from other countries where respondents sourced their iron ore inputs were further away from Korea geographically. The distance of other countries geographically was relevant because it would indicate higher shipping costs. Thus, Australian iron ore costs would logically be lower because iron ore originating in Australia must travel a shorter distance to Korea.[230] Commerce continues to find that iron ore does not contribute to the totality of the circumstances in finding a PMS for these final results because the record evidence does not support the DIP's assertion that Australian iron ore costs are distorted. Although DIPs provided data concerning the comparative quality and grade of iron ore, they have not established that Australian iron ore costs are distorted.[231]

DIPs now argue that Commerce could have relied on record evidence to "remove ocean freight and other assorted delivery expenses" from the prices that they provided.[232] After removing shipping, DIPs contend that Australian iron ore prices are still 17.68 percent to 43.67 percent lower than Brazilian iron ore prices.[233] Moreover, DIPs also argue that Australian iron ore prices are distorted due to subsidization and tax evasion.[234] Although Commerce continues to evaluate its PMS methodology, for these final results, Commerce determines on the basis of the data specific to this POR that DIPs have not provided sufficient evidence to establish a distortion in Australian iron ore prices. It remains unclear, from the price comparison offered by DIPs, how or if the grade and form of iron ore is taken into account in their analysis. Respondents argue that both of these factors impact the price of iron ore.[235] Therefore, because it is not clear from

[226] *See* U.S. Steel Case Brief at 6-14.
[227] *See* Respondents PMS Rebuttal Submission at 51 and Exhibit SHIP-1.
[228] *Id* at 17.
[229] *Id.*
[230] *Id.*
[231] *See* Hyundai POSCO PMS Rebuttal Comments at 69 and Exhibit IRON-9-1, IRON-9-2, and IRON-12.
[232] *See* U.S. Steel Case Brief at 14-17.
[233] *Id.*
[234] *Id.* at 16-24.
[235] *See* PMS Comments and Rebuttal Factual Information at 58-59.

the record whether the price comparison given is truly an "apples-to-apples" comparison, we have not relied on it for these final results.

Price-Based PMS

We continue to find that there is no statutory basis for Commerce to find a price-based PMS using the same data as Commerce used to find a cost-based PMS.[236] Section 773(a)(1)(B)(i) of the Act defines NV as "the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the {EP} or {CEP}." Pursuant to section 771(15) of the Act, Commerce shall find "sales and transactions" to be "outside the ordinary course of trade" in situations in which it "determines that the particular market situation prevents a proper comparison with the export price or constructed export price." Section 504 of the TPEA added the concept of "particular market situation" to the definition of the term "ordinary course of trade." The statute does not define "particular market situation," but the SAA explains that such a situation may exist for sales "where there is government control over pricing to such an extent that home market prices cannot be considered competitively set."[237]

In their price-based PMS allegation, the DIPs argue that the sales prices of cold-rolled steel in Korea are suppressed and undercut by a deluge of Chinese imports, thus rendering these sales outside the ordinary course of trade.[238] We continue to find that because the DIPs offer the same support for their price-based PMS allegation as they have offered for their cost-based allegation, it is unclear how the factors identified by the DIPs in their cost-based PMS allegation would affect the sale price of cold-rolled steel as opposed to the purchase price of hot-rolled coil inputs.[239] We continue to find that the DIPs have failed to demonstrate that Korean selling prices of cold-rolled steel are not competitively set or that the Korean government exercises control over pricing for sales of cold-rolled steel, thereby rendering Korean prices outside the ordinary course of trade.[240]

In setting forth the framework governing a PMS inquiry, Section 773(e) of the Act discusses CV and provides Commerce with broad authority to use "*any* other calculation methodology" if it determines that a "particular market situation exists such that the cost of materials… does not accurately reflect the cost of production in the ordinary course of trade."[241] Further, the relevant legislative history indicates that the TPEA permits Commerce to adjust the respondents' costs based upon the PMS.

[236] *See* Preliminary PMS Memorandum at 18.
[237] *See* SAA at 822.
[238] *See* U.S. Steel's Letter, "Cold-Rolled Steel Flat Products from the Republic of Korea: Cost Adjustments and Price-Based Particular Market Situation Allegations for Hyundai," dated August 15, 2019
[239] *See* Hyundai's and POSCO/PDW's Letter, "Cold-Rolled Steel Products from the Republic of Korea: Particular Market Situation Comments and Rebuttal Factual Information," dated October 7, 2019 (Hyundai and POSCO/PDW's PMS Rebuttal) at 72-74.
[240] *See* Preliminary PMS Memorandum at 18.
[241] *See* Section 773(e) of the Act.

Based on the statutory language and evidence of legislative intent, Commerce has consistently found that Section 504 of the TPEA added the concept of PMS in the definition of the term "ordinary course of trade," for purposes of constructed value, "and through these provisions for purposes of the cost of production under {section 773(b)(3)}."[242] Thus, where a PMS affects the COP of the foreign like product, it is reasonable to conclude that such a PMS may prevent an accurate evaluation of the sales below cost test.[243] Accordingly, we continue to find no statutory basis for conducting a price-based PMS analysis using the same data that we used to conduct a cost-based PMS analysis. We determine that there is insufficient independent evidence to support a priced-based PMS allegation, and the DIPs did not adequately support the allegation that Korea exercises control over pricing for sales of cold-rolled steel, which would thereby render Korean prices outside the ordinary course of trade.

Comment 2: Quantification of a Particular Market Situation Adjustment

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

U.S. Steel's Comments:

- Commerce has acknowledged that a separate adjustment is necessary to account for the additional distortive impact of GOK subsidization, stating, "an upward adjustment to {hot-rolled steel} costs due to subsidies does not address the depth of distortion and the impact of global excess capacity on the Korean steel market."[244] Rather, subsidy rates "quantify the impact of the {government}'s assistance in the production of hot-rolled steel products, which is *part of* the PMS…"[245]
- In the *Preliminary Results*, Commerce declined to make any CVD adjustment for subsidization of Korean HRC production by the GOK. This is inconsistent with Commerce's past practice and otherwise fails to remedy the depth of quantifiable distortions identified in the Cost-Based PMS Allegation. Commerce should incorporate an adjustment for distortive subsidization in its final results.[246]
- Commerce needs to adjust the respondents' electricity costs to ensure a "fair comparison" between Hyundai's constructed value and reported costs. KEPCO's losses over the POR,

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[242] *See* Section 771(15)(C) of the Act (Commerce "shall consider" such transactions outside ordinary course of trade).
[243] As explained above, *Saha Thai*, *Borusann* and *Husteel* are not final and conclusive and remain subject to appeal. Furthermore, these cases are not binding on the agency with respect to Commerce's application of its PMS methodology in this administrative review.
[244] *See* U.S. Steel Case Brief (citing *Large Diameter Welded Pipe from the Republic of Korea*, 84 FR 6374 (February 27, 2019) and accompanying IDM at Comment 1; *Large Diameter Welded Pipe from the Republic of Turkey*, 84 FR 6362 (February 27, 2019) and accompanying IDM at Comment 1 ("the use of Turkish HRC subsidies alone, as a means of offsetting *some portion* of the distortive effects of the PMS, does not address the depth of the distortion and the impact of global excess capacity on the Turkish market…")).
[245] *Id.* (citing *Large Diameter Welded Pipe from the Republic of Turkey*, 83 FR 43646 (August 27, 2018), and accompanying IDM Comment IX.A.3).
[246] *See* U.S. Steel Case Brief at 35.

induced by GOK intervention, provide a clear method for quantifying a PMS adjustment.[247]

- Commerce should adjust the respondents' reported electricity costs, including both electricity used in HRC production and that used in CRS production.[248]
- An adjustment factor based on price adjustments necessary to bring KEPCO to profitability is a reasonable quantification of the degree of price depression experienced by Korean steelmakers. Indeed, given that steel producers have generally paid discounted electricity rates since when KEPCO was profitable, Domestic Producers' proposed adjustment is likely conservative.[249]

POSCO/PDW and Hyundai's Comments:

- The DIPs' proposed global excess capacity-based regression methodology is flawed and must be rejected as a basis for quantifying a PMS adjustment. The DIPs' model and methodology to not yield meaningful or reasonable results.[250]
- The respondents provided a review and analysis of the DIPs' regression model prepared by Georgetown Professor Rodney Ludema, in whose professional opinion the DIPs' regression analysis and resulting adjustment factor are so deeply flawed as to be useless for the task at hand. The DIPs' method does not provide a valid or reliable method for PMS adjustment.[251]
- The DIPs' model is subject to wild swings with minor data changes, making the analytical framework too volatile to derive any single permutation or adjustment factor.[252]
- The DIPs' Regression Analysis is based on incorrect and outdated world steel capacity and production data.[253]
    - The DIPs assume that the total 2017 production was 1,690.48 million metric tons (MMT).[254] This production level in 2017 implies a 75 percent capacity utilization level.[255] However, the World Steel Association subsequently published revised figures in the World Steel in Figures 2019 publication, showing a 2017 production level of 1,729.8 MMT.[256]
    - In essence, the DIPs' model seeks to answer the question "what would the price of hot rolled steel be, if capacity utilization increased from 75 percent to 85 percent?"[257]

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[247] *Id*. at 37.
[248] *Id*. at 41.
[249] *Id*. at 39.
[250] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35.
[251] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35.
[252] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35.
[253] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35.
[254] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35(citing Domestic Interested Parties' Cost-Based PMS Allegation at Exhibit 62).
[255] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35 (citing Respondents' PMS Rebuttal Submission at Regression Appendix I page 4).
[256] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35 (citing Respondents' PMS Rebuttal Submission at Regression at Appendix I and Exhibit REG-5 at 6 (citing World Steel Association "World Steel in Figures 2019")).
[257] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35.

However, capacity utilization was at 77 percent during 2017 (the first four months of the POR) and 81 percent during 2018 (the last eight months of the POR).[258]

- Simply using the updated 2017 figure dramatically reduces the DIPs' adjustment factor.[259] There is no basis to conclude that 85 percent capacity utilization is the appropriate threshold.[260]
- There is substantial record evidence in the regression appendices which proves that an assumed or target of 85 percent global steel capacity level is overstated and unrealistic, while at the same time ignores the fact that capacity utilization was at 81 percent in 2018.[261] Using an 81 percent capacity utilization rate is more reasonable and yields significantly lower adjustment factors.[262]

- The DIPs' Regression Analysis contains outlier data.[263]
  - As discussed in Regression Appendix I and II of the respondents' rebuttal PMS submission, the DIPs' model runs from 2008 through 2017,[264] but the regression results are driven by two outlier years, 2008 and 2009, which correspond to the Great Recession.[265]
  - This global downturn was a period of unusual stress in global markets. Global trade as a share of GDP reached its historical peak in 2008 and experienced the largest single-year decline in recorded history in 2009.[266]
  - None of these factors are accounted for in the DIPs' model; instead, the DIPs treat 2008 and 2009 as if they were normal years, with no adjustment for the unprecedented events of the Great Recession.[267]
  - The record contains reasonable alternative regressions based on updated data sources and alternative assumptions.[268], The DIPs failed to explain why they chose the time periods they chose in their regression model, *i.e.*, by starting at a time of a global financial downturn and failing to use the most up-to-date data from 2018.[269]
- There is no product-specific data in the DIPs' Regression Model.[270]
  - The DIPs' entire model – the input data and the AUV to be adjusted – is based on the 4-digit level HTS category. This basket category covers a much broader range of hot rolled steel products than those that could be used in cold-rolled steel production.[271]

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[258] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35.
[259] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35.
[260] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35.
[261] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35.
[262] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35.
[263] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35.
[264] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35.
[265] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35.
[266] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35. (citing Fouquin, Michel and Jules Hugot, "Two Centuries of Bilateral Trade and Gravity Data: 1827-2014," CEPII Working Paper (May 2016)).
[267] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35.
[268] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35.
[269] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35.
[270] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35.
[271] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35.

- Neither the analysis nor the adjustment factor is specific to the actual inputs used in the production of CRS, and the whole regression analysis is infected by extraneous import values for irrelevant products.[272]
- This broad basket analysis introduces uncertainty and reduces the validity of the DIPs' analysis.[273]

- The DIPs' model lacks other significant variables such as energy prices.[274] The DIPs included Brent crude oil prices in their data but did not include the variable in their OLS regression.[275] Including energy prices in the regression drops the resulting output to the low single digits.[276]
- There is no basis to conclude that 85 percent capacity utilization is the threshold, as record evidence shows this level is overstated and unrealistic. The flaws in the underlying input data and incorrect assumptions render the DIPs' regression model unusable to derive any reasonable PMS adjustment factor. [277]
- If Commerce determines to use regression-based analyses to quantify a PMS adjustment—and it should not—substantial record evidence demonstrates that when revised assumptions and data sources related to assumed uneconomic capacity and capacity utilization are used along with more recent data for 2018 and a more comprehensive time period, the PMS adjustments resulting from the regression model are so low as to demonstrate that, in fact, even this regression model suggests no PMS adjustment at all is warranted.[278]

Domestic Interested Parties Rebuttal Comments:

- In addition to the other adjustments advocated by U.S. Steel, Commerce should continue to adjust the respondents' HRC costs using the DIPs' Regression Analysis.[279]
- The DIPs' OLS fixed effects regression analysis constitutes a valid and reasonable basis upon which to adjust for distortions in the Korean HRC market caused by overcapacity in China, Korea, and elsewhere.[280]
- The respondents' paid expert altered the data used in the DIPs regression analysis on an unsubstantiated premise and also swapped variables and shifted timescales. The respondents' expert report never analyzes the actual regression model proposed by the DIPs; instead it runs a series of different models contrived by the author of that analysis.[281] Accordingly, this analysis is fundamentally flawed.
- The respondents have provided no evidence to warrant altering the AUVs used in the DIPs Regression Model. The report on which the respondents' arguments are based

[272] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35.
[273] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35.
[274] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35.
[275] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35.
[276] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35.
[277] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35.
[278] *See* Hyundai Case Brief at 25-35; POSCO/PDW Case Brief at 25-35.
[279] *See* Domestic Interested Parties Rebuttal Brief at 41-43.
[280] *Id.*
[281] *Id.*

begins by altering the AUVs for HRC to exclude hot-rolled steel products, which it alleges cannot be used in CRS production.[282]

- The respondents' narrative is inconsistent, first claiming that "patterns in relief" alone render HTS 7208.10 unusable, whereas HTS 7208.40, which also contains "patterns in relief," is unusable only for other reasons.[283]
- None of the characteristics at the six-digit level concern the physiochemical properties of hot-rolled steel, and the respondents have not substantiated that the HTS headings they seek to exclude are actually incapable of being used in the Korea steel market for CRS production.[284]The regression model accounts for appropriate supply and demand side explanatory variables and record evidence does not support the addition of variables proposed by the respondents.[285] The respondents claim that the model lacks variables "related to energy prices."[286] While the respondents obfuscate this in their case briefs, their proposed "energy prices" are coke, natural gas, and crude oil.[287] Yet, the documentation which the respondents cite for support in including these particular prices indicates that the respondents have, without acknowledgment, selected only the third through fifth-largest steelmaking energy expenses.[288] As such, none of the respondents' proffered variables warrant inclusion, because none are significant energy inputs.[289]
- 2008-2017 is the correct time period to analyze.[290] As the overcapacity crisis began in 2008 and quality data exist for the years 2008 to 2017, Commerce should calculate an overcapacity adjustment using these temporal parameters.
- As late as 2007, global capacity utilization rates were above 85 percent.[291] By contrast, capacity utilization rates plummeted beginning in 2008, remaining well below 85 percent thereafter.[292] This dramatic change reflects the 2008 onset of the global overcapacity crisis.[293]
- The 85 percent threshold for healthy capacity utilization is reasonable and amply supported because a capacity level of 85 percent represents a global production level which supported a profitable steel industry.[294]
- Contrary to the respondents' bare assertion,[295] a threshold for healthy steel industry capacity usage of 85 percent or higher is amply supported, by both independent economic analysis and historical capacity usage figures.[296]

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[282] *See* Domestic Interested Parties Rebuttal Brief at 44-46.
[283] *Id.*
[284] *Id.*
[285] *Id.* at 47-48.
[286] *Id.*
[287] *Id.* (citing Respondents' PMS Comments at Appendix I pages 12-15).
[288] *Id.* (citing Respondents' PMS Comments at Appendix I Exhibits REG-9 and REG-10).
[289] *See* Domestic Interested Parties Rebuttal Brief at 47.
[290] *Id.* at 47.
[291] *Id.* (citing U.S. Steel's Letter, "Cold-Rolled Steel Flat Products from the Republic of Korea: Factual Information to Clarify Aspects of Domestic Interested Parties' Particular Market Situation Allegation," dated September 23, 2019 (U.S. Steel's Clarifying Factual Information) at Exhibit 18).
[292] *Id.* at 48 (citing U.S. Steel's Clarifying Factual Information at Exhibit 19).
[293] *See* Domestic Interested Parties Rebuttal Brief at 52.
[294] *Id.* at 53.
[295] *Id.*
[296] *Id.* (citing Cost-Based PMS Allegation at 61 n.234 and Exhibit 198 pages 47-49).

- The ordinary least squares methodology and underlying assumptions are econometrically sound.[297] The ordinary least squares methodology is both: (1) unbiased and (2) more efficient than other estimators, including two-stage least squares regression analysis (2SLS), provided the necessary assumptions are met. Domestic Producers performed Wooldridge's empirical test for endogeneity bias[298] and found that the degree of endogeneity bias is statistically insignificant.[299]

POSCO/PDW and Hyundai's Rebuttal Comments:

- Any PMS adjustment based on the CVD rates from *Hot-Rolled Steel from Korea CVD* would amount to double counting. Low levels of subsidization show that there is no PMS, POSCO/PDW and Hyundai are integrated producers who do not "source" HRC for cold-rolled steel production, and Commerce already assesses countervailing duties against POSCO/PDW's and Hyundai's CRS products. Any inclusion of further CVD-based adjustments would amount to double-counting, as Commerce has already remedied any distortion through its countervailing duty investigation on cold rolled steel.[300]
- In *Vicentin S.A.I.C. v. United States*, the CIT held unequivocally that where, as here, PMS allegations have been made with respect to the same material input (*i.e.*, HRC), substantial record evidence must establish that the alleged distortion is not already remedied in a parallel CVD proceeding.[301]

Commerce Position:

As an initial matter, we note that neither section 773(e) of the Act, section 771(15) of the Act, 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 DIPs' regression analysis.[302] We continue to find that the regression analysis submitted by the DIPs is a reasonable method to quantify the relationship between global uneconomic capacity and the cost of HRC. 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 the average unit value of HRC that

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[297] *See* Domestic Interested Parties Rebuttal Brief at 54.
[298] *See* Cost-Based PMS Allegation at Exhibit 55 pages 534–35.
[299] *Id.* at Exhibit 56 (Stata output for a 2SLS regression).
[300] *See* POSCO/PDW Rebuttal Brief at 8-10; Hyundai Rebuttal Brief at 8-10.
[301] *See* POSCO/PDW Rebuttal Brief at 8-10; Hyundai Rebuttal Brief at 8-10 (citing *Vicentin S.A.I.C. v. United States*, Consol. Ct. No. 18-00111, Slip Op. 19-120 (September 10, 2019) at 29).
[302] *See Preliminary Results* and accompanying PDM at 16. *See also* Cost Based PMS Allegation at 48-67 and associated Exhibits.

we find to have existed in Korea during the POR.[303]

Regression Analysis

Product Specification for Regression Model

With respect to respondent's argument that the import AUV data in the dependent variable should be disaggregated, we disagree with respondent and find that an analysis based on import AUVs at the four-digit level on this record will better reflect the extent to which the overall Korean HRC market has been distorted.[304] The purpose of the regression analysis is to determine the relationship between the dependent variable, *i.e.*, the Korean import AUV of HRC, and the independent variables, including uneconomic capacity. The import AUVs should reflect as closely as possible the market for the material input used to produce in-scope merchandise, the market for which Commerce has found to be distorted during the POR. While the range of products encompassed by the four-digit HTS subchapter may be overinclusive of the products used to produce cold rolled steel, the individual six-digit subheading product groups proposed by respondent exclude many products that may be used in the production process.

Furthermore, the disaggregation of AUVs to the six-digit HTS level presents a number of data issues. Commerce notes, for example, that there are missing data for several countries in the respondents' dataset, specifically for codes 720838 and 720839. Additionally, OECD data on steel capacity and World Steel Association data on steel production are only provided at the broader four-digit HTS level,[305] and combining these data at the four-digit HTS level with regression data at the six-digit HTS level prevents an accurate quantification of the PMS. Accordingly, the regression analysis where the dependent variable is the import AUV at the four-digit HTS level (heading 7208) is the more appropriate model to quantify the relationship between the prices of all of the HRC products which may be used to produce cold rolled steel and uneconomic capacity.

Appropriate Beginning and End of Annual Time Series Data

The respondents argue that data from 2008 and 2009 should not be included in the analysis because they correspond to the global financial crisis.[306] However, Commerce finds that a period of ten years is an appropriate length of time for quantification of the effect of overcapacity on steel prices. It allows for an adequate amount of data and ensures consistency of the regression analysis from one proceeding to another. 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-

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[303] *See* Hyundai Final Calculation Memorandum; *see also* POSCO/PDW Final Calculation Memorandum.
[304] *See* Hyundai Case Brief at 32-34; POSCO/PDW Case Brief at 30-32.
[305] *See* DIP's Letter, "Cold-Rolled Steel Flat Products from the Republic of Korea: Cost-Based Particular Market Situation Allegation," dated August 15, 2019 (Cost-Based Particular Market Situation Allegation) at 57-58.
[306] Hyundai and POSCO/PDW PMS Comments and Rebuttal Factual Information at 60.

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 also argue that the regression should include 2018, which covers eight months of the POR.[307] 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 includes information from a time period 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 and agree with the DIPs that the use of data up to 2017 is appropriate.

Concerning using updated 2017 data for global production and capacity, Commerce notes that the updated production figures for 2017 (1,729 MT) were published in the World Steel Association's World Steel in Figures 2019 report in June 2019,[308] before the PMS allegation was filed in August 2019. Commerce also notes that 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 before the allegation was filed. Both the updated 2017 capacity and production totals were available to petitioners at the time the allegation was filed, and Commerce, therefore, agrees with Respondents that the PMS regression and adjustment calculated by the DIPs should have included updated 2017 capacity and production data. Therefore, Commerce has calculated the PMS adjustment using the beta on the uneconomic capacity variable (-.460) from the regression put on the record by Hyundai (which is identical to the regression submitted by petitioners in all other respects) that includes the updated 2017 production estimate from the World Steel Association and the updated 2017 steel capacity estimate from the OECD.

Choice of Independent Variables

Commerce finds that the regression used by the DIPs 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 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. However, it is not clear, based on the record, which of the energy sources in respondent's alternative regressions that include an energy cost variable is the most appropriate to consider when analyzing the costs of producing HRC. Therefore, making such an adjustment absent such information could in fact result in an overall less, not more, representative calculation. 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.

[307] *Id*. at 60-61.
[308] *See* Hyundai and POSCO/PDW PMS Comments and Rebuttal Factual Information Regression Appendix 1.

Potential Bias of Independent Variables

Concerning the respondents' claim that the model results are invalidated due to endogeneity,[309] Commerce notes that none of the variables in the DIPs' model is lagged or directly dependent on another lagged variable in the model. To ensure that the model minimizes endogeneity bias, the DIPs define 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) (see below) 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, as well as instrumental variables estimation through 2SLS.[310] 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.[311] Moreover, Commerce acknowledges that the strict exogeneity assumption is not realistic and that in real world scenarios, time series and/or panel data mostly violate this assumption.[312]

Concerning autocorrelation and heteroskedasticity,[313] it is Commerce's view that in testing for autocorrelation, 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 DIPs 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.[314] Finally, although DIPs' 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.

For the reasons described above, we have determined that the regression analysis submitted by the DIPs, with the minor modifications described above, is a reasonable method to quantify the relationship between global uneconomic capacity and the price of steel inputs, and, using the methodology described below, to calculate an adjustment for the average unit cost of HRC to reflect the distortions in the HRC market that we found to exist during the POR.

Calculation of the PMS Adjustment

Capacity Utilization Rate

The DIPs advocate a capacity utilization rate of 85 percent. However, the documentation they submitted does not support their argument. For example, two of the studies submitted by the

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[309] *See* Respondents PMS Rebuttal Submission at Appendix I and Exhibit REG-7 at 12.
[310] *See* J.M. Wooldridge, Introductory Econometrics: A Modern Approach (5th ed. 2013) (Woolridge) at chapters 14 and 15.
[311] *See* Petitioners PMS Allegation at Exhibit 56.
[312] *See* Wooldridge at chapters 10, 14 and 15
[313] *See* Respondents PMS Rebuttal Submission at Appendix I (containing Exhibit REG-7 page 12).
[314] *See* Wooldridge at chapters 10, 14 and 15.

DIPs (from 2002 and 1980) are outdated,[315] and another study provided by the DIPs relies upon data and analysis that underestimate the magnitude of the excess capacity crisis.[316]

We concluded in *CORE from Korea* that an 80 percent target capacity utilization rate is reasonable.[317] Commerce recognizes that global capacity utilization rates have been no greater than 80 percent since 2007[318] and that all the steel production and capacity data included in the model are from a period where the 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.[319]

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 in 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 a few weeks ago 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.[320]

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[315] *See* US Steel Factual Information to Clarify Aspects of PMS Allegation at Exhibit 29: The Boston Consulting Group, Breaking the Stalemate, "Calculated on the basis of worldwide production of crude steel, global capacity utilization fluctuated between 70 and 80 percent from 1990 through 2000. (*See* Exhibit 3.) Given that we consider 'healthy' capacity-utilization levels to be around 92 percent, effective worldwide overcapacity is about 20 to 25 percent of actual production," dated July 2002; *See* also Exhibit 26, "Technology and Steel Industry Competitiveness," dated June 1980.

[316] *See* PMS Allegation at Exhibit 199 at 3: McKinsey & Company, Metals and Mining Practice, dated January 2018: The current capacity shake-up in steel and how the industry is adapting, Exhibit 1: Global demand/capacity, Million metric tons, crude steel – excluding China IF capacity and production); and PMS Clarification at Exhibit 30 at 152: Center for European Policy Studies, "Assessment of Cumulative Cost Impact For The Steel Industry, Final Report," dated June 10, 2013: "Considering that a capacity utilization of about 87% is deemed close to full capacity utilization (Ecorys, 2008), in 2007 overcapacity was not an issue in the EU.".

[317] *See CORE from Korea* and accompanying IDM at 31-33.

[318] *See* Respondents' Rebuttal Factual Information, dated October 9, 2019, Exhibit CAP-10 ("OECD Quarterly Steel Market Development, Q2 2019"), at 31.

[319] *See* Respondents PMS Rebuttal Submission at Appendix II (containing Attachment S, "U.S. Department of Commerce, "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).

[320] Memorandum, "Placing New Factual Information on the Record," dated June 19, 2020 (containing part 3 of J.M. Wooldridge's textbook "Introductory Econometrics: A Modern Approach," 5th Edition 2013, and 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)).

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 those parties who have argued that its effects cannot be undone by a one-off increase in global production.[321]

Looking to the record information, we conclude that a more industry-specific and rational 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.

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.[322] In addition, five years is a typical timeframe for strategic planning to outline the operational and financial objectives of an enterprise, including in the steel industry.[323] Furthermore, a five-year average for capacity utilization has been used in other steel policy initiatives of the U.S. government.[324]

Thus, we find that a counterfactual global production capacity based on a longer, five-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. This ensures that the economic health of the industry will not be based on the experience of a single year. Accordingly, the counterfactual global production capacity we are using 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 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

[321] *See* Domestic Interested Parties Rebuttal Brief at 52-54 (arguing that an 85 percent capacity utilization rate is supported by "independent economic analysis and historical capacity usage figures").
[322] The Korean Iron and Steel Institute uses a five-year average for analyzing production trends generally and in presentations to the OECD Steel Committee. Memorandum, "Placing New Factual Information on the Record," dated June 19, 2020 at Attachment 2. Other international steel associations relying on five-year trends in presentations to the OECD Steel Committee include the Japan Iron and Steel Federation, and ALACERO, the Latin American Steel Association. *Id.* at Attachment 3 and 4.
[323] A recently released strategic plan presented by EUROFER, the European Steel Association, also relies on a five-year period. *Id* at Attachment 5.
[324] 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 FR 67748 (November 27, 1979)).

PMS.[325] 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 method to determine the level of capacity utilization considered by Commerce in that analysis.[326] Thus, as we have explained, in response to those expressed concerns, Commerce placed information on the record and invited comments and rebuttal information.[327] Some of the interested parties have argued that Commerce was legally prohibited from putting that information on the record late in 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.[328] 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,[329] 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

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[325] *See Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 15114 (March 17, 2020), and accompanying 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 *Large Diameter Welded Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 84 FR 6374 (February 27, 2019)).

[326] Specifically, interested parties have raised numerous arguments about the appropriate level of global steel capacity utilization to be relied on in calculating an adjustment. Hyundai Case Brief at 35; POSCO/PDW's Case Brief at 28, 33; Domestic Interested Parties Rebuttal Brief at 52-54. *See also Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2715 (January 16, 2020) and accompanying IDM at 2-3 and Comment 7; *Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipment; 2017-2018*, 85 FR 3616 (January 22, 2020), and accompanying IDM at Comment 2.

[327] *See* Memorandum, "Placing New Factual Information on the Record," dated June 19, 2020. We disagree with parties that claim Commerce would have rejected comments on the factual information placed on the record on June 19, 2020. 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.

[328] *See* POSCO/PDW's Letter, "Cold-Rolled Steel Flat Products from the Republic of Korea: Factual Information in Response to the Department's June 19, 2020 Memorandum Placing New Factual Information On the Record," dated June 24, 2020 at 3-4 (POSCO/PDW's June 24 Factual Information); *see also* Hyundai's Letter, "Cold-Rolled Steel Flat Products from the Republic of Korea: Factual Information in Response to the Department's June 19, 2020 Memorandum Placing New Factual Information On the Record," dated June 24, 2020 at 3-4 (Hyundai's June 24 Factual Information); Hyundai's Letter, "Cold-Rolled Steel Flat Products from the Republic of Korea: Refiling of June 24, Factual Information Submission to Remove certain proprietary Information," dated June 29, 2020 (Hyundai's June 24 Factual Information Resubmission).

[329] *See* Cost Based PMS Allegation at Exhibit 55.

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.[330] 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 satisfied the requirements of that provision by allowing interested parties to respond to the June 19th memorandum. We understand that POSCO/PDW and Hyundai argue that although they were given an opportunity to comment on the steel reports and Wooldridge textbook excerpts, they did not know the specific capacity in which Commerce was considering using these documents, so therefore had no opportunity to provide a refined comment in that regard.[331] However, POSCO/PDW and Hyundai argue for requirements in section 782(g) of the Act which do not exist.

When Commerce placed the steel report and Wooldridge textbook excerpts 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.[332] POSCO/PDW and Hyundai argue that Commerce was required by section 782(g) 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 POSCO/PDW and Hyundai 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

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[330] *See e.g.*, *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 33919 (July 18, 2018) (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)).

[331] *See* POSCO/PDW's June 24 Factual Information at 2-3; Hyundai's June 24 Factual Information at 2-3; Hyundai's June 24 Factual Information Resubmission.

[332] *See* U.S. Steel's Letter, "Cold-Rolled Steel Flat Products from the Republic of Korea: Information to Rebut, Clarify, or Correct Aspects of Commerce's New Factual Information," dated June 24, 2020 (U.S. Steel's June 24 Factual Information); POSCO/PDW's June 24 Factual Information; Hyundai's June 24 Factual Information; Hyundai's June 24 Factual Information Resubmission.

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 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 undermined the legitimacy of the steel reports or provided arguments that suggested that the information contained within those sources was not representative of the industry. 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).

For the foregoing reasons, Commerce determines 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 19th Factual Information

In response to the factual information we placed on the record on June 19, 2020, the parties placed rebuttal factual information on the record.[333] However, none of the information submitted on the record undermines the validity or value of that information. We have therefore analyzed that information and determined that five years represents a reasonable period of time to assess the economic health of the steel industry. The rebuttal documents submitted provide updates on data regarding the global, Korean, and Chinese steel markets, either leading up to or during the POR.[334] This information does not change our decision that five years is a reasonable length of time over which to evaluate the health of the steel industry.

Moreover, 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 to its analysis.[335] Commerce's regulation and practice both are in accordance

[333] *See* U.S. Steel's June 24 Factual Information; POSCO/PDW's June 24 Factual Information; Hyundai's June 24 Factual Information; Hyundai's June 24 Factual Information Resubmission.
[334] *See* U.S. Steel's June 24 Factual Information; POSCO/PDW's June 24 Factual Information; Hyundai's June 24 Factual Information; Hyundai's June 24 Factual Information Resubmission.
[335] *See, e.g.*, *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 33919 (July 18, 2018) (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*

with Commerce's procedural requirements under the Tariff Act of 1930. To the extent that parties cite to section 782(g) of the Act, Commerce does not view this section as relevant because none of the rebuttal factual information calls into question Commerce's reliance on a five-year average to determine a counterfactual global production capacity.

Beta Coefficient on the Uneconomic Capacity Variable

Commerce finds that the 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 DIPs 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 effect of global uneconomic capacity in the steel industry on the cost of imported HRC in Korea, Commerce has relied on the regression coefficient associated with uneconomic capacity to quantify the PMS adjustment to the respondents' reported HRC costs.

Calculation of the PMS Adjustment

The regression model used by the DIPs 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),[336] and the error term (ε_i).[337] 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 the 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 gross fixed capital formation (GFCF).[338]

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)).

[336] The country-specific, fixed-effects coefficient captures the time-invariant variables affecting the dependent variable.

[337] The country-specific error term captures the unobserved factors affecting the dependent variable that are uncorrelated with the independent variables.

[338] *See* Cost-Based PMS Allegation at Exhibit 56.

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 before 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 beyond 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:

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

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,[339] the figures on the record needed for the adjustment are as follows:

$GlobalCap_{2017}$	2,240,100
$GlobalProd_{2017}$	1,729,800
$GlobalProd_{2016}$	1,626,954
$GlobalProd_{2015}$	1,620,001
$GlobalProd_{2014}$	1,669,450
$GlobalProd_{2013}$	1,650,354
$GlobalProd_{max}$	1,669,450
$CapUtilRate$	0.80
$\beta_{UneconCap}$	-.46

Using the equations defined above (and units in MT):

$$GlobalCap_{cf} = 1{,}659{,}312 \div 0.80 = 2{,}074{,}140$$

$$UneconCap_{cf} = 2{,}074{,}140 - 1{,}669{,}450 = 404{,}690$$

$$UneconCap_{2017} = 2{,}240{,}100 - 1{,}669{,}450 = 570{,}650$$

$$change\ in\ AUV = \left(\frac{404{,}690}{570{,}650}\right)^{-.46} - 1 = .1713$$

Thus, for the final results, Commerce will adjust upward respondents' cost of hot-rolled steel inputs by a rate of 17.13 percent.

[339] For 2017 Global Capacity Data, *see* Cold-Rolled Steel Products from the Republic of Korea: Particular Market Situation Comments and Rebuttal Factual Information at Exhibit Reg-3 (October 7, 2019);For 2017 Global Production data, *see* Cold-Rolled Steel Products from the Republic of Korea: Particular Market Situation Comments and Rebuttal Factual Information at Exhibit Reg-5 (October 7, 2019);For 2013-2016 Global Production data, *see* Cold-Rolled Steel Flat Products from the Republic of Korea: Cost-Based Particular Market Situation Allegation at Exhibit 63, (August 15, 2019); For UEC Beta (-.46), *see* Cold-Rolled Steel Products from the Republic of Korea: Particular Market Situation Comments and Rebuttal Factual Information at Regression Appendix I, page 6, table 2 (October 7, 2019)

Comment 3: Applicability of Particular Market Situation Adjustment to Self-Produced Inputs

AMUSA's Comments:

- The *Preliminary Results* recognize that the factors distorting the Korean market for HRC are a market-wide phenomenon. As a result, the impact of these factors is not related solely to the HRC purchased by respondents but, rather, applies equally to HRC that is self-produced.[340]
- Commerce, therefore, should apply the PMS adjustment to all HRC, irrespective of whether the HRC was self-produced or purchased.[341]
- Distinguishing between self-produced and purchased HRC is arbitrary and economically illogical because both purchased and self-produced PMS are driven by the market price for steel.[342]
- By the very nature of Korean International Financial Reporting Standards inventory valuation principles, POSCO/PDW's self-produced HRC is valued at either the distorted net market value or at an even lower cost value, both of which are logically impacted by the PMS in Korea. Commerce's adjustment factor should, therefore, be applied to self-produced HRC.[343]
- POSCO/PDW does not operate or make production decisions outside of the influence of the market it is a part of. As a rational economic actor, POSCO/PDW's production decisions for hot-rolled steel are impacted by the prevailing market prices for HRC, including the decision of whether to produce HRC internally for its CRS production.[344]
- POSCO/PDW acknowledged that it determines its sales prices of its products based on "market conditions" and that, when setting HRC prices, it takes into account its costs, including those of raw materials, supply and demand in the Korean market, exchange rates, and conditions in the international steel market.[345] Thus, where the cost to produce HRC is higher than the price to purchase HRC, there is no advantage to producing HRC, and vice versa.[346] In this manner, the implicit value of the self-produced HRC is likewise impacted and distorted by global steel excess capacity.[347]
- In the past, Commerce has acknowledged the logical connection between purchased and self-produced inputs and adjusted the cost of an input involving PMS regardless of whether it was purchased or self-produced.[348]

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[340] *See* AMUSA Case Brief at 3-4.
[341] *Id.*
[342] *Id.* at 5.
[343] *Id.* at 7.
[344] *Id.* at 6.
[345] *Id.* (citing POSCO/PDW March 25, 2019 Section A Questionnaire Response at Appendix I).
[346] *Id.* at 6.
[347] *Id.* at 7.
[348] *Id.* at 9.

U.S. Steel's Comments:

- Consistent with widely used accounting principles, the respondents' valuation of works in progress, *i.e.*, HRC used to produce CRS, is limited by market prices, which additionally evidences that the respondents' self-produced HRC valuation is not insulated from the Korean market.[349]
- A respondent-specific carve-out for self-produced HRC is antithetical to Commerce's market-wide framework for cost-based PMS issues and, moreover, conflicts with Commerce's past practice of adjusting self-produced inputs to account for market-wide distortions.[350]
- Virtually all steelmakers have some form of cost accounting, whether the HRC is ultimately consumed by the primary steel producer itself or sold to a third party. Visibility into Hyundai's inexact cost accounting system does not excise its self-produced steel from the Korean market.[351]
- The regression-based adjustment factor specifically accounts for the impact of raw material costs on steel pricing and, thus, may reasonably be applied to adjust the respondents' self-produced HRC costs for overcapacity-related distortions.[352]

POSCO/PDW's Rebuttal Comments:

- The DIPs have failed to explain how the alleged distortions with respect to HRC pricing are related to POSCO/PDW's reported cost of producing cold-rolled steel.[353] To reiterate, fundamental to the DIPs' allegation is their claim that Korean HRC prices are distorted by a particular market situation.[354]
- The entire premise of the DIPs' regression analysis to quantify the alleged distortion is to establish the prices of HRC in the Korean market, and not the cost to produce HRC.[355] There is no basis to adjust POSCO's costs for HRC because the reported costs in this case are not for HRC, but are for the inputs to produce cold-rolled steel in its integrated facilities. POSCO/PDW is an integrated producer that does not rely on purchased HRC to produce cold-rolled steel.[356]

Hyundai's Rebuttal Comments:

- In the *Preliminary Results*, Commerce properly found that it should not apply a PMS adjustment to a Hyundai's costs for self-produced HRC because the alleged PMS related only to HRC purchase prices.

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[349] *See* U.S. Steel's Case Brief at 26.
[350] *Id.* at 26.
[351] *Id.*
[352] *Id.*
[353] *See* POSCO/PDW Rebuttal Brief at 2.
[354] *Id.* (citing Domestic Interested Parties Cost Based PMS Allegation at 6).
[355] *Id.* at 3.
[356] *Id.*

- Indeed, the purpose of the DIPs regression analysis is to establish the *prices* of HRC in the Korean market, and not the *cost* to produce HRC. Thus, the DIPs' proposed adjustment resulting from their regression analysis — to account for distortions in *prices* of HRC, is irrelevant to Hyundai's actual production costs.[357]
- Hyundai reported "the cost of iron ore, coal, and scrap" in the Direct Materials field, *i.e.*, DIRMAT.[358] Thus, Hyundai's reported costs are not for HRC, but are for the inputs to produce cold-rolled steel in its integrated facilities and operations (*i.e.*, the material costs are for the inputs to produce steel, not purchased hot rolled steel).[359]
- Moreover, in *Welded Line Pipe from Korea*, Commerce distinguished the respondents' purchases of HRC and CTL plate inputs and declined to make any PMS adjustment to the respondents' CTL plate input.[360] Commerce applied the PMS adjustment only to the HRC input consumed by each respondent, not to the respondents' CTL plate input, because the subsidy rates used for the PMS adjustment were calculated for HRC, but not CTL plate.[361]

Commerce Position: DIPs argue that Commerce erred in the *Preliminary Results* by not applying a PMS adjustment to HRC self-produced by the respondents.[362] We disagree, and, consistent with our established practice, we have limited the PMS adjustment to the respondents' purchases of HRC inputs. Accordingly, we continue to make no PMS adjustment to self-produced HRC inputs for the final results.[363]

As we noted in the Preliminary PMS Memorandum, the PMS finding is based on distortions in the acquisition price of HRC in Korea.[364] The DIPs correctly contend that the PMS affects the entire Korean market for HRC. However, we find their argument that self-produced HRC, which is not bought or sold in the market, is somehow subject to the same market forces as purchased HRC to be unavailing. The record shows that the respondents' non-purchased steel inputs are not tied to purchases of HRC, which is the basis of our PMS adjustment.[365] Moreover, as we also noted in *CORE from Korea*, the PMS allegation hinged on HRC pricing rather than on the cost of respondents' reported inputs, which are iron ore, coal, and steel scrap. There is no evidence that these inputs are subject to the same market forces that distort the market price of HRC.[366]

The DIPs mischaracterize both Commerce's practice and Commerce's analysis in the

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[357] *Id.*
[358] *Id* at 6-7 (citing Hyundai Steel's Section D Response at D-40).
[359] *Id.* at 6.
[360] *Id.* at 7 (citing *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 33919 (July 18, 2018) (*Welded Line Pipe from Korea*) and accompanying IDM at 14-15).
[361] *Id.* at 8.
[362] *See* AMUSA Case Brief at 2-9; *see also* U.S. Steel Case Brief at 27-34; *Preliminary Results* and accompanying PDM at 17; Preliminary PMS Memorandum at 19-20.
[363] *See, e.g., CORE from Korea*, and accompanying IDM at Comment 3.
[364] *See* Preliminary PMS Memorandum at 19.
[365] *See* Hyundai's and POSCO/PDW's Letter, "Cold Rolled Steel Products from the Republic of Korea: Particular Market Situation Comments and Rebuttal Factual Information," dated October 7, 2019 at 5 (Hyundai & POSCO PMS Rebuttal Comments).
[366] *See CORE from Korea* and accompanying IDM at Comment 3.

preliminary determination. There is no factual basis for the DIPs' claim that Commerce's practice is to adjust for self-produced products to account for market-wide distortions.[367] The DIPs point to *Welded Carbon Steel Standard Pipe and Tube from India* to claim that Commerce made an adjustment to all inputs, both purchased and self-produced.[368] However, in that case we made an adjustment irrespective of whether *pipe and tube* (*i.e*., subject merchandise) was self-produced from purchased HRC, or whether the *pipe and tube* (subject merchandise) was purchased from unaffiliated suppliers (and thus was inclusive of the purchase price of HRC) before being resold. Self-produced HRC was not an issue in *Pipe and Tube from India*, and therefore the DIPs' reference to that case is not relevant here. The DIPs also cite to previous determinations in *CORE from Korea* and *Welded Line Pipe from Korea* where Commerce adjusted both purchased and self-produced HRC inputs based on the rate of subsidization from the CVD order on hot-rolled steel from Korea.[369] However, in the instant proceeding, the quantification of the PMS adjustment in the PMS allegation is based on a regression analysis which quantifies the impact of global overcapacity on the price of HRC in the Korean market. Although the DIPs claim that there is no evidence that self-produced HRC is not part of the Korean market, we find, to the contrary, that there is no evidence that self-produced HRC *is* part of the Korean market, since it is not bought or sold. Additionally, the DIPs' claim that Commerce has applied a respondent-specific carve-out is erroneous.[370] Commerce rightly applied an adjustment for PMS distortions to the products subject to that distortion, which were purchased by the respondents, in the preliminary results, regardless of the respondent. The HRC self-produced by Hyundai and POSCO is not subject to the same market distortions as purchased HRC because it does not enter the market.

Moreover, we do not find the DIPs' reliance on world steel prices compelling since they have not demonstrated how world market prices for steel relate to the non HRC steel inputs purchased by the respondents. Finally, given that the PMS finding and PMS adjustment here are based on distortions in the acquisition price for HRC in Korea, the method by which the respondents value the inventory of the self-produced intermediate products, including HRC, is irrelevant to our PMS finding. Based on the foregoing, in these final results, we have not applied a PMS adjustment to the respondents' self-produced HRC inputs.

Comment 4: POSCO/PDW CEP Offset

POSCO/PDW's Comments:

- In the *Preliminary Results*, Commerce determined that POSCO's home market level of trade was "at the same relative level of intensity based on the relative amount of: (1) sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support" performed in the home market compared to POSCO's sales to the United States.[371] However, the record confirms that

[367] *See* U.S. Steel's Case Brief at 26.
[368] *See* AMUSA Case Brief at10.
[369] *Id.* at 9.
[370] *Id*.
[371] *See* POSCO/PDW Case Brief at 36 (citing *Preliminary Results* and accompanying PDM at 23).

POSCO's home market sales require a significantly higher degree of selling functions than POSCO/PDW needs to engage in to sell to its U.S. affiliates.

- Commerce's regulations concerning level of trade and CEP offsets provide that "The Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing."[372]
- In conducting this analysis in a CEP offset context, Commerce compares the functions the respondent performs in selling to home market customers to the selling functions the respondent engages in in selling to its affiliates in the United States. That is, Commerce compares the selling functions performed by the respondent in selling to its unaffiliated home market customers to the functions performed in selling to the U.S. market, where U.S. affiliates act on the respondent's behalf to sell to unaffiliated customers. Consistent with Commerce's preliminary framework, Commerce typically analyzes selling functions based on four general selling function categories: (1) sales and marketing activities; (2) freight and delivery; (3) inventory maintenance and warehousing; and (4) warranty and technical support. On this basis POSCO/PDW's submissions confirm that a CEP offset is justified in this review.
- For the purposes of determining whether a CEP offset is warranted, Commerce's analysis does not focus on the selling functions offered by the U.S. affiliate; rather, the proper analysis is to determine the relative intensities with respect to the foreign respondent company in the comparison home and U.S. markets. POSCO provided the relative intensities of each selling activity between its home and U.S. markets in a selling functions chart in POSCO/PDW's Section A Response at Exhibit A-7. The materials in this exhibit confirm that POSCO/PDW performs more activities in selling to home market customers than to its U.S. affiliates.[373]
- The selling functions POSCO performs in the home market are significantly greater and more numerous than the functions it engages in for U.S. sales. The sheer size of POSCO/PDW's home market alone demonstrates that POSCO/PDW engages in significant marketing and sales activities.[76]
- Maintaining sales volume of such extent in the home market requires significant market presence and sales activity. On the other hand, POSCO does not need to engage in significant sales and marketing efforts to sell to its U.S. affiliates at the CEP level of trade.
- While the majority of POSCO/PDW's sales are made to order, POSCO/PDW makes some sales from inventory in the home market, demonstrating that this selling function category is performed to a greater degree in the home market than for the CEP level of trade. In contrast, POSCO/PDW does not perform inventory maintenance or warehousing activities to support its sales to its U.S. affiliates at the CEP level of trade. The freight and delivery operations in the home market are also more complex than for sales to the United States.[374]
- With respect to warranty service, POSCO/PDW performs this function at a medium level in home market channels 1, 3 and 4, and at a low level for channel 2, and likewise

[372] *Id*. (citing 19 CFR 351.412(c)(2)).
[373] *Id.* at 37.
[374] *Id.* at 38.

performs this function at medium and low levels in selling to U.S. customers. Viewed together with the selling functions chart that POSCO/PDW submitted at Exhibit A-7 of its Section A Response and materials in POSCO/PDW's supplemental questionnaire response, it is evident that POSCO/PDW performed significantly more selling functions for its home market sales than U.S. sales.[375]

AMUSA's Rebuttal Comments:

- The burden lies with POSCO/PDW to demonstrate that different levels of trade exist between home market and U.S. CEP sales. Commerce has established that "it is the respondent's burden to build an accurate record to support its position" regarding whether CEP offset is warranted.[376] No such record exists in this proceeding, as correctly determined by Commerce in its *Preliminary Results*.
- POSCO/PDW failed to provide the necessary data or documents to support its analysis of the selling functions it performed. Moreover, the information that POSCO/PDW almost exclusively relied on when evaluating and reporting the various selling function intensities for home market and U.S. CEP sales, *i.e.*, the market-specific total hours worked by sales personnel calculation, is not only very general in nature but it also clearly indicates that home market sales were not subject to more intensive selling activities based on this metric. In addition, other record evidence directly contradicts POSCO/PDW's reporting of relative selling intensity values regarding nearly all of the selling activity subcategories for which it reported a difference between home market and U.S. CEP sales.[377]
- Even if POSCO/PDW had provided sufficient supporting evidence and data for its selling function intensity classifications, POSCO/PDW reported substantial differences in selling function intensities between home market and U.S. CEP sales for only one out of the five main selling function categories, which is not meaningful enough to be considered to result in a difference in the level of trade between the markets. In addition, POSCO did not demonstrate at all that its home market sales were made at a more advanced stage of marketing that is also required (in addition to substantial differences in selling activities) for a difference in level of trade to exist.[378]

Commerce Position: We continue to find that no CEP offset is warranted for POSCO/PDW's CEP sales in these final results. As we noted in the *Preliminary Results*, Commerce will grant a CEP offset, under section 773(a)(7)(B) of the Act, if it determines that the NV level of trade (LOT) is at a more advanced stage of distribution than the LOT of the CEP and the data available do not provide an appropriate basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible).[379]

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[375] *Id.* at 39.
[376] *See* AMUSA Rebuttal Brief at 16 (citing *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 53419 (August 12, 2016) and accompanying IDM at Comment 3; and *PSC VMPCO – Avisma Corp. v. United States*, 33 CIT 1593, 1598 (2009)).
[377] *Id.* at 7-8.
[378] *Id.* at 8-14.
[379] *See Preliminary Results* and accompanying PDM at 19-21.

In these final results, we continue to find that the: (1) sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support services provided by POSCO/PDW in the United States are too insignificant to establish that POSCO/PDW's CEP sales are at a separate LOT than POSCO/PDW's home market sales.[380] Moreover, we note that our analysis of POSCO/PDW's LOT in these final results is consistent with that employed in the *LTFV Final Determination*, wherein we also determined that the selling functions provided by POSCO/PDW on its U.S. sales were too insignificant to establish POSCO/PDW's CEP sales as separate and distinct from POSCO/PDW's other U.S. sales or to POSCO/PDW's sales in the home market.[381]

In this review, and consistent with section 773(a)(7)(B) of the Act, we have analyzed the (1) sales and marketing, (2) freight and delivery services, (3) inventory maintenance and warehousing, and (4) warranty and technical support services provided by POSCO/PDW in both the home market and the United States.[382] Our analysis of these selling functions continues to indicate that POSCO/PDW provided sales support to its CEP entities, which were supported by POSCO/PDW in Korea, and that the sales activities undertaken by POSCO in Korea benefited both CEP and Korean sales.[383] The role of these multiple entities in the sales process suggests that sales and marketing, freight and delivery, inventory maintenance, and warranty and technical support varied across both CEP and home market channels.[384]

Based on the foregoing, and consistent with our finding in the *LTFV Final Determination* of the instant proceeding and the record of this review, we continue to find from our examination of POSCO/PDW's home market and CEP selling activities that POSCO/PDW's CEP sales are not substantially more advanced than POSCO/PDW's home market sales.[385] Accordingly, we have continued to deny POSCO/PDW a CEP offset in these final results.

Moreover, as the DIPs have also noted, on CEP sales, both POSCO and PDW provide certain selling functions (*e.g.*, sales forecasting, strategic planning, market research and marketing support), which benefits both POSCO America and POSCO Daewoo America.[386] As such, we continue to find that such activities benefit both home market and CEP sales activities. Given

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[380] *See* POSCO/PDW March 25, 2018 Section A Questionnaire Response at A-20 through A-24 and Exhibit A-7; *see also Preliminary Results* and accompanying PDM at 20.
[381] *See Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final* Determination, 81 FR 11757 (March 7, 2016) (LTFV *Preliminary Determination*) and accompanying PDM at 19-21 (unchanged in *Certain Cold Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 49953 (July 29, 2016) (*LTFV Final Determination*)).
[382] *See LTFV Final Determination* and accompanying IDM at Comment 9.
[383] *See* POSCO/PDW March 25, 2018 Section A Questionnaire Response at Exhibit A-6.1 (home market sales) and Exhibit A-6.2 (U.S. sales).
[384] *Id.*
[385] *See LTFV Preliminary Determination* and accompanying PDM at 19-21 (unchanged in *LTFV Final Determination*); *see also*, *e.g.*, *Silicomanganese from Australia: Final Determination of Sales at Less Than Fair Value*, 81 FR 8682 (February 22, 2016) (*Silicomanganese from Australia*) and accompanying IDM at Comment 2; and *Cut to Length Plate from Korea* and accompanying IDM at Comment 9.
[386] *See* POSCO/PDW March 25, 201826, 2019 Section A Questionnaire Response at A23-A25.A-18-A-21 and Exhibits A-6(1) and A-6(2).

POSCO/PDW's sales activities (*e.g.*, sales forecasting, strategic planning, market research and marketing support), we dispute POSCO/PDW's assertion that it consistently provides a greater degree of sales support on home market transactions than it provides for CEP transactions.[387] Based on our examination of the selling functions reported by POSCO/PDW in the home market and on its CEP sales, we continue to find insufficient evidence to suggest that the home market LOT is sufficiently more advanced than the CEP LOT to warrant granting POSCO/PDW an LOT adjustment. Moreover, we find no evidence that establishes the difference in either sales activity or selling expenses which accrue through POSCO/PDW selling out of inventory as opposed to POSCO/PDW selling directly to its customer. Accordingly, we have continued to make no CEP offset in these final results.

Comment 5: Hyundai Manufacturer Codes

Hyundai's Comments:

- In Commerce's preliminary margin calculations, Commerce incorrectly used the data in the manufacturer fields "MFRH" and "MFRU" as a limiting factor in the concordance portion of Commerce's margin calculation program for Hyundai, which resulted in the unintended consequence of forcing all sales to constructed value. In fact, all sales were produced by Hyundai, and are, therefore, eligible for price-to-price matches.[388]
- Commerce should correct this issue in the final results by modifying Section 1-E-ii of the Margin Program by setting Hyundai's U.S. and home market manufacturing codes to "NA," *i.e.*, "not applicable."

No other interested parties commented on this issue.

Commerce Position: We agree with Hyundai that its manufacturer codes should not have been used as a limiting factor in the concordance portion of our margin calculation program. In these final results, we have revised our calculations to set Hyundai's "MFRH" and "MFRU" to "NA" in both the home market and U.S. margin programs.[389]

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[387] *See* POSCO Case Brief at 36-39.
[388] *See* Hyundai Case Brief at 3.
[389] *See* Hyundai Final Calculation Memorandum.

VII. Recommendation

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

☒	☐
_____________	_____________
Agree	Disagree

7/6/2020

X

Signed by: JEFFREY KESSLER

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Jeffrey I. Kessler
Assistant Secretary
 for Enforcement and Compliance