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International Trade Administration
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Administrative Review
POR: 9/1/2017-8/31/2018
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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 Oil Country Tubular Goods from the Republic of Korea

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 oil country tubular goods (OCTG) 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 revised the margin calculation for the two mandatory respondents, Hyundai Steel Company (Hyundai Steel) and SeAH Steel Corporation (SeAH). We continue to find that SeAH sold the subject merchandise in the United States at prices below normal value (NV), but we find that Hyundai Steel did not. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

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

[1] *See Certain Oil Country Tubular Goods from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 63615 (November 18, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

General Issues

Comment 1-A: Lawfulness of Commerce's Interpretation of the Particular Market Situation (PMS) Provision
Comment 1-B: Evidence of a PMS
Comment 1-C: Quantification of PMS Adjustment
Comment 2: Application of Constructed Value (CV) Profit and Selling Expense Ratios to PMS-Adjusted Costs
Comment 3: Calculation of CV Profit and Selling Expenses
Comment 4: Differential Pricing

Hyundai Steel-Specific Issues

Comment 5: Hyundai Steel's Cost Reconciliation
Comment 6: Minor Inputs Obtained from Affiliated Parties
Comment 7: Expenses Related to Raw Material Purchases
Comment 8: Byproducts Reintroduced into Production
Comment 9: Scrap Offsets
Comment 10: U.S. Warehousing Expenses
Comment 11: Warranty Expenses
Comment 12: Packing Expenses for Hyundai Steel's Prime Sales
Comment 13: Constructed Export Price (CEP) Profit Calculation
Comment 14: Cost of Prime Products Sold in the United States

SeAH-Specific Issues

Comment 15: Freight Revenue Cap
Comment 16: Calculation of General and Administrative (G&A) Expenses Incurred by SeAH's U.S. Affiliate

II. BACKGROUND

On November 18, 2019, Commerce published the *Preliminary Results* of this administrative review.[2] In accordance with 19 CFR 351.309(c), we invited interested parties to comment on the *Preliminary Results*.[3] On January 3, 2020, the following parties submitted case briefs: (1) petitioner Maverick Tube Corporation and TenarisBayCity (collectively, Maverick);[4]

[2] *See Preliminary Results*.
[3] *Id.*
[4] *See* Maverick's Letter, "Oil Country Tubular Goods from the Republic of Korea: Case Brief of Maverick Tube Corporation and Tenaris Bay City, Inc.," dated January 3, 2020 (Maverick's Case Brief).

(2) petitioner United States Steel Corporation (U.S. Steel);[5] (3) Hyundai Steel;[6] (4) SeAH;[7] (5) ILJIN Steel Corporation (ILJIN);[8] and (7) Husteel Co., Ltd. (Husteel).[9] Also on January 3, 2020, NEXTEEL Co., Ltd. (NEXTEEL) and AJU Besteel Co., Ltd. (AJU Besteel) submitted letters in support of respondents' case briefs.[10] On January 10, 2020, the following parties submitted rebuttal briefs: (1) Maverick;[11] (2) U.S. Steel;[12] (3) Hyundai Steel[13]; and (4) SeAH.[14]

On December 18, 2019, the Domestic Interested Parties,[15] Hyundai Steel,[16] and SeAH,[17] filed a request for a hearing. On February 7, 2020, Commerce held a public hearing.[18]

On June 19, 2020, Commerce placed certain new factual information on the record of this review.[19] On June 24, 2020, U.S. Steel and Hyundai Steel placed information on the record to rebut, clarify, or correct the information in Commerce's June 19, 2020 memorandum.[20]

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[5] *See* U.S. Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea: Case Brief of United States Steel Corporation," dated January 3, 2020 (U.S. Steel's Case Brief).
[6] *See* Hyundai Steel's Letter, "Certain Oil Country Tubular Goods from the Republic of Korea – Case Brief," dated January 3, 2020 (Hyundai Steel's Case Brief).
[7] *See* SeAH's Letter, "Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea — Case Brief of SeAH Steel Corporation," dated January 3, 2020 (SeAH's Case Brief).
[8] *See* ILJIN's Letter, "Oil Country Tubular Goods from the Republic of Korea: Case Brief," dated January 3, 2020 (ILJIN's Case Brief).
[9] *See* Husteel's Letter, "Oil Country Tubular Goods from the Republic of Korea, 9/1/2017-8/31/2018 Administrative Review, Case No. A-580-870: Case Brief," dated January 3, 2020 (Husteel's Case Brief).
[10] *See* NEXTEEL's Letter, "Oil Country Tubular Goods from the Republic of Korea: NEXTEEL's Letter in Support of Respondents' Case Briefs," dated January 3, 2020 (NEXTEEL Letter of Support); *see also* AJU Besteel's Letter, "Certain Oil Country Tubular Goods from the Republic of Korea – Letter in Support of Case Briefs," dated January 3, 2020 (AJU Besteel Letter of Support).
[11] *See* Maverick's Letter, "Oil Country Tubular Goods from the Republic of Korea: Rebuttal Brief of Maverick Tube Corporation and Tenaris Bay City, Inc.," dated January 10, 2020 (Maverick's Rebuttal Brief).
[12] *See* U.S. Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea: Rebuttal Brief of United States Steel Corporation," dated January 10, 2020 (U.S. Steel's Rebuttal Brief).
[13] *See* Hyundai Steel's Letter, "Certain Oil Country Tubular Goods from the Republic of Korea – Rebuttal Brief," dated January 10, 2020 (Hyundai Steel's Rebuttal Brief).
[14] *See* SeAH's Letter, "Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea — Rebuttal Brief of SeAH Steel Corporation," dated January 10, 2020 (SeAH's Rebuttal Brief).
[15] *See* Letter from Maverick Tube Corporation, TenarisBayCity, United States Steel Corporation, TMK IPSCO, Vallourec Star, L.P., and Welded Tube USA (collectively, Domestic Interested Parties or DIPs), "Oil Country Tubular Goods from the Republic of Korea: Request for Hearing," dated December 18, 2019.
[16] *See* Hyundai Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea–Request for Public Hearing," dated December 18, 2019.
[17] *See* SeAH's Letter, "Oil Country Tubular Goods from the Republic of Korea — Hearing Request," dated December 18, 2019.
[18] *See* Letter from Commerce on January 17, 2020, regarding hearing schedule; *see also* Hearing Transcript, dated February 14, 2020.
[19] *See* Memorandum, "Antidumping Duty Administrative Review of Oil Country Tubular Goods from the Republic of Korea 2017-2018: Placing New Factual Information on the Record," dated June 19, 2020.
[20] *See* U.S. Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea: Information to Rebut, Clarify, or Correct Aspects of Commerce's New Factual Information," dated June 24, 2020; *see also* Hyundai Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea; Objection to June 19th Information Release and Submission of Rebuttal Factual Information," dated June 24, 2020.

On March 12, 2020, we extended the deadline for issuing the final results of this administrative review.[21] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending these final results until July 6, 2020.[22]

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 merchandise covered by the order is OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.*, whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock.

Excluded from the scope of the order are: casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to the order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

[21] *See* Memorandum, "Certain Oil Country Tubular Goods from the Republic of Korea: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review," dated March 12, 2020.
[22] *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.

IV. CHANGES SINCE THE *PRELIMINARY RESULTS*

For the final results of review, Commerce based the margin calculations for each mandatory respondent on CEP, export price (EP), and CV, where appropriate, for Hyundai Steel and SeAH. We used the same methodology as stated in the *Preliminary Results*, with the exception of modifying the PMS adjustment rate for Hyundai Steel and SeAH.

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

For these final results, we calculated a weighted-average dumping margin that is not zero, *de minimis*, or determined entirely on the basis of facts available for SeAH. Accordingly, Commerce has assigned to the companies not individually examined (*see* the Appendix for a full list of these companies) a margin of 3.96 percent, which is the weighted-average dumping margin calculated for SeAH for these final results.

VI. DUTY ABSORPTION

In the *Preliminary Results*, Commerce preliminarily found that AD duties have been absorbed by Hyundai Steel and SeAH. As explained in the Preliminary Results, Commerce provided an opportunity to Hyundai Steel and SeAH to rebut the presumption of duty absorption with evidence that their unaffiliated U.S. purchasers ultimately paid the entire duty assessed on subject merchandise. However, Hyundai Steel and SeAH did not submit such evidence on the record of this administrative review. Further, no party has addressed the issue of duty absorption in their case briefs. Therefore, we have made no changes to our preliminary determination of duty absorption for the final results of review.

VII. DISCUSSION OF THE ISSUES

General Issues

Background:

In the *Preliminary Results*, we determined that a PMS existed in Korea which distorted the cost of production (COP) of OCTG, based on the cumulative effect of: (1) steel overcapacity and price suppression; (2) Korean government subsidization of hot-rolled coil; (3) anticompetitive

behavior among Korean steel producers (4) distortions in Korean electricity input costs; and (5) steel industry restructuring efforts by the Korean government (collectively, the five elements of 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 for OCTG, basing that adjustment on the factor derived in the regression analysis, which is discussed in Comment 1-C, below.[23]

Comment 1-A: Lawfulness of Commerce's Interpretation of the Particular Market Situation Provision

Hyundai Steel's Comments:[24]

- The PMS provision of the Trade Preferences Extension Act (TPEA) can only be triggered if both (1) a PMS exists, and (2) the respondent's "costs of materials and fabrication or other processing do not accurately reflect the cost of production in the ordinary course of trade." Thus, the burden of proving the existence of a PMS is on the party alleging its existence, and Commerce has the established practice that finding a "PMS exists is reserved for limited circumstances and must be based on substantial evidence that the alleged distortion is so significant that it creates an inability to compare foreign and domestic prices." Record evidence does not indicate that the extraordinary circumstances necessary for finding a PMS have been met. Commerce should reverse its affirmative PMS finding in the final results.
- Commerce has not found the situation in Korea to be outside of the ordinary course of trade. The situation that Commerce found of distorted HRC input costs in Korea is no longer an unusual situation in Korea since Commerce has found that it has been going on for years now. Since the first time Commerce found a PMS existed in Korea with respect to HRC inputs, a minimum of 50 months has passed prior to the current POR where the DIPs are still arguing that the same PMS exists. After so much time, the situation is no longer "particular."
- Under the TPEA, Congress did not define a PMS, but the term existed in the statute with regard to a PMS affecting home market sales. Commerce must then interpret the term the same way it did before TPEA amended the Tariff Act in 2015, reserving its use only for limited and extraordinary circumstances, as mandated by the Statement of Administrative Action (SAA). In the 1997 preamble to the antidumping and countervailing duty regulations, Commerce signaled that a PMS finding should not be routinely made in AD cases but limited to extraordinary circumstances with a high threshold for substantial evidence.
- In this proceeding, Commerce must recognize that there is nothing "particularly abnormal, unusual, or distorted about the company's production" of subject merchandise throughout the POR.
- Commerce did not independently empirically analyze whether or not a PMS exists in the Korean steel market based on Hyundai Steel's actual manufacturing costs for the subject

[23] *See* Commerce's Memorandum, "2017-2018 Administrative Review of Antidumping Duty Order on Oil Country Tubular Goods from the Republic of Korea: Decisions on Particular Market Situation Allegations," dated November 8, 2019 (Preliminary PMS Memorandum).
[24] *See* Hyundai Steel's Case Brief at 16-31.

merchandise in the instant POR and did not attempt to show any connection between those actual manufacturing costs and the alleged market distortion.

- Commerce has not demonstrated that Hyundai Steel's input HRC costs are either inaccurate or would cause any distortions to the AD calculations in any meaningful way.
- In the AD investigation of *Steel Rebar from Taiwan*, Commerce made a negative PMS determination based on detailed, data-driven analysis. In the instant review, however, Commerce did not do any benchmark analysis in the *Preliminary Results*. Commerce likewise did not conduct any analysis on Hyundai Steel's input HRC purchase prices or Korean market prices. Commerce's PMS finding in the *Preliminary Results* is, therefore, unsupported and unreasonable.
- The practice of benchmarking inputs for determining whether a PMS adjustment is appropriate is well-rooted, with *Biodiesel from Argentina* serving as an example of Commerce using outside reports and data from the World Bank, the World Trade Organization (WTO), and the Office of the U.S. Trade Representative (USTR) to empirically analyze the extent of distortion in the Argentine market.
- Similarly, in *Biodiesel from Indonesi*a, Commerce used worldwide prices as a benchmark to perform a quantitative analysis and make adjustments to costs using a "market determined source" instead of a CVD rate.
- Commerce needs to ensure that it complies with WTO regulations when calculating the respondents' manufacturing costs. Commerce has not shown that Hyundai Steel did not pay a fair market price for its HRC inputs or electricity, and Hyundai Steel's reported costs in this proceeding "reasonably reflect" its actual incurred costs based on its accounting books and records.

SeAH's Comments:[25]

- Commerce may only adjust costs when evidence demonstrates that, as a result of a "particular market situation," "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" in accordance with Subparagraph (b) of section 504 of the TPEA.[26]
- Section 773(f) of the Act requires that Commerce calculate costs "based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with generally accepted accounting principles of the exporting country…and reasonably reflect the costs associated with the production and sale of the merchandise."[27]
- Despite these statutory provisions, Commerce has yet to identify any evidence that the allegedly distorted prices failed to reflect the cost of production in the ordinary course of trade. Commerce only asserts that various factors working in conjunction distorted the Korean market prices for hot-rolled coils.
- Commerce fails to take into account the fact that sales at distorted prices may be profitable. When this occurs, the statute does not permit a PMS adjustment to constructed value.

[25] *See* SeAH's Case Brief at 11-19.
[26] *Id.* at 11-12 (citing Trade Preferences Extension Act of 2015, P.L. 114-27, 504(b)).
[27] *Id.* at 12; *see also* section 773(f) of the Act.

- Commerce's assertion that the statute does not require a company-specific analysis of input costs to determine whether the prices paid by a particular respondent are within the ordinary course of trade cannot be reconciled with the statute.[28]
- There is no evidence that the prices for HRC in Korea (on either a respondent-specific or country-wide basis) failed to reflect the cost of production of those coils in the ordinary course of trade. Under the statute, a finding of generalized distortions due to a PMS is not sufficient. Absent this evidence, there is no basis for Commerce to adjust SeAH's costs or constructed value.[29]

Husteel's Comments:[30]

- Commerce's determination that a PMS exists in Korea is not in accordance with the law.
- Under section 776(e) of the Act, Commerce must demonstrate that there exists sufficient evidence that respondent's costs do not accurately reflect the COP in the ordinary course of trade to make an affirmative PMS determination. Section 773(b) and (e) of the Act require Commerce to use a company's own books and records to determine costs.

U.S. Steel's Rebuttal Comments:[31]

- Contrary to Hyundai Steel's suggestion, a PMS finding is not limited to a certain threshold of distortion, nor does it require an additional determination of uniqueness to find distortion of production costs such that they are outside the ordinary course of trade.[32]
- Prior to the TPEA, the Court recognized the breadth of the PMS concept, stating that Commerce "must be afforded considerable discretion to determine, case-by-case," whether a PMS exists.[33] However, the passing of the TPEA afforded Commerce the flexibility to find a PMS such that it is not based solely upon distorted pricing or costs, which is further supported by the SAA.[34]
- The Court rejected Hyundai Steel's suggestion that Commerce's 1997 regulatory preamble prescribes a substantive PMS standard, as the term "particular market situation" is not defined by Commerce's regulations or the *Preamble* thereof.
- In addition, the Court rejected the notion that the SAA does not pertain to how constructed value is calculated, thus weakening respondent's arguments in cases such as

[28] *Id.* at 13 (citing 773(e) and Commerce's December 21, 2018, Response Brief, *NEXTEEL vs. United States* (Consol. Court No. 18-00083 at 16-17)).
[29] *Id.* at 14-15 (citing, *e.g.*, *United States v. Menashe*, 348 U.S. 528, 538-39 (1955); and *Rubin v. Islamic Republic of Iran*, 138 S. Ct. 816, 824 (2018).
[30] *See* Husteel's Case Brief at 1-5.
[31] *See* U.S. Steel's Rebuttal Brief at 8-27.
[32] *Id.* at 12 (citing Hyundai Steel's Letter, "Rebuttal of Factual Information and Comments Relating to PMS Allegation," dated September 13, 2019 (Hyundai PMS Comments), at 2, and 10-11).
[33] *Id.* at 13 (citing *Davis Wire Corp. v. United States*, 180 F. Supp. 3d 1187, 1194 (CIT 2016).
[34] *Id.* at 14 (citing, *e.g.*, *Notice of Final Results of Antidumping Duty Administrative Reivew: Furfuryl Alcohol from the Republic of South Africa*, 62 FR 61,084, 61,086-87 (November 14, 1997) ("we agree with the petitioner that the list of examples in the SAA regarding what may constitute a particular market situation is not exhaustive").

Wheat from Canada in which Canadian domestic prices are limited to competitive prices in the United States.[35]

- Hyundai Steel misinterprets the meaning of the ordinary course of trade, pursuant to 19 USC 1677(1). It claims that the passage of time relative to once-distortive factors render these factors "normal." Global overcapacity is not normal, and the passage of time does not render it so.[36]
- The Court has repeatedly confirmed that Commerce may adjust respondents' costs where a PMS exists, stating that the "…amended statute gives Commerce the discretion to adjust the cost of production calculation methodology when determining constructed value if Commerce finds that a particular market situation exists."[37] Contrary to respondents' argument that, in addition to finding a PMS exists, Commerce must also find that the COM do not accurately reflect the COP in the ordinary course of trade, Commerce is not obligated to take this additional step in order to make a PMS determination.
- Contrary to Hyundai Steel's and SeAH's contention that Commerce must undertake a benchmarking analysis, there is no statutory requirement or legislative history requiring such an analysis to support a PMS finding.
- SeAH's comparisons to *Biodiesel from Argentina* and *Biodiesel from Indonesia* are misplaced because, in those cases, no party questioned whether global market prices used for benchmarking were distorted. Furthermore, a benchmark analysis is unnecessary because, where a PMS exists, it follows that prices are outside the ordinary course of trade and the presence of identified market distortions can evidence price depression.[38]
- Commerce has recognized Congress' intention that Commerce use the cost-based PMS provision to address subsidized inputs during antidumping proceedings and respondents identify no statute that precludes subsidization from contributing to a PMS.
- Hyundai Steel and SeAH rely on the flawed assumption that Commerce's qualitative inquiry must focus on the respondent's own costs. However, they do not cite to any statutory provision to support this argument. Commerce's PMS findings have consistently been made using a market-wide analysis of cost-based PMS allegations, negating the appropriateness of a respondent-specific analysis within the context of evaluating whether a PMS exists.

Commerce Position:

We have not changed our interpretation of the statute. Hyundai, SeAH and Husteel argue that the PMS provisions of the statute require Commerce to analyze whether each individual respondents' costs accurately reflected the cost of production in the ordinary course of trade. In other words, they assert that the statute requires Commerce to conduct a company-specific analysis to determine whether a PMS exists. However, the plain language of the relevant statutory provision does not state that Commerce must conduct a company-specific analysis of each individual respondent. Section 773(e) of the statute provides that a different calculation

[35] *Id.* at 16 (citing *Wheat from Canada*, and accompanying Issues and Decision Memorandum (IDM) at Comment 1).
[36] *Id.* at 17; *see also* 19 USC 1677(1).
[37] *Id.* at 19.
[38] *Id.* at 23.

methodology could be used "if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade." The plain language of the statute uses the term "particular market situation," which indicates that such situation exists in a *market* and, consequently, Commerce may reasonably analyze the Korean HRC market as a whole. By definition, a PMS analysis is concerned with distortions in the overall market rather than distortions on particular sales or transactions of a particular company.[39] Companies do not operate in a vacuum, but, rather, purchase their inputs in a market. If a particular market is distorted as a whole, it would be illogical to conclude that one company operating in that particular market is insulated from the market distortions with respect to costs. The statute does not mandate that Commerce conduct an additional, granular, company-specific cost evaluation for each respondent that purchases an input within a market where "a particular *market* situation" exists. In light of the foregoing, a company-specific analysis is unnecessary and inappropriate here, because the record of this review contains sufficient evidence to demonstrate that the market as a whole is distorted, and that a PMS exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the COP within the normal course of business.

We are not persuaded by SeAH's argument that the statutory reference to paragraph 1 of section 773(e) requires Commerce to analyze costs on a company-specific basis rather than analyzing the market as a whole in its PMS analysis. SeAH contends that section 773(e)(1) refers to costs incurred by a specific producer and, thus, the language regarding "cost of materials and fabrication or other processing of any kind" in the particular market provision must also refer to the costs incurred by a specific producer. However, SeAH does not offer any support for its assertion that the cost referenced in section 773(e)(1) is restricted to the cost incurred by a specific producer other than quoting a portion of the section. We find that the language of section 773(e)(1) is broader than SeAH's overly restrictive interpretation. Specifically, the constructed value provision of the statute, section 773(e), provides in relevant part:

(e) Constructed value – For purposes of this subtitle, the constructed value of imported merchandise shall be an amount equal to the sum of—

> (1) the cost of materials and fabrication or other processing of any kind employed in producing the merchandise, during a period which would ordinarily permit the production of the merchandise in the ordinary course of trade;
>
> (2) (A) the actual amounts incurred and realized by *the specific exporter or producer* being examined in the investigation or review for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country…

When we compare paragraph 1 of section 773(e) with paragraph 2 of the same section, it is apparent that the language of paragraph 1 is not limited to the costs of a specific producer. Paragraph 2 contains an express and clear limitation, when it refers to "amounts incurred and

[39] *See Biodiesel From Argentina: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 8837 (March 1, 2018) (*Biodiesel from Argentina*), and accompanying IDM at Comment 3.

realized by the *specific exporter or producer being examined in the investigation or review*." (emphasis added). In contrast, paragraph 1 does not contain this limitation and refers to "the cost of materials and fabrication or other processing of any kind" broadly, *i.e.*, without limiting such cost to a specific exporter or producer being examined. The absence of such limitation in the language of paragraph 1, while the limitation is expressly stated in the immediately following paragraph 2 with respect to another item of the cost build up, strongly suggests that such limitation should not be read by implication for purposes of paragraph 1.

SeAH contends that section 773(f)(1)(A) of the Act requires that Commerce calculate costs "based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with generally accepted accounting principles of the exporting country…and reasonably reflect the costs associated with the production and sale of the merchandise." We do not disagree that, in general, the costs are normally calculated based on the records of an exporter or producer of the merchandise, if such records reasonably reflect the costs associated with production and sale of merchandise. This provision explains how the costs are calculated under normal circumstances in an undistorted market and contains a requirement that the producer's records must reasonably reflect costs associated with the production and sale of merchandise. This provision, however, does not prohibit Commerce from adjusting such costs under section 773(e), when the circumstances in the market are not normal, *i.e.*, when 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. Where a "particular market situation" exists, 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.[40] Additionally, SeAH's argument that some sales in a distorted market may still be profitable conflates the concepts of profitability and accuracy. Evidence of profitability does not overcome the evidence of distortion. Similarly, Husteel's argument that Commerce must use a respondent's own books and records to determine costs under section 773(e) of the Act is misplaced. We have used the respondents' own books and records to determine costs, and, where appropriate, made an adjustment to address distortions resulting from PMS under section 773 of the Act, which expressly provides Commerce with authority to make such adjustments.

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 under section 773(e), and through these provisions for purposes of the COP under section 773(b)(3). Section 773(e) of the TPEA states that "{i}f a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under the 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.[41]

[40] *See 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.
[41] *See* section 773(e) of the Act.

Hyundai Steel contends 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 Hyundai Steel 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 antidumping statute, the Statement of Administrative Action (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 PMS. For instance, a PMS 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).[42] 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 PMS. By enacting the TPEA, Congress expanded Commerce's authority to apply the concept of PMS. There is no indication in the TPEA nor in the legislative history that Congress intended to limit Commerce's ability to find a PMS with respect to costs to some unspoken extraordinary circumstances. In fact, even some of the examples of the PMS that the SAA provides, such as different holiday seasons in different countries, are not rare or extraordinary circumstances. Regarding Husteel's substantially similar argument that the application of the PMS provision has a high evidentiary threshold and is reserved for unusual situations, section 504 of the TPEA expanded Commerce's authority to apply the concept of PMS to costs of production and, in this case, as explained in Comment 1-B, Commerce considered the evidence of PMS and properly found that the evidence supported a finding of a PMS in Korea. Neither the statute, nor the SAA, limit the number of times or the countries for which Commerce could find a PMS to exist. Thus, the TPEA gives Commerce ample discretion to determine those instances in which a PMS exists.

Moreover, we are not persuaded by Hyundai Steel's argument that the passage of time normalized the PMS in Korea and made the distorted costs accurately reflect the costs of production within an 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 Steel points to *Steel Rebar from Taiwan* in which Commerce made a negative PMS determination using a "benchmarking analysis," we disagree with Hyundai Steel's contention that a benchmarking analysis is required in each case. Each case has its own facts and arguments and the particular market determinations are inherently case specific. Depending on

[42] *See* SAA at 822.

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 PMS 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. Second, Hyundai Steel argues that Commerce needs to rely upon a detailed, data-driven analysis, which we have addressed in Comments 1-B and 1-C, below.

Comment 1-B: Evidence of a Particular Market Situation

Hyundai Steel's Comments:[43]

- There exists no basis to adjust Hyundai Steel's manufacturing costs based on the collective impact of the four PMS factors described in the DIPs' PMS Allegation. In making its finding of a PMS based on the factors used for the preliminary PMS determination, Commerce merely accepted the DIPs' presented information in their PMS allegation. Commerce's main finding concerning its preliminary PMS finding of global steel overcapacity that was distorting HRC costs in the Korean market during the POR is derived from its factual determinations in prior cases.
- The DIPs based their claim of a PMS on the same arguments the CIT has twice rejected. The articles provided by the DIPs in their PMS Allegation[44] are not contemporaneous with the POR. Further, the Korean steel market was not impacted enough, even during the pre-POR global downturn, to justify a PMS designation. Also, normal market supply and demand dictated steel market activity and steel input transactions in Korea during the POR. Further, steel prices in Korea changed in accordance with steel prices in the global market, meaning the situation was not unique to Korea. The Korean steel market was not in a unique situation during the POR or in the years preceding it.
- Commerce rejected PMS allegations in other recent proceedings where the domestic producers in each respective case failed to present substantial evidence that HRC input prices in Turkey, Oman, and the United Arab Emirates were distorted.
- The CIT rejected Commerce's PMS findings with respect to input HRC in the first and second administrative reviews of this proceeding.
- The affirmative PMS finding in the first administrative was ordered to be reversed by the CIT. In its ruling, the CIT rejected the affirmative PMS finding because it stated that it was unreasonable that Commerce would find each individual factor did not constitute a PMS, but that, taken together, the "cumulative effect" of the four factors, did indicate the existence of a PMS. In the second administrative review, the CIT ruled that Commerce's affirmative PMS finding was unsubstantiated because it relied upon the same four factors and arguments that the CIT determined were unfounded in the first review.
- The record evidence in this proceeding does not indicate that Hyundai Steel's OCTG manufacturing costs during the POR were distorted by HRC from China or elsewhere or

[43] *See* Hyundai Steel's Case Brief at 31-59.
[44] *See* DIPs Letter, "Oil Country Tubular Goods from the Republic of Korea: Particular Market Situation Allegation," dated August 5, 2019 (PMS Allegation).

were in disaccord with world and regional HRC prices. Despite the fact that Korea is the second largest importer of Chinese HRC, record evidence does not indicate that the volume of Chinese HRC exports to Korea is significant enough to be impactful or distorting. Commerce did not conduct any analysis in the Preliminary Results to show that the input HRC prices Hyundai Steel paid were inconsistent with market prices or less than the suppliers' production costs.

- By continuing to state that the alleged steel overcapacity is a global problem, Commerce devalues its main argument that there is anything unique or particular about the steel market situation in Korea. If steel production was suffering from global overcapacity, the distortive effects would not be particular to Korea and would similarly impact other countries like the United States itself.
- Korean import data compiled and published by Commerce demonstrates a significant decrease of Korean steel imports from 2016 to 2018, demonstrating the insignificant role that Chinese and other imports had on Korean steel pricing during the POR.[45]
- Contrary to Commerce's findings in its *Preliminary Results*, the current global steel market situation has shown reductions in capacity and increases in capacity utilization, steel consumption, steel prices, and profitability, pointing to a general recovery in the global steel market.[46] Record information provides an abundance of evidence demonstrating this recovery, including the following examples:
    - Steel overcapacity has been significantly reduced in recent years, including in China and Korea, especially during the first part of the POR in 2017. Likewise, excess capacity of steel decreased globally by 14.23 percent in 2017 while capacity utilization increased globally by 5.27 percent year-on-year in 2017. Excess capacity of steel as a percentage of steel production sharply decreased globally by 17.45 percent year-on-year in 2017, and China's share of global excess capacity decreased by 10.56 percent in 2017 as well.
    - Demand for steel products around the world has seen a gradual recovery, representing an increase in global steel demand, supported by China.
    - Consumption of hot rolled products increased significantly globally, including in China and Korea.[47]
    - Exports from China have declined by 27.3 percent, in the first quarter of 2018 and declined 9.3 percent in the first 10 months of 2018 compared to the same period the previous year.[48]
    - The world price index increased by 13 percent for flat steel products and 9 percent for rebar from January through July in 2018. The global steel market has also seen rising prices of flat steel products (which includes HRC) during 2017 and 2018.[49]
- It is unreasonable for Commerce to reach an affirmative PMS decision based on the fact that the Korean government has not found illegal dumping or subsidization of Chinese

[45] *See* Hyundai Steel's Case Brief at 44.
[46] *Id.* at 45.
[47] *See* Hyundai Steel's Case Brief at 41.
[48] *Id.* at 42.
[49] *Id.* at 47.

HRC imports. Commerce is not the administrator of antidumping and countervailing duty proceedings in Korea.

- Commerce did not give any justifiable reason for using 2012-2013 world steel prices for comparison with prices during the POR and then using that comparison as indication that a PMS exists.

Subsidization of Korean HRC Inputs[50]

- While Commerce alleges Korean Government subsidization of the Korean HRC industry to combat global steel overcapacity as a basis for its PMS finding, it has also found in other proceedings that the very subsidy programs it rests upon, *i.e.*, the One-Shot Act and the Special Act on Corporate Revitalization are either not utilized by Korean steel producers or that benefits were not conferred under such programs.[51] Accordingly, the alleged subsidization of Korean HRC inputs does not support an adjustment to costs.
- Even if Commerce determines the existence of Government of Korea (GOK) steel market intervention, Commerce calculated a de minimis final subsidy rate for Hyundai Steel (0.58%) and POSCO (0.54%) related to HRC production, thus demonstrating that Korean producers did not benefit from any subsidies on HRC in the production of subject merchandise.

Strategic Alliances in Korea[52]

- The administrative record does not support the existence of any strategic alliances between OCTG producers and Korean HRC suppliers. Even assuming such alliances exist in theory, Commerce has yet to demonstrate that such alliances have distorted the Korean HRC market, let alone corroborate information placed on the record. In *Husteel*, the CIT considered and rejected the notion of strategic alliances.[53]
- Commerce continues to rely solely on the fact that the Korea Fair Trade Commission levied a fine on Hyundai Steel and other Korean steel makers as a basis for finding that strategic alliances exist. Further, the events that Commerce relies upon occurred between 2003 and 2013, with the last imposition of penalties occurring several years prior to this POR.
- Record information demonstrates that Hyundai Steel maintained commercial relationships with its input suppliers and competes with other Korean steelmakers across global steel product markets.

Distorted Electricity Costs[54]

- Commerce has consistently found in other proceedings, such as *CTL Plate from Korea*, that no countervailable subsidy exists regarding Korean electricity that confers benefits to Korean steel producers. Further, in those proceedings, Commerce has consistently

[50] *See* Hyundai Steel's Case Brief at 54.
[51] *See* Hyundai Steel's Case Brief at 54 (citing *Cut-to-Length Quality Steel Plate from Korea*).
[52] *Id.* at 55.
[53] *Id.* (citing *Husteel* at 1359).
[54] *Id.* at 57 (citing, *e.g.*, *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 82 FR 16341 (April 4, 2017) (*CTL Plate from Korea*), and accompanying IDM at 28-33.

concluded that electricity pricing in Korea is in accordance with market principles. There is nothing in this administrative record to suggest that electricity prices during the POR were aberrant or that the Korean energy market operates any differently from the energy market of any other sovereign country. Thus, the record does not support the claim that Korea domestic electricity costs are not market based.

SeAH's Comments:[55]

There Is No Basis to Adjust SeAH's Costs in this Review to Compensate for an Alleged PMS[56]

- There is no basis for Commerce to make a PMS adjustment, as the evidence does not support a finding that the Korean market was distorted based on the five alleged factors that Commerce used in the *Preliminary Results* for its PMS analysis and determination, *i.e.*, the five elements of PMS.
- The evidence the DIPs point to is misapplied, as it actually demonstrates that POSCO was profitable in 2016, compared with previous years, and that its net income was higher in 2017 than in 2016. Also, POSCO's gross profit and operating income were both higher in 2018 than in 2017. Such steady increasing profits directly refute the claim that sales of HRC to SeAH were made at below-cost prices.
- Commerce's preliminary determination shows that Commerce applied its PMS adjustment only to the cost of purchased hot rolled coils; Commerce made no PMS adjustment to the cost of self-produced hot coils. This methodology unfairly discriminates against companies like SeAH, which do not produce hot coils, instead relying on purchases from other manufacturers. The statutory requirement that Commerce make a finding that the input cost does not reflect the cost of production in the ordinary course of trade was intended precisely to prevent such discrimination.

Chinese Overcapacity[57]

- Record evidence demonstrates that Commerce incorrectly claims that imports from China suppressed Korean prices for HRC during the review period. Despite fluctuations in Chinese and global capacity utilization during the 2014 to 2018 period, POSCO reported increasing gross and operating profits in each of those years. Accordingly, the impact of alleged Chinese overcapacity is not "particular" to Korea.
- SeAH's own purchasing history also demonstrates that imports from China have not suppressed Korean prices for HRC.
- Commerce asserts that its preliminary determination regarding Chinese overcapacity is consistent with prior determinations in previous segments of this proceeding. However, the CIT has consistently rejected these findings to be unsupported by evidence and contrary to law, rendering Commerce's reliance upon past findings indicative of

[55] *See* SeAH's Case Brief at 3-11.
[56] *Id.* at 2-3.
[57] *Id.* at 3-5.

fundamental lawlessness, rather than as evidence supporting Commerce's determination.[58]

- There is nothing in the dumping law requiring a country to impose trade remedies on the demands of the U.S. government.

Evidence Confirms that Any Subsidies to Korean Producers of HRC Were Insignificant[59]

- The subsidy rate that Commerce based its PMS determination on in previous reviews has changed from an AFA rate of 58.68 percent for POSCO in *Hot-Rolled Coil from Korea* to a calculated subsidy rate 0.54 percent for POSCO in 2016.[60] This change to the subsidy rate as calculated for POSCO demonstrates the subsidy as insignificant, despite Commerce's description in the preliminary determination that it stems from a tremendous downward pressure on prices due to massive Chinese overcapacity.

Anticompetitive Behavior in Korea[61]

- Despite Commerce's preliminary findings of bid-rigging among Korean pipe producers for sales of line pipe to a Korean gas company, this alleged bid-rigging ended in January 2013, well before the current review period and well before the alleged onslaught of low-priced imports from China. Thus, there is no evidence of anticompetitive behavior affecting HRC prices in Korea.
- The source documentation cited by Commerce in its *Preliminary Results* shows no evidence of any collective action on coil prices, let alone on imports from China. The alleged past collusion which Commerce references in its preliminary results relates to instances in which Korean pipe producers, such as SeAH, purportedly colluded to raise prices to their customers. This further invalidates Commerce's allegation of collusion.

Distorted Electricity Costs[62]

- While Commerce preliminarily determined that KEPCO, the Korean state-owned electricity supplier, experienced a loss in 2018, with a projected loss in 2019, record evidence shows that KEPCO earned profits from 2014-2017; it does not show that Korean HRC producers benefitted from uneconomically low electricity prices. This runs contrary to the allegation that the Korean government intended to subsidize the steel industry with subsidies to combat low prices.
- Commerce has yet to address the issue of whether electricity constitutes a significant portion of the cost of HRC. Absent this explanation, there is no basis for Commerce to conclude that electricity subsidies play a role in distorting HRC prices in the Korean market.

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[58] *Id.* at 5 (citing *NEXTEEL Co. v. United States* 355 F. Supp 3d 1336 (CIT 2019) (*NEXTEEL I*) at 1364; *NEXTEEL Co. v. United States*, 392 F. Supp. 3d 1276, 1297 (CIT) (*NEXTEEL II*); *Hyundai Steel v. United States*, Slip Op. 19-148 (CIT Nov. 25, 2019).
[59] *Id.* at 5-6.
[60] *Id.* (citing *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 2016*, 84 FR 28,461 (June 19, 2019), as amended by *Countervailing Duty Order on Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Amended Final Results of the First Administrative Review*, 84 FR 35604 (July 24, 2019)).
[61] *Id.* at 6-8.
[62] *Id.* at 8-9.

GOK Restructuring Efforts[63]

- There is no evidence that the alleged GOK restructuring efforts impacted HRC prices. The newspaper reports relied upon in the preliminary determination are highly unreliable.
- Concerning the "One Shot Act," Commerce has consistently found that Hyundai Steel and other Korean companies did not receive benefits under this program.
- There is no record evidence to support the assertion that a PMS exists in Korea because its government instituted a program to promote restructuring to address overcapacity. Any such restructuring that did take place to reduce excess capacity would remedy the situation, not make it worse. Further, there is no evidence on the record that any such government-restructuring program has had an impact on prices for HRC in Korea during the instant review period.

ILJIN's Comments:[64]

- Commerce erroneously found the existence of a PMS for Korean HRC, as the Courts have repeatedly struck down. The evidence in this review is insufficient to support the individual factors used by Commerce to make an affirmative PMS finding.

Husteel's Comments*:*[65]

Commerce's Should Reverse its PMS Determination[66]

- Commerce however fails to demonstrate that any of the five factors identified affect respondents' costs, which is necessary for a PMS finding. While Commerce contends that the "totality of conditions in the Korean market constitute a PMS," the CIT in both the first and second administrative reviews of this order stated the opposite. That is, in *NEXTEEL I*,[67] the CIT concluded that "it does not stand to reason that individually, the facts would support a PMS, but when viewed as a whole, these same facts could support the opposite conclusion."[68] Thus, the CIT instructed Commerce to reverse its finding, making clear the fact that Commerce should not base its PMS determination on allegations that have already been deemed unreasonable. In *Husteel*,[69] the CIT came to the same conclusion in the remand pertaining to the underlying 2015-2016 administrative review of *Welded Line Pipe from Korea*.

Global Steel Overcapacity and Chinese Steel Imports[70]

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[63] *Id.* at 9-10.
[64] *See* ILJIN's Case Brief at 1-2.
[65] *See* Husteel's Case Brief at 1-11.
[66] *Id.* at 1-5.
[67] *See NEXTEEL I*, 355 F. Supp. 3d at 1336.
[68] *Id*. (citing *NEXTEEL 1*, 355 F. Supp. 3d at 1351).
[69] *See Husteel Co. v. United States*, Consolidated Ct. No. 18-00169, Slip Op. 20-02 (CIT Jan 3, 2020) (*Husteel Consolidated*).
[70] *Id.* at 5-7.

- Commerce's preliminary finding that global steel overcapacity and Chinese steel imports into Korea contributed to a PMS in the Korean OCTG industry is unsupported by record evidence in the instant administrative review.
- Regarding of the contention that Chinese steel exports distorted respondents' production costs, in *NEXTEEL 1*, the CIT favorably relied upon Commerce's preliminary PMS determination in the 2014-15 administrative review in which Commerce stated that the global effect of Chinese steel exports in and of itself means that no PMS exists.[71]
- In *Husteel*,[72] the CIT pointed out that Commerce's argument that Chinse overcapacity impacts the Korean market does not necessarily support the fact that there is distortion in the Korean market, noting that the PMS determination need not be based on only one market.
- Commerce's efforts to distinguish the effects of the global steel overcapacity on the Korean market from the rest of the global market are not based on substantial evidence. That is, there is nothing to demonstrate that that costs of the HRC used by the respondents are distorted and thus, require remedy. Further, Commerce's citation in the *Preliminary Results* to the PMS determination in *Circular Welded Pipe from Turkey*[73] on this issue is misplaced because, in that case, there was actually some alleged evidence of HRC costs being distorted downward in comparison to benchmarks.
- While Commerce cites to various types of secondary materials to support its global steel overcapacity argument, it ignores the fact that in the CVD segments of this order, Commerce determined that even the major producers of OCTG received no significant subsidization from the Government of Korea.
- Commerce continues to cite to previous reviews of this proceeding as a basis for its PMS finding, which continue to be overturned by the CIT.[74]
- The mandatory respondents in this review have submitted substantial evidence to demonstrate that their costs were not distorted. It is these costs that Commerce is required to examine under the PMS statute.

Alleged Korean Subsidization of HRC[75]

- Commerce's argument that alleges subsidization by the Government of Korea is based on outdated information and speculation.
- The first administrative review of the hot-rolled steel order showed little to no subsidization of HRC. In that review, Commerce found an occurrence of only 0.58 percent subsidization in which "the cost of materials…did not accurately reflect the cost of production in the ordinary course of trade."[76]
- Commerce also did not provide supporting evidence in its *Preliminary Results* showing that respondents used government programs, such as: the "Special Act on the Corporate

[71] *Id*. (citing *NEXTEEL 1*, 355 F. Supp. 3d at 1351).
[72] *See* Husteel's Case Brief at 5 (citing *Husteel*, Consol. Ct. No 18-00169 at 24).
[73] *See Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 39345 (July 18, 2019) (*Circular Welded Pipe from Turkey*), and accompanying PDM.
[74] *See* Husteel's Case Brief at 7 (citing *NEXTEEL I*, *NEXTEEL II*, and *Husteel Consolidated*).
[75] *Id.* at 8-9.
[76] *Id.* at 8.

Revitalization" or the "One-Shot Act."[77] Alleging potential government interference does not equate to evidence of program usage or distorted HRC costs.

Anticompetitive Behavior Among Korean Steel Producers[78]

- While Commerce preliminarily determined in this review, as it has in prior segments of this proceeding, that strategic alliances exist, the CIT has repeatedly determined that the evidence Commerce relies upon for the existence of strategic alliances is insufficient.[79]
- The strategic alliance factor offers no support that there exists a PMS in Korea, as the strategic-alliance factor does not address whether the cost to product the subject merchandise was below market value or whether it was sold in the ordinary course of trade.
- In *Husteel*,[80] the CIT held that Commerce must base each allegation on substantial evidence and cannot simply rest upon the "totality approach," an approach that Commerce utilizes to support its allegation of strategic alliances, among other factors that comprise its PMS determination.

Distorted Electricity Costs[81]

- Commerce's determination that the Government of Korea intervenes in the electricity market as one of several PMS factors is merely speculative and not supported by substantial evidence,[82] such as demonstrating the effect on prices as a result of the alleged intervention in the electricity market.
- Commerce fails to acknowledge that in a number of CVD cases, Commerce has determined, and the CIT has upheld, the fact that electricity in the Korean market is not being provided for less than adequate remuneration.[83]

Steel Industry Restructuring[84]

- As an initial matter, Commerce should not rely upon this element in its PMS determination. The burden of supporting the PMS allegation rests solely upon the party alleging the existence of PMS, and this factor was not included in the DIPs' allegation.[85]
- Further, there is no actual evidence of restructuring taking place, the OCTG industry being affected, or the mandatory respondents' costs being distorted, this part of Commerce's PMS determination is speculative.

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[77] *Id.* (citing Preliminary PMS Memorandum at 16).
[78] *Id.* at 9-10.
[79] *Id.* at 9 (citing *NEXTEEL I*, 355 F. Supp. 3d at 1351; *NEXTEEL II*, 392 F. Supp. 3d at 1288).
[80] *Id.* at 10 (citing *Husteel Consolidated* at 24).
[81] *See* Husteel's Case Brief at 10-11.
[82] *Id.* at 11 (citing *Husteel Consolidated* at 24).
[83] *Id.* (citing *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53,439 (August 12, 2016), and accompanying IDM at 36-53; and *Maverick Tub Corp. v. United States*, 273 F. Supp. 3d 1293, 1312 (CIT 2017)).
[84] *Id.*
[85] *Id.* (citing *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27,296, 27,357) (May 19, 1997)) ("{T}he party alleging the existence of a 'particular market situation' or that sales are not 'representative' has the burden of demonstrating that there is a reasonable basis for believing that a 'particular market situation' exists or that sales are not 'representative.'").

AJU Besteel's Comments:[86]

- The review-specific average rate assigned to AJU Besteel, a non-examined company, is based on flawed data that substantially overstates the assigned rate, which is based on a flawed regression analysis.
- AJU Besteel disagrees with Commerce's PMS findings and for the final results of review, supports the arguments raised by Hyundai Steel on the PMS issue, as provided in Hyundai Steel's case brief.

NEXTEEL's Comments:[87]

- NEXTEEL disagrees with the rate assigned to non-examined companies, which is largely comprised of Commerce's PMS determination. Findings for the final results of review, NEXTEEL supports the arguments raised by the mandatory respondents on the PMS issue.

U.S. Steel's Rebuttal Comments:[88]

- Evidence contained in the DIPs overall PMS Allegation is robust with substantial, contemporary and probative information. In the current segment, the record contains a plethora of additional information that was absent in previous segments of this proceeding, including in *NEXTEEL I*.
- The PMS Allegation in this review contains 92 exhibits from during or after the POR with an additional 41 articles and government documents pertaining to pre-POR policy changes and actions that carry into the instant review period.[89] Respondents were unable to refute evidence in support of a PMS, including evidence demonstrating the multiple identifiable distortions in Korea.
- Respondents' contention that the CIT's substantial evidence rulings concerning the different administrative records of the first and second administrative reviews do not control disposition of Commerce's PMS determination.
- In *NEXTEEL I*,[90] the Court remanded Commerce's PMS determination in AR1 based solely on the conclusion that substantial evidence was lacking. However, the Court upheld Commerce's PMS determination, in theory. That is, the Court stated that the "statute's language and legislative history permit Commerce's chosen methodology," concluding that "Commerce's particular market situation approach was reasonable in theory."[91]

[86] *See* AJU Besteel Letter of Support at 1-2.
[87] *See* NEXTEEL Letter of Support at 1-2.
[88] *See* U.S. Steel's Rebuttal Brief at 8-12 and 27-54.
[89] *Id*. at 27.
[90] *Id.* at 9 (citing *NEXTEEL I*, 355 F. Supp. 3d at 1350).
[91] *Id.* at 9.

Steel Overcapacity and Price Suppression in Korea[92]

- Steel overcapacity in Korea has been far from average, Korea has been China's first or second largest hot-rolled steel (HRS) export destination since at least 2013, with HRS imports accounting for at least 12 percent of Korean domestic HRS production since 2013.[93] Commerce correctly recognized evidence of overcapacity and price suppression in its preliminary PMS determination.
- In the preliminary PMS determination, Commerce recognized the distortive and anticompetitive intervention within China, as China continued to be the world's largest steel producer and exporter during the POR.
- The DIPs demonstrated in their *PMS Clarifying Factual Information* that overcapacity reduction efforts are nothing more than a façade.[94] The OECD has projected that global overcapacity will continue to be a significant challenge for the global steel industry.[95]
- The fact that a large proportion of Korean exports end up in distorted markets evidences depressed home market prices. Korea's two largest flat-rolled export markets (China and India) are also two of the world's lowest-priced.
- Hyundai Steel's reliance on distorted prices to prove the absence of distortion is misplaced. While Hyundai Steel attempts to compare Korean prices to global benchmarks, and Korean prices for 2017 to Korean prices for 2015, for instance, this only amounts to a comparison of one set of distorted prices to another and does not even address the value of HRC in the ordinary course of trade where no distortion exists.

Korean Government Subsidization[96]

- In the preliminary PMS determination, Commerce accurately determined that evidence supports GOK subsidization of Korea's largest HRC producers at above *de minimis* levels in response to the steel overcapacity crisis. Commerce also recognized the GOK's continued intervention in the domestic steel market to support ongoing operations of Korean steel producers, including the One Shot Act that was designed to aid Korea steelmakers with the oversupply challenge.

Anticompetitive Behavior Among Korean Steel Producers[97]

- Commerce correctly concluded that anticompetitive behavior in the Korean steel market has been a long-time occurrence that will impact prices in a distortive manner during the current POR and into the future. Because the cartel practice is hidden from public view, it is not possible to ascertain the full extent of distortive activity. This, however, does not negate the fact that, based on past, known occurrences, anticompetitive behavior likely continues. In months leading up to this POR, for instance, the KFTC fined Hyundai Steel 312 million won for obstructing investigative probes.[98]

[92] *Id.* at 3-37.
[93] *Id.* at 30.
[94] *Id.* at 31-34.
[95] *Id.* at 35.
[96] *Id.* at 38-39.
[97] *Id.* at 39-43.
[98] *Id.* at 40.

- Korean steelmakers, including Hyundai Steel, have a long history of cartel behavior. Respondents, however, have provided no record evidence to indicate such behavior has ceased. The PMS Allegation contains evidence of three KFTC decisions evidencing Korean steel producers engaged in cartel behavior, further particularizing the anti-competitive distortion in the Korean steel market.[99] SeAH itself has admitted that cartels have raised prices in the past and therefore, this cannot be a contributing factor to finding PMS. However, price raising by cartels underscores the distortive nature of the steel market in Korea.
- Hyundai Steel's reference to *Husteel* is misplaced. In that case, the CIT was not addressing an actual PMS determination; rather, the Court was addressing whether Commerce should have addressed an entirely separate major input argument. Also, the evidence before the Court was limited to a single affidavit, which did not touch upon pricing practices in the Korean market nor mention any specific Korean OCTG producers.[100] By contrast, the PMS Allegation includes KFTC decisions and new reports that name specific Korean producers of OCTG and that also describe specific price-fixing schemes.

Distorted Electricity Input Costs[101]

- The DIP's PMS Allegation contains a plethora of information on the GOK's dominance in the Korean electricity market. As such, there is little question that the GOK's policies constitute heavy monitoring and regulation of KEPCO's electricity prices by the GOK. Commerce's preliminary PMS determination acknowledged this market distortion by noting the GOK owns more than 50 percent of KEPCO, which distributes 100 percent of electricity in Korea. Further, KEPCO incurred massive operating losses in 2017 and 2018, yet it still sold electricity at prices insufficient to cover its costs, an impossible scenario without government regulation.
- While Hyundai Steel suggests the DIPs have not provided evidence of Korean intervention in price-setting, KEPCO itself admits to government regulation of tariff rates charged to customers.[102] The U.S. Energy Information Administration also cites to KEPCO's electricity pricing system as one that is "designed to protect…industrial consumers."[103]
- While Hyundai Steel asserts that the GOK's involvement in the domestic electricity market does not differ from any sovereign country's regulation of its own energy markets, Hyundai Steel submitted no evidence of at least one similar arrangement in another country. Because this arrangement of GOK involvement in the electricity market is far from normal, Commerce should continue to find that the GOK's distortive influence in the Korean energy market contributes to an affirmative PMS determination.

[99] *Id.* at 42.
[100] *Id.*
[101] *Id.* at 43-47.
[102] *Id.* at 45.
[103] *Id.*

Steel Industry Restructuring Effort by the Korean Government[104]

- In its preliminary PMS determination, Commerce included a fifth factor, the GOK's interference in Korean steel industry restructuring. These restructuring efforts include a variety of programs and funding for business renovation and aptitude development within the steel industry that ultimately interfere with the normal function of a free market and impacts the ordinary course of trade. Commerce should continue to rely upon this factor for its final PMS determination.
- While *Husteel* claims that Commerce is precluded from making such a finding because it was not alleged by the DIPs, Commerce rejected this argument in OCTG AR2, stating that Commerce may look to additional factors under its totality of the circumstances approach.[105] Neither the statute nor regulations prohibit Commerce from determining, even absent an allegation, that a third-country market is impacted by a PMS; and the *Preamble* only addresses the timelines of a PMS allegation.[106]
- Hyundai Steel and SeAH argue that Commerce has not identified evidence of restructuring taking place, or of the OCTG industry being impacted by such alleged restructuring. Commerce, however, relied upon substantial record evidence, including six specific steel industry business restructuring plans before the GOK. Additional information exists on the record that was not included in Commerce's Preliminary PMS Memorandum, including numerous press reports from 2016 to 2019 that speak to government restructuring efforts, which respondents have not challenged.[107] The existence of these programs evidences the severity of the overcapacity-related distortions that have led to the creation of such programs, impacting a company's financial situation, and leading to further market distortion, regardless of whether funds have been disbursed.

Commerce Position:

We disagree with the respondents that record evidence does not support the existence of a PMS in Korea, which distorted the COP of OCTG. As explained in Comment 1, above, section 504 of the TPEA and section 773(e) of the Act provide Commerce with the means to ascertain whether a PMS exists and also allows Commerce the discretion to develop a methodology to account for it, *i.e.*, "the administering authority may use another calculation methodology under the subtitle or any other calculation methodology," to support its PMS finding.[108] Although the CIT in *NEXTEEL I* (14-15) and *NEXTEEL II* (15-16) remanded this issue on case-specific evidentiary grounds, the court upheld Commerce's methodological approach, which was based on a "totality of circumstances." In this review, Commerce continues to apply this same conceptual approach. That is, because we continue to use the "totality of circumstances" approach, we continue to evaluate the existence of PMS as a market-wide circumstance, based on the record of this administrative review. In this regard, we evaluate the existence and impact of price distortions on the market, as a whole. Thus, our PMS finding is with respect to the entire market, rather than limited to an individual company's experience, and as such, our PMS adjustment for HRC

[104] *Id.* at 47-54.
[105] *Id.* at 48.
[106] *Id.* at 48-49.
[107] *Id.* at 50-53.
[108] *See* section 773(e) of the Act.

serves to correct the distortions in the Korean market. Despite respondents' arguments to the contrary, we find that we do not need to establish direct linkage between respondents' purchase price for HRC and the alleged distortions during the POR.

Commerce has used its discretion in previous administrative reviews of this proceeding and found a PMS to exist. The fact that Commerce has found a PMS in Korea since the first administrative review of this order does not somehow render this market to be no longer particular, That is, in each segment of this proceeding, Commerce has undertaken an extensive analysis of information on the individual record of the proceeding to determine whether distortions exist within Korea that may impact the cost of producing merchandise sold to the United States. The TPEA intended for Commerce to have the flexibility to conduct such an analysis wherever the cost of producing subject merchandise is outside the ordinary course of trade. In this regard, it is fully within Commerce's discretion to determine whether a PMS exists in Korea by conducting an extensive analysis, as envisioned by the SAA.

For the current review, as in previous segments of this proceeding, Commerce considered the PMS allegations as a whole based on their cumulative effect on the COP of Korean OCTG Based on the totality of the conditions in the Korean market, Commerce continues to find that the allegations represent facets of a single PMS, as explained in further detail in Comment 1-B, below. Notably, The CIT concluded that Commerce's approach of considering the totality of circumstances in the market (including four of the factors noted above) is reasonable.[109]

We disagree with respondents' argument that the CIT rejected Commerce's PMS finding as unreasonable in the first and second administrative reviews of this proceeding. The CIT upheld Commerce's overall PMS methodology but, called into question whether enough support existed on the record to make such a determination. Our examination of the existence of a PMS in the instant proceeding is based on an extensive amount of information, both qualitative and quantitative, placed on the record of this review, thus satisfying any concern of substantial evidence and reasonableness behind Commerce's PMS methodology and our final PMS determination for the final results of this review.

Husteel points out that Commerce must support each element that it rests upon in its PMS determination. We agree. The record contains substantial evidence associated with each of the five factors that we relied upon in our preliminary PMS determination, which we continue to find supportive of an affirmative final PMS determination. We discuss these factors below and also discussed them in depth at the preliminary stage of this review.[110]

Further, while Husteel questions Commerce's continued reliance upon factors that it claims the CIT found to be unreasonable in *Welded Line Pipe from Korea*, we find Husteel's argument to hold little merit. First, in *Husteel*, the administrative record on which the Court opined was wholly different from the record in this segment of this proceeding. For instance, in Welded Pipe from Korea, Commerce's support for the strategic alliance factor in support of its PMS

[109] *See NEXTEEL I*, 355 F. Supp. 3d at 1349 (discussing legislative history and finding that Commerce's approach was reasonable).
[110] *See, e.g.*, Preliminary PMS Memorandum.

determination rested on only a declaration from an outside party. In this case, the record contains a number of supporting documents to show the existence of strategic alliances in Korea. The same holds true with respect to the other PMS factors, such as overcapacity, as discussed below. Thus, the administrative record in Welded Line Pipe from Korea cannot supplant the administrative record in this segment of this proceeding. Second, there is little question that the CIT has upheld Commerce's PMS methodology with respect to the totality of circumstance where substantial support exists, as stated by the Court in *NEXTEEL I* and *NEXTEEL II*. Because of the decisions rendered by the Court in both *NEXEEL I* and *NEXTEEL II*, in this administrative review, we find that the record is replete with evidence with respect to five of the seven PMS factors alleged by the petitioners and fully evaluated by Commerce.

Commerce finds 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 coupled with price suppression and the unfairly-traded Chinese HRC contributing to it; the GOK's subsidization of HRC; strategic alliances between Korean HRC suppliers and Korean OCTG producers; the GOK's distortive involvement in the Korean electricity market, and the resulting steel industry restructuring effort by the GOK. In this review, we considered the components of the PMS allegation as a whole, based on their cumulative effect on the Korean market for HRC. Based on the totality of the conditions in the Korean HRC market, Commerce finds that the factors described above represent aspects of 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, which is applied to the purchases of an individual company, serves to address the distortions in the Korean market. Accordingly, we do not need to establish a linkage between respondents' actual cost of manufacturing and the distortions during the POR.

For this final PMS determination, we used information on the record to quantify the impact of the PMS in Korea by making an upward adjustment to the respondents' reported HRC costs for OCTG and based that adjustment on the factor derived in the Regression Analysis (*see* Comment 3-C, below).

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. Although the factors are the same, additional evidence (*e.g.*, HRC prices) relevant to this POR (17-18) did not exist during the PORs of *NEXTEEL I* and *NEXTEEL II*. Here, we have performed analysis of the evidence on the record of this administrative review, including the 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 evidence on the record of this review. Moreover, the litigation in both *NEXTEEL I and 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.

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 OCTG in Korea. Further, contrary to respondents' claim, as we explained in Comment 1-A, 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. 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, but instead reflect normal market conditions that even Commerce recognizes has been ongoing from July 2014 through June 2018 does not hold. Congress specifically defined a PMS to be outside the ordinary course of trade, and the statute 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, the CIT has explicitly rejected this claim, stating that the Preamble to Commerce's regulations does not define the PMS.[111] The CIT also rejected respondents' suggestion that the SAA language can be employed to limit the boundaries of the cost-based PMS provision to the calculation of constructed value.[112]

With respect to SeAH's claim that our decision to apply the PMS adjustment only to purchased HRC inputs amounts to discrimination against companies like SeAH, we disagree. Commerce rightly applied an adjustment for PMS distortions to all Korean HRC products which were purchased by the respondents, regardless of the respondent. Self-produced HRC is not subject to the same market distortions as purchased HRC because it does not enter the market.

With respect to Hyundai Steel's contention that Commerce merely accepted information presented in the DIPs' PMS allegation, suggesting we did not undertake a PMS analysis, we find this argument to be unfounded. While a PMS allegation must be supported by evidence to warrant further investigation, as the administering authority, Commerce weighs and analyzes the information placed on the administrative record, regardless of which party submits that information. Hyundai Steel itself acknowledges this very point by pointing to Tapered Roller Bearings in which Commerce states "'…the burden remains with the petitioner to sufficiently substantiate its allegation so as to prompt further investigation by Commerce.'"[113]

Because we must extensively analyze record information, we point out that in response to the PMS allegation submitted by the DIPs in this review, our preliminary determination was fully analyzed in a 27-page document dedicated to PMS.[114] Hyundai Steel's unsubstantiated assertion

[111] *See Davis Wire Corp. V. United States*, 180 F. Supp. 3d 1187, 1193 (CIT 2016).
[112] *See Vicentin*.
[113] *See Certain Tapered Roller Bearings from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 83 FR 29092 (June 22, 2018), and accompanying IDM at Comment 1.
[114] *See* Preliminary PMS Memorandum.

that Commerce merely accepted the information without any consideration rings hollow and runs contrary to the record of this administrative review. Furthermore, while the DIPs submitted information supportive of seven factors that it believed contributed to a PMS in Korea, having extensively evaluated all information contained in their allegation, Commerce found that only five of the seven factors impacted the COP of OCTG in Korea as outside the ordinary course of trade and disagreed with DIP's contentions regarding the other two alleged factors. We address each of these factors below, based on the comments received in the case and rebuttal briefs.

Global Steel Overcapacity and Price Suppression[115]

Commerce continues to find that as a result of the significant 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, primarily from China and Japan.[116] While the overcapacity stems from China, Korea is also exposed to indirect overflow from Japan. As another regional steel producer with close geographic and economic ties to China, Japan also incurs substantial volumes of cheap Chinese steel imports.[117] With China being Japan's third-largest source of imported steel, Japanese markets are also subjected to low priced Chinese imports and consequently export excess steel to Korea, further saturating the Korean market.[118]

As we stated in the Preliminary PMS Memorandum, the PMS Allegation[119] included an abundant amount of information concerning the global steel overcapacity crisis and its far-reaching effects world-wide (including in Korea). This is an issue that Commerce has previously encountered and addressed in all of the previous segments of this proceeding and in several of its other proceedings involving Korea.[120]

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.[121] Further, in contrast with the respondents' and the Chinese government claims that Chinese steel production capacity was reduced in 2018, data indicate that Chinese steel capacity has actually risen since

[115] *See* US Steel's Rebuttal Brief at 27-54.
[116] *See* PMS Allegation at 10-12.
[117] *Id.* at 11-12 and Exhibits 37 and 38, GTIS Chinese Export AUV Data for 2017-2018 and GTIS Chinese Export Volume Data for 2017-2018, respectively.
[118] *Id.* at 12 and Exhibit 39, Commerce Global Steel Trade Monitor, "Steel Imports Report: Japan," dated February 2017.
[119] *See* Preliminary PMS Memorandum at 9-10; *see also* DIP's Letter, Oil Country Tubular Goods from the Republic of Korea: Particular Market Situation Allegation," dated August 6, 2019 (PMS Allegation).
[120] "{E}xcess steel-production capacity has created market distortions across the globe. Excess steel-production capacity causes serious market distortions and contributes to the downturn in global steel markets, including significant price suppression, displaced markets, unsustainable capacity utilization, negative financial performance, shutdowns, and lay-offs. The deterioration in steel demand, along with continued capacity expansions, are likely to place further pressure on country-specific steel markets and create incentives for government interventions which will further distort the production costs and prices for a wide range of steel products." *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 57583 (December 6, 2017), and accompanying PDM at 14, unchanged in *CWP from Korea AR 15-16*.
[121] *See* PMS Allegation at 6-9 and Exhibits 16-22.

2015, in spite of supposed efforts by the Chinese government to reign in its overcapacity problem.[122] 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.[123] 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." [124]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 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.[125]. In addition, imports from China have constituted at least 12 percent of Korean domestic production of HRS from 2013 through 2017.[126] Contrary to the respondents' claims, the data strongly support a determination that imports of low-priced HRC from China contributed to the existence of a PMS during the POR.[127]

While SeAH argues that there is nothing requiring a country, like Korea, to impose trade remedies to address their market distortions, this does not negate the need to address such market distortion in the context of cross-border trade with the United States. HRC imports from China are subsidized, dumped, and tainted by other non-market distortions, but these distortions were not remedied by any Korean trade remedy measures during the POR. Thus, the failure to offset these unfair trade practices contributed to a PMS impacting the entire Korean market for HRC, distorting the acquisition price for HRC during the POR. Commerce explained a similar phenomenon affecting the Turkish market for HRC based in part on the non-payment of safeguard duties on injuriously low-priced Turkish imports of HRC, stating that, "{t}he failure to offset these unfair trade practices contributed to a PMS impacting the entire Turkish market for HRC, distorting the acquisition price for HRC during the POR."[128]

We find that the facts in this review, on which respondents rely to make their arguments, fail to confirm that Chinese steel overcapacity and its effects were absent during this POR, and that increases in steel prices in general, or in HRC in particular, have risen to such an extent that the downward price effects caused by global steel overcapacity did not exist during the POR. On the contrary, the record shows that although during the POR world steel prices for flat products

[122] *Id.* at 7-8.
[123] *Id.* at 8-9 and Exhibits 23-31 and 225.
[124] *See* Hyundai Steel PMS Rebuttal Comments at 27 and Exhibit C-1, containing the OECD's report on "Recent developments in steelmaking capacity," dated March 5, 2018.
[125] *See* PMS Allegation. at 16-17 and Exhibits 37 and 54.
[126] *Id.* at 16-17 and Exhibits 37 and 54, containing Korean HRS and Plate Import AUV Data for 2013-18 and GTIS Chinese Export AUV Date for 2017-18, respectively.
[127] *Id.* at 8-9 and Exhibits 23-31 and 225.
[128] *Id.* at 11 and Exhibits 15-16.

(which includes HRC) increased from a ten-year record low point achieved in 2015,[129] when viewed against the entire ten-year dataset, they were still at the relatively low levels prevalent in the 2012-2013 period.

Hyundai Steel argues that the current global steel market situation has shown reductions in capacity and increases in capacity utilization, steel consumption, steel prices and profitability, negating the overcapacity factor relied upon by Commerce's in its PMS determination. While some changes may be occurring in the global steel market, we find that the facts in this review fail to demonstrate that Chinese steel overcapacity and its effects were absent during this POR, or that increases in steel prices in general, or in HRC in particular, have risen to such an extent that the downward price effects caused by global steel overcapacity did not exist during the POR. On the contrary, record evidence continues to show 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,[130] they were still at the low levels prevalent in the 2012-2013 period.

With respect to Hyundai Steel's contention that manufacturing costs during the POR were not distorted, we disagree. As stated in our preliminary determination, 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. Further, we find that record evidence continues to support this finding in the instant review as Korea was the second largest destination of Chinese exports of hot-rolled products in 2017 and 2018, importing between 1.8 and 3.6 million metric tons (MT), respectively.[131] Accordingly, the effects on Chinese overcapacity had a greater effect on the Korean market than on most other markets.

Chinese exports of hot-rolled products in 2017 and 2018 comprised approximately 50 percent and 42 percent of Korea's total imports of these products in 2017 and 2018.[132] Also, in addition to the large volume of Chinese exports, we find it appropriate to consider the imports from Japan which were also heavily impacted by the flood of Chinese hot-rolled steel products. Taken together, Chinese and Japanese imports of hot-rolled products in 2017 and 2018 comprised over 90 percent of HRS imports into Korea.[133] 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.

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[129] The ten-year period was from January 2008-June 2018. *See* Hyundai Steel PMS Rebuttal Comments at 34, containing a chart of "World steel prices" from data in the OECD Steel Market Developments 2018 Q4 report, dated January 11, 2019.
[130] The ten-year period was from January 2008 to June 2018. *Id.* at 11 (citing Joint Rebuttal Comments at 29 and Exhibit CAP-9: "World Steel Prices" chart from data in the OECD Steel Market Developments 2018 Q4 report, dated January 11, 2019).
[131] *Id.* at 11 (citing PMS Allegation at 11 and Exhibit 6: "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Particular Market Situation Allegation and Supporting Information," dated April 2, 2019 (HWR Korea PMS Allegation), at Exhibit 113).
[132] *Id.* at 12 (citing PMS Allegation at 11 and Exhibit 6 (citing HWR Korea PMS Allegation at Exhibit 116)).
[133] *Id.* at 12; *see also* Hyundai Steel's Case Brief at 44.

As raised at the preliminary stage of this review, the respondents argue for the final results that steel imports into Korea are insignificant, noting a downward trend in the volume of Korea's steel imports from 2010 to 2015, which fell again in 2017 and 2018.[134] However, Commerce calculates import penetration as the ratio between the volume of imports and consumption.[135] The record here contains no information on Korean consumption of HRC, so we cannot determine the import penetration rate with respect to HRC. However, Commerce reported that Korean import penetration of all steel products was 32.3 percent in 2017 and 25.7 percent in 2018.[136] Moreover, in *CWP from India AR 17-18*, we found that the import penetration rate of nine percent, relative to domestic demand, is not an insignificant factor.[137] Accordingly, based on the import penetration rates for steel products in Korea that ranged from 32.3 percent to 25.7 percent, we find that the import penetration rate in Korea was significant. We acknowledge that HRC products are a subset of all steel imports and that data limitations on the record prevented us from calculating a more specific import penetration rate, but, as facts available, we determine that the rate for import penetration for all steel products is a reasonable proxy for the import penetration rate for HRC products.

In arguing that the PMS Allegation is not particular to Korea, the respondents assert that the global overcapacity crisis, or Chinese/Korean steel overcapacity, has distorted the cost of steel production all over the world, and that the Korean steel market is no more "particular" than the rest of the world. We do not find this argument persuasive because the global overcapacity crisis will manifest its distortive effects differently in different markets. The record evidence indicates that Korea was the second largest destination of Chinese exports of hot-rolled products in 2017 and 2018, importing between 1.8 and 3.6 million MT, respectively,[138] and, thus, the effect of Chinese overcapacity on Korea was greater than its effect on most other countries.[139] In the Korean market particularly, the government provided subsidization to major producers of HRC aimed at supporting domestic steel producers and their ambitions for capacity expansions, a scenario of further distortions that is unique to Korea.[140]

Korean Government Subsidization of Hot-Rolled Coil

The legislative history of the TPEA indicates that Congress intended to provide Commerce with the ability to address price and cost distortions resulting from subsidization through the PMS provision. The TPEA states "that Commerce can disregard prices or costs of inputs that foreign producers purchase if Commerce has reason to believe or suspect that the inputs in question have

[134] *See* Dongkuk PMS Case Brief at 49; Dongkuk Rebuttal Comments at Attachments 2 and 3: Global Steel Trade Monitor, Steel Imports Report: South Korea, dated May 2019).
[135] *See* Preliminary PMS Memorandum at 11; Dongkuk PMS Case Brief at 42-43; and Joint Rebuttal Comments at 23 and 26 (citing U.S. Department of Commerce, Global Steel Trade Monitor, Steel Imports Report: South Korea, dated May 2019).
[136] *See* Preliminary PMS Memorandum at 12 (citing Dongkuk Rebuttal Comments at Attachment 3: Global Steel Trade Monitor, Steel Imports Report: South Korea, dated May 2019).
[137] *Id.* (citing *CWP from India AR 17-18*).
[138] *See* PMS Allegation. at 15-16 and Exhibits 37, 38, 42, 52-54, and 224.
[139] *Id.* at 15 (citing GTIS Chinese Export Volume Data for 2017-18 at Exhibit 38).
[140] *Id.* (citing PMS Allegation at Exhibits 31 and 32).

been subsidized or dumped."[141] Further, during the Senate debate on this bipartisan legislation, Senator Brown called the proposed legislation "one of the most important bills to come in front of the Senate" which would "guarantee that Americans can find a more level playing field as we compete in the world economy…."[142] He also identified the Korean OCTG and steel industries as an example of industries that do not play by the rules, specifically referencing unfair subsidization of the Korean OCTG industry by the Korean government:

> These {U.S. OCTG} producers increasingly lose business to foreign competitors that are not playing by the rules. Imports for OCTG, Oil Country Tubular Goods, have doubled since 2008. By some measures imports account for somewhat more than 50 percent of the pipes being used by companies drilling for oil and gas in the United States.
>
> Korea has one of the world's largest steel industries, but get this, not one of these pipes that Korea now dumps in the United States – *illegally subsidized* - is ever used in Korea for drilling because Korea has no domestic oil or gas production. In other words, *Korea has created this industry only for exports and has been successful because they are not playing fair*. So their producers are exporting large volumes to the United States, the most open and attractive market in the world, at below-market prices. This is clear evidence that our workers and manufacturers are being cheated and it should be unacceptable to the Members of this body. It hurts our workers, our communities, and our country. It is time to stop it.[143]

Consistent with the text of the statutory provision and the legislative history, we have evaluated the totality of circumstances in Korea with respect to production and sale of OCTG, including the fact that Korean government subsidizes production of hot rolled coil, the main input to OCTG production.

As stated in the preliminary PMS determination, Commerce found that the GOK subsidized the biggest HRC producers in Korea.[144] Although the level of subsidization has decreased in recent years, the GOK continued to subsidize its steel industry at above *de minimis* levels. The GOK's subsidization of domestic HRC production was a response to the global steel overcapacity crisis.[145] The GOK's 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 OCTG). To remain afloat, the Korean HRC producers must adjust their pricing in response to the price suppression by the HRC import prices caused by the continued effects of

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[141] *See* section 504(b) of the TPEA.
[142] *See* Congressional Record-Senate, S2899, S2900 (May 14, 2015).
[143] *Id*. (emphasis added).
[144] *Id.* at 21-27 and Exhibits 15, 77-100; *see also Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination,* 81 FR 53439 (August 12, 2016), as amended in *Certain Hot-Rolled Steel Flat Products from Brazil and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders,* 81 FR 67960 (October 3, 2016).
[145] *Id.* at 21-22.

the global steel overcapacity crisis, and GOK provided assistance to Korean HRC producers. These resultant distortions of HRC input costs flow directly to the COP of OCTG.

Furthermore, the respondents' argument that the "Special Act on the Corporate Revitalization" or "One-Shot Act," through which the GOK has attempted to help "Korean companies which perform corporate restructuring to address oversupply," has not been found countervailable in various Commerce CVD proceedings[146] does not negate the fact that the program was established to counter the effects of global steel overcapacity. The program provides government financial and institutional support "to promote voluntary corporate restructuring"[147] and is evidence of government intervention in the market. 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

In the instant review, evidence on the record shows that Korean OCTG producers attempt to compete by engaging in strategic alliances. Such evidence supports the allegation that these strategic alliances may have affected prices in the period covered by the original LTFV investigation and prior administrative reviews, including this POR. For example, on December 21, 2017, the KFTC fined Hyundai Steel and SeAH, along with other Korean steelmakers, 92.1 billion won for rigging bids for pipe sold to a Korean gas company over a period of ten years.[148] Hyundai Steel and SeAH 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."[149]

While Hyundai Steel points to *Husteel* in which the CIT found that Commerce did not support the strategic alliances element of the PMS determination, we find Hyundai Steel's reliance on that case to be misplaced. In *Husteel*, the only evidence on the record of the underlying antidumping segment of *Welded Line Pipe from Korea* was a declaration to support Commerce's finding of strategic alliances in Korea. Because that was the sole document of support for this PMS element, the CIT called into question the validity of Commerce's strategic alliance factor for that PMS determination.[150] Unlike in that review, however, in the instant review, the administrative record contains a plethora of information pointing to strategic alliances. For

[146] *See* Hyundai Steel PMS Rebuttal Comments at 41-42 and Attachment M.
[147] *See* PMS Allegation at Exhibit 93, the "Special Act on the Corporate Revitalization," dated February 12, 2016, amended March 18, 2016.
[148] *Id.* at 27-30 and Exhibits 101-120.
[149] *Id.* at Exhibit 104, Korea Times article, "Steelmakers fined W92 bil. for bid rigging," dated December 20, 2017 (citing a KFTC official).
[150] *See Husteel* at 24.

instance, on September 7, 2018, the KFTC announced that Hyundai Steel and five other Korean steel companies were being fined more than 100 billion Won and were being referred for criminal prosecution for fixing the price of iron bars.[151]

Although the period for which Hyundai Steel and SeAH are being punished for their bid-rigging schemes was before the POR of this instant review and involved a different product, these decisions by the KFTC provide evidence that the practice at issue was not a one-time event but rather a long-term, chronic occurrence. Moreover, the KFTC has not made any findings that Hyundai Steel and SeAH have 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 by Korean companies alone is not dispositive, but it is part of Commerce's consideration of the totality of circumstances in Korea, including the prior anticompetitive arrangements and practices that involved the respondents in evaluating the full effect of all 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 KEPCO.[152] 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…..[153] This GOK control of KEPCO allows the GOK to exercise control over the prices that KEPCO charges.[154] Based upon the foregoing, we agree with the petitioners that the prices charged by KEPCO are set by the GOK and that electricity in Korea is "a tool of the government's industrial policy."[155]

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.[156] Considering the government control over KEPCO, it is significant that KEPCO reported and operating loss of 208 billion Won in 2018, constituting its first operating loss in six years, and a 2.4 trillion Won loss is expected for 2019.[157]

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.[158] Moreover, electricity constitutes a significant portion of the cost of manufacturing (COM) of OCTG. Based on these facts, we find

[151] *See* PMS Allegation at 28.
[152] *See* Preliminary PMS Memorandum at 18; *see also* PMS Allegation at Exhibit 121, KEPCO Form 20-F at 31.
[153] *See* PMS Allegation at 31 and Exhibit 121, KEPCO Form 20-F at 31.
[154] *Id.* at 32-33.
[155] *Id.* at 33.
[156] *See* SAA at 822.
[157] *See* Preliminary PMS Memorandum at 3 and Exhibits 217-219; *see also* PMS Allegation at 34 and KEPCO 2018 Earnings Results at 12.
[158] *Id.*

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 OCTG.

Steel Industry Restructuring Effort by the Korean Government

While analyzing the alleged factors creating a PMS in Korea, we examined an additional element of the Korean government playing an active role in restructuring the private steel industry. On August 30, 2017, just two days before the start of this POR, the Korean Ministry of Trade, Industry, and Energy asked the domestic steel industry to "execute a voluntary restructuring."[159] 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.[160] Although this particular report relates to reduction of steel plate rolling capacity, as discussed below, the overall restructuring effort by Korean government does not appear to be limited to steel plate rolling.

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.[161] 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.[162] Since 2016 and an initial trial period of this program, the GOK deemed it successful and stated that it would continue[163] and the steel industry, including mandatory respondent Hyundai Steel, has taken advantage of this restructuring initiative since its implementation.[164]

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 Restructuring" which was constructed to accelerate the steel industry, among others.[165] 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

[159] *Id.* at Exhibit 124, containing a *Business Korea* article, "Industry Minister Calls for Dcisive Cut in Glut Products by Korean Steelmakers," dated August 31, 2017.
[160] *Id.* at 18-19.
[161] *Id.* at Exhibit 7, containing a *Kallanish Commidities* 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).
[162] *Id.* at Exhibit 93, containing the Special Act on the Corporate Revitalization, dated February 12, 2016 and amended March 18, 2016.
[163] *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, respectively.
[164] *Id.* at Exhibit 81, containing an *Aju Business Daily* article, "S. Korea Designates Two More Steel Firms for Fast-Track Corporate Restructuring" dated November 22, 2016.
[165] *Id.* at Exhibit 94, containing a GOK press release, "Government Unveils 2017 Action Plan for Industrial Restructuring," dated January 25, 2017.

development of "ultra light, hybrid, and other advanced materials, as well as smart and eco-friendly manufacturing."[166] Further, in a press release from January 2019, the GOK stated that it had reserved 10 trillion won for business restructuring.[167]

This continued, broad, and ongoing involvement of the GOK in the steel industry's response to market overcapacity is indicative of a PMS. It is the precise type of interference that meets the definition of a PMS as stated in the TPEA.[168] 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. Government interference in the steel industry in response to particular market conditions that affected such industry to the point that the industry needs to consider undergoing 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 PMS existed in Korea.[169] Commerce determined that the evidence related to the shipbuilding industry and not the shipping industry.[170] 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.[171] Finally, Commerce determined that POSCO does not rely on Hyundai Merchant Marine and even Hyundai Steel's input shipments by Hyundai Merchant Marine were minor when compared to its total shipments of all of its import purchases.[172]

DIPs now 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 hot-rolled coil.[173] However, 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

[166] *Id.*
[167] *Id.* at Exhibit 90, containing a GOK press release from the Sixth Ministerial Meeting on Boosting the Economy, "Government to Seek Urban Development on National Properties," dated January 23, 2019.
[168] *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."
[169] *See* Preliminary PMS Memorandum at 20.
[170] *Id.*
[171] *Id.*
[172] *Id.*
[173] *See* U.S. Steel's Case Brief at 24-33.

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 the respondents.[174]

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 PMS in Korea.[175] 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.[176] 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.

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.[177] 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.[178] Moreover, DIPs also argue that Australian iron ore prices are distorted due to subsidization and tax evasion.[179] 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.[180] Therefore, because it is not clear from the record whether the price comparison given is truly an "apples-to-apples" comparison, we have not relied on it for these final results.

Comment 3-C: Quantification of Particular Market Situation Adjustment

U.S. Steel's Comments:

Commerce Should Make Certain Adjustments to the PMS Calculation[181]

- For the preliminary PMS determination, Commerce only made a PMS adjustment specific to the regression model submitted by the DIPs and declined to adjust for other PMS factors, including limiting the adjustment to only purchased HRC. The DIPs proposed reasonable

[174] *See* Preliminary PMS Memorandum at 20.
[175] *Id.*
[176] *Id.*
[177] *See* U.S. Steel's Case Brief at 33-40.
[178] *Id.*
[179] *Id.*
[180] *See* Hyundai Steel's Rebuttal Brief at 28
[181] *See* U.S. Steel's Case Brief at 41-61.

adjustments to respondents' distorted costs, which must be adjusted to ensure a fair comparison between constructed value and U.S. price.

- There is no basis for treating Hyundai Steel's self-produced HRC any different from purchased HRC. By excluding from the PMS adjustment Hyundai Steel's self-produced HRC and the non-regression adjustments in their entirety, Commerce has failed to take into account *all* market distortions for which reliable quantifications exist, which negates a fair comparison with U.S. price. Thus, for the final results, Commerce should calculate an adjustment for every input found to have been distorted by one or more particular market situations over the POR. Specifically, Commerce should make the following PMS adjustments:

Self-Produced HRC Adjustment[182]

- Korean HRC producers, which includes Hyundai Steel, are subject to the same market-wide overcapacity distortions in the steel market.
- Hyundai Steel's self-produced prices are not insulated from the Korean market, as the company's HRC transfer price is based on unaffiliated third-party transactions, which are also impacted by market distortions. While Hyundai Steel attempted to back out the transfer price to account for production expenses, the adjusted transfer price of Hyundai Steel represents nothing more than an understated market value.
- Should Commerce continue to limit the PMS adjustment to Hyundai Steel's purchased HRC, it should modify the adjustment by recalculating the percentage of Hyundai Steel's purchased HRC.

HRC Subsidization Adjustment

- For the preliminary PMS determination, Commerce declined to make an adjustment for GOK subsidization of Korean HRC production, which fails to address distortions raised in petitioners' PMS Allegation and is inconsistent with Commerce's own past practice.[183]
- The regression analysis submitted by petitioners addresses the quantification of global and Korean overcapacity; it does not take into account market distortions related to subsidization by the Korean government. Thus, Commerce should still make an upward adjustment for subsidy-related distortions of Hyundai Steel's self-produced HRC, along with adjusting all other respondents' HRC costs to account for GOK subsidization. Any such adjustment for the HRC input should be one that is above *de minimis.*

Electricity Adjustment

- In the preliminary results, Commerce failed to adjust respondent's electricity costs to account for market distortions. Because KEPCO's electricity costs fail to account for the cost of production and ultimately understate the reported cost of manufacture, for the final results, Commerce should make an adjustment to respondents' electricity costs to ensure a fair comparison between constructed value and the COM.
- It is rational to assume that KEPCO, a near-monopoly distributor of electricity, would cover electricity costs at reasonable rates of return, giving steel producers discounts, even while

[182] *Id.* at 41-52.
[183] *Id.* at 53 (citing *Large Diameter Welded Pipe from Korea and Turkey*).

still operating at profitable levels. Thus, the proposed electricity adjustment would only result in a conservative adjustment.

- KEPCO's electricity generation, distribution, and related support functions form nearly all (if not all) of KEPCO's business. Also, KEPCO's overseas activities, in the aggregate, are not significant in terms of scope or amount compared to KEPCO's domestic activities.
- Commerce should increase reported electricity costs to reflect the difference between KEPCO's average cost of production during the POR plus a reasonable rate of return and the GOK's effective industrial tariff rates.

Shipping Adjustment[184]

- HMM is clearly the largest Korean maritime shipping company, which distorts the shipping market vis-à-vis small Korean shipping companies that compete with HMM to ship coal and iron ore to Korean steel makers.
- The record contains publicly available financial information for a Korean shipping company that services the Australia-to-Korea bulk shipping route for these specific inputs. HMM's dominant presence on the relevant route make its financial statements a reasonable basis on which to calculate a shipping adjustment.
- HMM's deficit (plus a reasonable rate of return) serves as a reasonable metric by which to assess distortion of bulk freight prices on the routes serviced by HMM. The proposed shipping adjustment would result in a conservative adjustment for calculating an appropriate PMS factor.

Iron Ore Adjustment[185]

- Commerce should adjust the value of all iron ore consumed by Hyundai Steel over the POR separate from the acquisition costs related to the distortion caused by overcapacity. Specifically, Commerce should calculate an adjustment for iron ore based on the difference between the prevailing Australian and Brazilian iron ore prices.
- Commerce should not credit Hyundai Steel's inconsistent statements concerning the price impact of iron ore grade.
- Record information permits the adjustment of iron ore prices by reducing the Australian and Brazilian prices to account for freight, along with the removal of other expenses that ultimately yields an apples-to-apples comparison to Hyundai Steel's reported iron ore costs.

Hyundai Steel's Comments:[186]

- The DIPs' regression analysis is deeply flawed in logic and unsuitable for making any adjustment for the alleged PMS for the final results of review.

Globalized Regression Models are Antithetical to an Allegation of a Localized PMS Within Korea[187]

[184] *Id.* at 59-60.
[185] *Id.* at 60-61.
[186] Hyundai Steel's Case Brief at 60-91.
[187] *Id.* at 60-64.

- The regression analysis should apply to distortions in a particular local market, not a global market. Thus, the use of global overcapacity in the regression analysis is illogical because it applies an alleged world-wide distortion to adjust for an alleged local market distortion.
- Global excess steel capacity impacts the global market, and it is not unique to Korea. As such, the DIPs' proposed OLS further supports the fact that, because there is no market situation particular to Korea, there are no distortive impacts.

The OLS Model's Results are Unsupported by Substantial Record Evidence[188]

- While for the *Preliminary Results*, Commerce relied on the imperfect regression model using the OLS method to quantify the impact on the import AUV of global uneconomic capacity, the underlying methodology for evaluating whether a PMS exists is completely unsound.
- The DIPs provide no reliable explanation as to how uneconomic capacity could cause a depression in HRC import AUVs, particularly where there is a statistically insignificant correlation of negative 0.59 between excess capacity and HRC import AUVs.
- The main flaws of the DIPs' methodology stem from the fact that they estimate the model with "global excess capacity measure (*i.e.*, "Uneconomic Capacity") and then apply the estimated coefficients to a hypothetical Korea-specific "Capacity Utilization" level to predict counterfactual prices. This approach violates not only their own premise that a PMS exists in Korea but also the econometric methodology to estimate pertinent effects.[189]
- The results of the DIPs OLS model show a statistically insignificant negative correlation of negative 0.0081 between the gross fixed capital formation (GFCF) and HRC import values, which petitioners claim to be consistent with measures of macroeconomic demand. However, in the commercial world, steel prices are a function of both supply and demand, current and forecasted.
- Record evidence demonstrates that GFCF is an overly broad basket category with an extremely disparate set of goods and economic activities, and not all GFCF assets are related to steel consumption. This makes it difficult to discern a correlation between steel prices and demand variables.

The Record Fails to Support Correlations of Iron Ore, Steel Scrap and Aluminum with Korean HRC Values[190]

- Contrary to the OLS model results, the regression data show both positive and negative correlations with the Korean HRC/flat steel product AUVs between 2008 and 2018.
- The regression data also show that scrap prices failed to positively correlate with the Korean HRC/flat product import AUV.
- The DIPs themselves admit the direct relationship between steel prices and aluminum prices is expected to be positive. However, the regression data does not yield this type of relationship.

[188] *Id.* at 64-76.
[189] *Id.* at 67-71.
[190] *Id.* at 73-74.

The Regression Model Fails to Consider the Countervailable Subsidy Findings[191]

- The DIP's regression model did not include each country's company-specific subsidies as a variable in their regression model. However, as part of its previous PMS findings, Commerce determined that a countervailable subsidy on domestic HRC is a significant factor. Absent this factor in the DIP's regression model, the model itself should be rejected in the final results of review.

Commerce Unreasonably Accepted the DIPs' Regression Results Despite Obvious and Uncorrected Data Errors[192]

- The DIPs regression model contains two serious data errors on iron ore and that call into question the methodology of this model.
- First, the 2008 iron ore prices appear to be an anomaly and based on partial-year data, resulting in a distortion in prices in a year when iron ore prices fell by over 60 percent.
- Second, the DIPs fail to update the uneconomic capacity data for 2017, relying instead on uneconomic capacity data from PMS allegations submitted in other Korean steel pipe cases.

The Time Period of the Regression Model is Unreasonable Because It Begins in an Outlier Year and Does Not Use the Most Current Available Data[193]

- The 2008-2009 data in the DIPs' regression analysis represents outlier data with huge swings stemming from the global economic downturn, yet it does not incorporate the data dating back to 2003 that they had access to. Starting their regression analysis at a time of a global financial meltdown is distortive, in nature, and undermines the integrity of any logical results from this regression model.

The Assumed Minimum 85 Percent Capacity Utilization Rate is Not Reasonable and Contradicted by Substantial Record Evidence[194]

- The DIPs are employing unreasonably high capacity utilization rates in their regression model. Further, the petitioners have presented no data showing that an 85 percent rate is necessary for global producers to achieve sustained profitability.
- The American Iron and Steel Institute and Commerce Secretary Wilbur Ross have stated that an 80 percent utilization level is needed to make the industry viable over the long term.
- Record evidence demonstrates that U.S. producers already have achieved sustained profitability at capacity utilization rates lower than 80 percent. Further, Commerce has already determined that U.S. steel producers, such as AK Steel and Nucor, had sustained annual net earnings of more $2 billion during the same period when their capacity utilization was at or below 80 percent.

[191] *Id.* at 74.
[192] *Id.* at 74-76.
[193] *Id.* at 76-79.
[194] *Id.* at 79-82.

- Where Commerce itself has recognized that an 80 percent capacity utilization rate is "healthy," a regression analysis based on a minimum 85 percent global capacity utilization rate is not reasonable.

The Alternative Regression Results on the Record Demonstrates that Commerce Accepted the Most Extreme Adjustment in the Preliminary Results[195]

- Numerous iterations of the regression analyses can be performed yielding vastly different results with slight changes to variables, assumptions or data series. This underscores the problematic nature of statistical models used to evaluate and quantify a PMS adjustment, as it allows for "cherry picking" results based on the most favorable assumptions.
- Should Commerce continue making a cost adjustment for the final results of review, Commerce should abandon the petitioner's methodology and rely on an adjustment that bears a reasonable relationship to commercial reality and is supported by the record.
- Commerce should use a regression model that accounts for both demand and supply-side variables, such as coking coal or other essential elements of steel production that are positively correlated with Korea HRC AUVs.
- Commerce should use a reasonable capacity utilization rate, as found in its 232 steel investigation conducted by Commerce's Bureau of Industry and Security Office of Technology Evaluation, which concluded that 80 percent is sufficient for sustained profitability.
- Commerce must include annual data that increases the accuracy and reasonableness of any resulting coefficients. Thus, it should include 2003-2007 or 2004-2007 time periods, which reflect years where global steel production achieved a capacity utilization rate of 85 percent. This would ensure a more complete and accurate regression analysis for the final results of review.
- Hyundai Steel submitted more than 120 alternative regression analyses that focused on different assumptions regarding time periods covered, variables considered, and capacity utilization rates. These models are not only reasonable, they are based on substantiated evidence. Commerce introduced distortions into the PMS calculation and overstated Hyundai Steel's costs of manufacturing. To correct the errors in the regression analysis used in the Preliminary Results, Commerce should make the following changes to that analysis:

  (1) use updated capacity and production figures for 2018, which incorporates the most recently available data, overlaps more with the POR, and adds degrees of freedom to the analysis;

  (2) correct the errors in the iron ore costs that the DIPs incorporated into their regression analysis;

  (3) assume a capacity utilization rate of 80% or 81% since no support at all exists for the 85% rate that the DIPs assumed;

  (4) use a period that begins either in 2003/2004 or 2010/2011 so that the regression methodology does not begin in the 2008-2009 period because those years act as influential observations that distort the regression results because of the global economic forces that existed during the height of the worldwide recession;

[195] *Id.* at 82-91.

(5) consider coke in addition to iron ore and steel scrap since it is a relevant input used to manufacture HRC that the DIPs omitted; and
(6) exclude aluminum since the DIPs failed to provide support for the inclusion of this metal in its regression model.

SeAH's Comments:[196]

The Regression Based PMS Adjustment Used in the Preliminary Determination is Not Reasonable[197]

- The regression-based model proffered by the DIPs fails to take into account the actual subsidy rates determined for POSCO and Hyundai Steel. Instead, the regression-model purports to allow prices for HRC to be estimated under the assumption that the global steel industry operated at 85 percent capacity.
- The DIPs' regression model fails to satisfy basic requirements for time-series analysis, is invalidated by the usual statistical tests, and generates results that fluctuate wildly over time, as supported by several experts on data analysis.[198] Petitioners' regression analysis is not supported by a single expert endorsing their methodology.
- Should Commerce adopt the regression model submitted by the petitioners, Commerce should make two adjustments to the calculations. First, Commerce should use the coefficients from the 2013-2017 period, because it would provide a better fit with the model. Second, Commerce should calculate an adjustment based on 2018 data, instead of relying solely on 2017 data, which would correspond more closely with the review period.
- The DIPs' logarithms specific to elasticity fail to recognize that, when logarithms are used in a multivariable regression, the model necessarily predicts the geometric mean of the dependent variable rather than predicating the arithmetic mean using separate additive effects of each individual variable. Thus, the model at issue is meaningless, as it does not consider the impact on AUVs of variables such as uneconomic capacity and iron ore.
- The DIPs' regression analysis relied upon by Commerce also fails to account for intertemporal exogeneity in the explanatory variables of the static regression model:

$$Yt = \beta 0 + \beta t\, zt + ut$$

Because the regression analysis at issue includes a data set that has both a time-series dimension and a cross-sectional dimension, additional refinements are necessary to ensure a proper analysis. However, such refinements would not otherwise be necessary if the regression model were based on a pure time-series dataset. Based on the DIPs' static regression model, there are a handful of variables (*e.g.*, uneconomic capacity and time-lag between price changes and production capacity) impacted by past, present and future

[196] *Id.* at 19-40.
[197] *Id.* at 19-21.
[198] *Id.* at 20 (citing statements made by Dr. Qing Pan, a Professor of Statistics at George Washington University, Michael Northeim, a financial analyst specializing in data analytics, and Dr. Rodney Ludema, a Professor of Economics at Georgetown University).

values of HRC prices, but these factors are not taken into account in the model, thus rendering invalid the regression model proffered by the DIPs.

- The DIPs' regression analysis has additional flaws, as it does not address distortions caused by multicollinearity and therefore, the model cannot be estimated using an Ordinary Least Squares (OLS) methodology.
- The results of the DIPs' regression analysis are artificially high because their analysis does not consider correlation, or autocorrelation, of data. The Durbin-Watson test,[199] for instance, which is a standard statistical test for establishing autocorrelation in data, indicates that there is less than 1 in 10,000 chance that the AUV data used in the petitioners' regression model is not autocorrelated, consequently yielding results of artificially high statistical significance.
- While Commerce correctly noted in the preliminary determination that a proper time-series analysis requires homoskedasticity, it failed to find complete evidence of heteroskedasticity, further invalidating the DIPs' proposed time-series regression model.[200]
- The DIPs' regression analysis also does not consider the direct effect of each explanatory variable. Instead, the model multiplies all the explanatory variables together, contradicting well-established statistical principles.

The Regression Analysis Cannot Properly Be Used to Extrapolate Results Beyond the Scope of the Data[201]

- The DIPs assert that their analysis establishes a model that may be used to estimate the AUVs for imports of hot-rolled coils into Korea during a particular year, such as 2017, under the assumption that global capacity utilization had been 85 percent. However, the models they derived from their regression analysis were "trained" on time periods in which global capacity utilization was much less than 85 percent. Because capacity utilization was less than 85 percent in every period considered by their regression, their model cannot properly be used to extrapolate what AUVs would have been if that level of capacity utilization had been achieved.
- The regression analysis also fails to test the data over different sub-periods within the overall period for which data is available to ascertain whether the coefficients are stable.

Should Commerce Use Petitioners' Regression Model for the Final Results, It Should Use A Period that Provides the Best Fit for the Data[202]

- To ensure more accurate results from the regression analysis, Commerce should use coefficients generated from the analysis of the period that provide a better fit for the data, *i.e.*, 2013-2017, rather than from the period 2008-2017 that the petitioners used in their model.

An Adjustment to HRC Based Solely on an Analysis of 2017 Prices is Inappropriate[203]

[199] *See* SeAH's Case Brief at 27.
[200] *Id*.
[201] *Id.* at 30-34.
[202] *Id.* at 36-38.
[203] *Id.* at 38-40.

- Because two-thirds of the review period falls within the 2018 calendar year, with only four months falling within the 2017 calendar year, it would be inappropriate to use an adjustment that is based solely on 2017 data. Should Commerce continue to rely on the 2017 figures provided in the DIPs' regression analysis, it should revise the adjustment to reflect the updated 2017 uneconomic capacity figure that Hyundai Steel reported.

Husteel's Comments:[204]

- Commerce's regression analysis is fundamentally flawed and should not be used to adjust respondents' costs. The fact that the regression model is based on global steel overcapacity directly contradicts the allegation that there exists market distortion particular to Korea. In addition to supporting all the points made by the mandatory respondents in this review, the following additional points should be noted.
- Supply and demand, not capacity and demand, determine the price of a good, which the DIPs acknowledge in their PMS allegation, but since they failto demonstrate oversupply, rely instead on overcapacity in their allegation.
- The economic regressions are deeply flawed and fail to reasonably quantify the effect of steel overcapacity on HRC import values. A report by Dr. Rodney D. Ludema, titled "Cold-Rolled Steel Flat Products from Korea: PMS Valuation methodology Reconsidered," demonstrates deficiencies of the regression model used by Commerce. Although prepared for the cold-rolled steel from Korea AD review, the report highlights the following points that speak to flaws in the regression analysis:
    - The Regression analysis is arbitrary, in nature, as the analysis is not limited to the impact of global excess capacity; rather, the analysis hinges upon a calculation between predicted and actual average unit values (AUVs) attributable to excess capacity, among other factors. This calculation is therefore only tangentially related to the assertion that PMS is based on global excess capacity.
    - The DIPs' variable coined "uneconomic capacity" whereby capacity utilization is below 85% is arbitrary and not supported by historical data.
    - The regression results are also distorted by the recession that occurred during 2008 and 2009. Once these outlying years are removed from the model, the estimated coefficient for uneconomic capacity disappears.
    - Petitioners' regression results are further distorted by their failure to include energy prices, an important component of steel production cost, which, when taken into account, render the model statistically insignificant.
    - The regression results also fail to adequately distinguish the effects of excess capacity on AUVs from either reverse causality or other variables related to excess capacity that would influence AUVs.
    - The model erroneously assumes that AUVs of different nations are independent of one another.
- Commerce has a legal obligation to address each of these concerns based on determinations supported by the record; it cannot just acknowledge concerns raised by respondents.[205] In doing so, Commerce should determine the flaws in the DIPs'

[204] *See* Husteel's Case Brief at 12-15.
[205] *Id.* at 15 (citing *Changzhou Trina Solar Energy Co. v. United States*, 195 F. Supp. 3d 1334, 1350 (CIT 2016) (quoting *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 484 (1951)).

regression results completely undermine the quantification of global excess capacity on HRC import AUVs in Korea. Thus, Commerce should not rely on Petitioners' regression model for the final results of review.

ILJIN's Comments:[206]

- Commerce cannot use the regression analysis submitted by the DIPs as a basis for the PMS adjustment due to the numerous errors contained therein. The analysis does not quantify any distortions in HRC and it is not specific to the price effects in the Korean OCTG market necessary for a PMS adjustment. For these reasons, for the final results, Commerce should rely upon the alternative methodologies provided by respondents to calculate an adjustment to the cost data.

AJU Besteel's Comments:[207]

- Commerce's regression analysis is deeply flawed and should not be relied upon for the final results of review.

U.S. Steel's Rebuttal Comments:[208]

Regression Analyses are a Reliable Econometric Modeling Method Employed by Commerce and Other Agencies

- The least-squares estimation, also known as regression, remains the most commonly applied econometric tool. Commerce, among other U.S. government agencies, itself has relied on OLS in other analyses, including to calculate benchmark interest rates in countervailing duty case.
- While Hyundai Steel argues that the DIPs' model is unreliable because it produces different outcomes when different variables are used, the same could be said for any regression model.
- The OLS 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. This analysis has greater explanatory power than earlier models from other case proceedings and includes improvements directly responsive to Commerce's prior critiques.

Regression Analyses are a Reliable Econometric Modeling Method Employed by Commerce and Other Agencies[209]

- The OLS is unbiased and more efficient than other estimators, including the 2SLS, provided necessary assumptions are met.
- SeAH and Hyundai Steel seem to consider regression models that are multisector with consumers, producers, governments, a financial sector, investment activity, *etc.*, which differs from the petitioners' regression model. A full-fledged structural model of the

[206] *See* IlJin's Case Brief at 8-9.
[207] *See* AJU Besteel Letter of Support at 2.
[208] *See* U.S. Steel's Rebuttal Brief at 55-58.
[209] *Id.* at 58-63.

world economy is not necessary to develop useful estimates of the coefficients of variables that reflect pertinent aspects of HRC price determination, including global excess capacity as indicated by uneconomic capacity.

- The fact that the DIPs' regression model includes biased estimates does not render the model invalid. In the real world of applied econometrics, estimators that may be biased are used because those are the best available.
- SeAH's assertion that a proper time series analysis requires homoskedasticity is unsupported and incorrect.
- The DIPs' regression analysis is used to model a simple equation for which high-quality data are reasonably accessible that will include excess capacity as an explanatory variable and the price of HRC as the dependent variable.
- Domestic producers reasonably selected linear logs among several alternative forms. Ultimately, the uneconomic capacity coefficient from the OLS regression model shows the impact of uneconomic capacity on the price of HRC, taking into account various explanatory demand and supply variables. The point estimate for the unit import value for Korea under an assumed reduction in uneconomic capacity is the best information available and is suitable to the task of adjusting for price distortions related to uneconomic capacity, given the underlying model's high explanatory power.

Independent Analysis Confirms the Overcapacity-Price Link[210]

- Hyundai Steel's own report confirms the link between overcapacity and price and Commerce itself has acknowledged the overcapacity-price link.
- Petitioners provided additional third-party evidence to corroborate the overcapacity-price relationship shown by the regression model.

Supply and Demand Side Explanatory Variables[211]

- Though difficult to include every economic factor that may impact steel prices, the submitted regression model accounts for time-variant and demand-side variables.
- While Hyundai Steel theorizes about alternative basket categories, it provides no evidence of the existence of reliable and relevant data specific to a particular category.
- Regarding demand conditions set forth in the regression model, the OLS considers relevant price-influencing factors that are based on real world data. Relying on aluminum prices, however, is not indicative of traditional price stability.
- While Hyundai Steel complains that GFCF has a statistically insignificant correlation with steel prices, it relies upon information contained in marketing materials of steel processors that are unsupported by actual economic research.
- Hyundai Steel misapplies the correlation concept, which is a mathematical concept, as correlation coefficients are not a matter for litigation. Regardless, the correlation assessments have been properly conducted and yield conclusions that are consistent with the regression model submitted by the DIPs.
- Hyundai Steel provides no evidence supporting alternative basket categories, such as construction.

[210] *Id.* at 64.
[211] *Id.* at 64-68.

The 85 Percent Threshold for Healthy Capacity Utilization is Reasonable and Amply Supported[212]

- The record indicates that an optimal utilization is higher than the minimum 80 percent. The Boston Consulting Group considers healthy capacity-utilization to be around 92 percent while the Centre for European Policy Studies and Ecorys Research and Consulting suggest 85 percent utilization is close to full capacity.
- The onset of the 2008 recession saw an overcapacity crisis, proving the point that since that time, the global steel industry has not seen healthy capacity utilization. Thus, the last 10 years is not indicative of 85 percent not serving as an adequate benchmark for normal utilization level.
- The 232 investigations established 80 percent as a minimum threshold for a viable U.S. industry with healthy global capacity utilization levels, which Commerce pointed to in *Circular Welded Pipe from Turkey*.[213] Petitioners' threshold of 85 percent is therefore grounded in historical experience and independent analysis of global markets, encouraging Commerce to adjust for overcapacity-based distortions.
- Commerce should disregard Hyundai Steel's argument regarding faulty time-series data and continue to use the 2008-2017 time period for the regression predications. The 2018 data poses its own flaws. For instance, the 2018 was not published until July 2019, constituting a seven-month time lag. Further, while the 2018 data from World Steel in Figures was not placed on the record of this review, even if it had been, a lot of that data represents estimates, making it unreliable for a regression model.

The Underlying Data Submitted by Petitioners is the Best Available[214]

- There are too many inconsistencies associated with respondents' own data in their regression models that nullify their use for the final results of review. For instance, the World Bank iron ore pricing data contains wide methodological changes including the grade of iron ore analyzed, the use of spot prices from China that were once reflective of contract prices from Brazil to Europe, shipping terms and other changes, that render such data unusable for the regression model. Including coke in the regression analysis does not render the analysis reliable and does not enhance its explanatory power. The HTS category is not specific enough to coke, only rendering the inclusion of coke unreliable. Commerce should therefore rely upon the petitioners' model to account for distortive effects of the steel overcapacity and price suppression to determine the PMS factor in Korea.

***SeAH's Rebuttal Comments:*[215]**

[212] *See* U.S. Steel's Rebuttal Brief at 68-70.
[213] *Id.* (citing PMS Decision Memorandum, "2017-2018 Administrative 2018 Administrative Review of the Antidumping Duty Order on Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Decisions on Particular Market Situation Allegations," dated July 10, 2019, Exhibit 15 of Petitioners' PMS Allegation).
[214] *Id.* at 75-77.
[215] *See* SeAH's Rebuttal Brief at 6.

- The DIPs' proposed regression analysis is mathematically flawed. To the extent that it is valid, their analysis shows that Korean HRC prices would be no higher if excess Chinese capacity were eliminated. This analysis would, therefore, invalidate the need to make an adjustment to HRC costs.
- Since the DIPs' analysis already fully accounts for the impact on prices if there were no excess Chinese capacity, any additional adjustment for Korean subsidies that responded to excess Chinese capacity would result in double-counting the effect on prices of the elimination of that excess capacity.

Hyundai Steel's Rebuttal Comments:[216]

- Despite the fact that the DIPs' regression analysis contains faulty assumptions and is essentially unusable, there is no logic behind suggesting that Commerce should make an adjustment to self-produced HRC inputs.
- In particular, the DIPs' analysis is based on an OLS fixed effect regression analysis that is concentrated on finished HRC market prices from import AUVs, rather than being based on the prices of HRC material inputs (*e.g.*, iron ore, steel scrap, electricity). Thus, the inputs in the regression analysis put forth by petitioners do not match the inputs in HRC production. In this regard, there is no rational relationship to the cost adjustment.
- The cases cited by U.S. Steel (*e.g.*, *CORE from Korea* and *Welded Line Pipe from Korea*) included an understandable approach in which Commerce adjusted for potential distortions of HRC to downstream purchases based on the effect of government subsidization. In the petitioners' regression methodology, there is little logic. It makes little sense to employ an approach in which Korean market prices of finished HRC are used as a proxy to adjust for Hyundai Steel's actual production costs to product HRC that are not impacted by overcapacity in China or large volumes of low-priced HRC imports.

Commerce Position:

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

In the *Preliminary Results*, we quantified the impact of the PMS in Korea by making an upward adjustment to the respondents' reported HRC costs, basing that adjustment on the petitioner's regression analysis.[217] We continue to find that the regression analysis submitted by the petitioner, with certain adjustments discussed below, is a reasonable method to quantify the relationship between global uneconomic capacity and the price of HRC inputs. For these final results, we continue to find that the adjustment factor resulting from the regression analysis, with certain adjustments adopted by Commerce, appropriately quantifies the impact of the PMS

[216] *See* Hyundai Steel's Rebuttal Brief at 35-36.
[217] *See Preliminary Results* PDM at 16; *see also* PMS Allegation.

concerning the distortion in cost of HRC that we find to have existed in Korea during the POR.[218]

Regression Analysis

Appropriate Beginning and End of Annual Time Series Data

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

Respondents also argue that the regression should also include 2018, which covers eight months of the POR. However, using data from all of 2018 would clearly reflect costs associated with production subsequent to the POR, and even much of the production in the first half of 2018 would likely relate to sales occurring outside the POR. Since the POR ended on August 31, 2018, the 2018 data includes information that is 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 find that the use of data up to 2017 is appropriate.

Concerning using updated 2017 data for global production and capacity, the updated production figures for 2017 (1,729 MT) were published in the 2019 World Steel in Figures Report in June 2019, before the PMS allegation by Petitioners was filed in August 2019. The updated global steel capacity figures for 2017 were published by the OECD in its "Capacity Developments in the World Steel Industry" reported in July 2019, also before the allegation was filed. Therefore, both the updated 2017 capacity and production totals were available to petitioners at the time the allegation was filed, and Commerce therefore agrees with Hyundai Steel that the PMS regression and adjustment calculated by Petitioners 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 Steel (which is identical to the regression submitted by petitioners in all other respects) that includes updated 2017 production estimate from the World Steel Association[219] and the updated 2017 steel capacity estimate from the OECD.[220]

Choice of Independent Variables

[218] *See* Hyundai Steel Final Calculation Memo; *see also* SeAH Final Calculation Memo.
[219] *See* WSA 2019 World Steel in Figures Report, June 2019.
[220] *See* OECD, "Capacity Developments in the World Steel Industry," July 2019.

Commerce finds that the regression used by petitioners 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 find 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.

Potential Bias of Independent Variables

Concerning SeAH's claim that the model results are invalidated due to endogeneity,[221] Commerce finds that none of the variables in Petitioners' model is lagged or directly dependent on another lagged variable in the model. To ensure that the model minimizes endogeneity bias, Petitioner defines Uneconomic Capacity as current capacity minus the largest production of crude steel in the ten years prior to the current year. Moreover, Commerce's PMS calculation methodology now considers the average production of the past five years (*i.e.,* 2013-2017) instead of only 2017, which also reduces the probability of endogeneity in the model. Furthermore, common treatments for endogeneity include a first-difference or fixed-effect model,[222] as well as instrumental variables estimation through 2SLS. The 2SLS alternative model put on the record by petitioners produces coefficients similar to the ones produced by the OLS model, indicating that any endogeneity in the OLS model is not significant enough to invalidate its results.[223] Moreover, Commerce acknowledges that the strict exogeneity assumption is not realistic and that in the real world, time series and/or panel data mostly violate this assumption.[224]

Concerning multicollinearity, autocorrelation, and heteroskedasticity[225] Commerce finds that multicollinearity does not bias or invalidate estimated coefficients, but rather impacts the variance of the estimators[226] and that virtually all-time series data contain a degree of multicollinearity. As such, the presence of multicollinearity in the model and the absence of perfect exogeneity does not necessarily invalidate the model results, as respondents claim. With

[221] *See* SeAH's Rebuttal Sep. 13, 2020, Vol. V Appendix 16-BPI. SeAH referred to Wooldridge's econometric textbook chapter 10, "basic regression analysis with time-series data" and argued 1) petitioners' model fails to account for intertemporal exogeneity, therefore, suffers from endogeneity. 2) uneconomic capacity suffers from the time-lag relationship between price changes and production capacity.
[222] *Id.*, advanced topics, chapters 14 and 15.
[223] *See* Petitioners PMS Allegation, Exhibit 56.
[224] *See* SeAH's Rebuttal Sep. 13, 2020, Vol. VI Appendix 21(Wooldridge 5th Edition, 2013).
[225] *See* SeAH's Rebuttal Sep. 13, 2020, Vol. V Appendices 16 and 17.
[226] *Id.* at 46 (citing PMS Allegation at Exhibit 1.1).

regards to autocorrelation, in Commerce's view, a Durbin-Watson test is more appropriate for "pure" time-series models (*i.e.,* those without any cross sectional data) as opposed to a regression based on panel data such as the one put on the record by Petitioner in this review. Furthermore, Wooldridge explains that in cases where variables are not strictly exogenous, as is the case in this review, neither a t test nor Durbin-Watson statistic are valid.[227] Finally, although petitioners' 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 petitioners, with the 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, have used it to calculate an adjustment for the purchase price of HRC to reflect the distortions in the HRC market that we found to exist during the POR.

Calculation of the PMS Adjustment

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

Capacity Utilization Rate

We concluded in CORE from Korea that an 80 percent target capacity utilization rate is reasonable in the steel context.[228] Commerce recognizes that global capacity utilization rates have been no greater than 80 percent since 2007,[229] 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

[227] *See* Wooldridge 5th edition, (2013) chapters 10, 14 and 15.
[228] *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 31-33.
[229] *See* PMS Allegation at Exhibit 197: OECD Half-Yearly Statistical Report, dated March 25-26, 2019.

operations of the steel industry and has used the 80 percent target in its Section 232 Investigations.[230]

Petitioners 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 petitioners (from 2002 and 1980) are outdated,[231] and another study provided by petitioners relies upon data and analysis that underestimate the magnitude of the excess capacity crisis.[232] Commerce's Global Steel Report does not confirm the petitioners' assertion that U.S. utilization trails global utilization in 2016 and 2017. The cited report does not contain utilization rates for the U.S. steel industry for any year; instead, it provides utilization rates of the North America region which trails global utilization rates in 2016 and 2017.[233] However, the North America region includes the United States and ten other countries. Further, the report shows that the North America region's utilization rates were higher than the global utilization rates in five years (*i.e.*, 2008, 2012, 2013, 2014 and 2015). Thus, we find that the record evidence does not support the petitioners' claim. As a result, we have determined for these final results to rely on a target capacity utilization rate of 80 percent.

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

In addition to our decision to apply an 80 percent capacity utilization rate as a reasonable counterfactual in this final determination, 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

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[230] *Id.* at Exhibit 198: U.S. Department of Commerce, Bureau of Industry and Security Office of Technology Evaluation, "The Effect of Imports of Steel on the National Security - An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, As Amended," dated January 11, 2018.

[231] *See* PMS Clarification at Attachment 27 at 10: 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* PMS Clarification at Exhibit 24, "Technology and Steel Industry Competitiveness," dated June 1980.

[232] *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 14 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 85% is deemed close to full capacity utilization (Ecorys, 2008), in 2007 overcapacity was not an issue in the EU.".

[233] *See* PMS Clarification at Exhibit 15: U.S. Department of Commerce, International Trade Administration, Global Steel Trade Monitor, Global Steel Report, dated September 2018, at 7: "Global Capacity Utilization Rate," at 8 "Regional Capacity Utilization Rates;" and at 14 "Region definitions," "North America: Canada, Costa Rica, Cuba, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Panama, Trinidad and Tobago, United States."

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.[234]

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 petitioners who have argued that its effects cannot be undone by a one-off increase in global production.[235]

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

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.[236] Five years is a typical timeframe for strategic planning to outline the operational and financial objectives of an enterprise, including in the steel industry.[237] In addition, a five-year average for capacity utilization has been used in other steel policy initiatives of the U.S. government.[238]

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

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[234] *See* 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)).

[235] *See* U.S. Steel's Rebuttal Brief At 68-70 (arguing that an 85 percent capacity utilization rate is supported by "independent economic analysis and historical capacity usage figures").

[236] For example, five-year averages are used to show trends by the Korean Iron and Steel Institute, the Japan Iron and Steel Federation, and ALACERO, the Latin American Steel Association. Memorandum, "Placing New Factual Information on the Record," dated June 19, 2020.

[237] A recently released strategic plan presented by EUROFER, the European Steel Association, uses a five-year period. Memorandum, "Placing New Factual Information on the Record," dated June 19, 2020 (https://www.Eurofer.org/News%26Events/News/MANIFESTO%20European%20Steel%20202019.html).

[238] Treasury looked at five-year averages when establishing a minimum "fair" import price as part of the Trigger Price Mechanism (*Imported Steel Mill Products Trigger Price Mechanism: First Quarter 1980 Revision of Trigger Prices*, 44 FR 67748, November 27, 1979).

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 PMS.[239] 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 to the level of capacity utilization used by Commerce in that analysis.[240] Thus, as we have explained, in response to those expressed concerns, Commerce placed information on the record and invited comments and rebuttal information.[241] 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.[242] 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,[243] 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

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[239] *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); and *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).

[240] Specifically, interested parties have raised numerous arguments about the appropriate level of global steel capacity utilization to be relied on in calculating an adjustment. *See* SeAH's Letter, "Case Brief of SeAH Steel Corporation," dated January 3, 2020 at 30-40, 47-49; *see also* Husteel's Letter, "Oil Country Tubular Goods from the Republic of Korea, 9/1/2017-8/31/2019 Administrative Review, Case No. A-580-870: Case Brief," dated January 3, 2020 at 14; Hyundai Steel's Letter, "Certain Oil Country Tubular Goods from the Republic of Korea – Case Brief," dated January 3, 2020 at 34-40; US Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea: Rebuttal Brief of United States Steel Corporation," dated January 10, 2020 at 68-70; *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; and *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.

[241] *See* Memorandum, "Placing New Factual Information on the Record," dated June 19, 2020. To the extent that any interested party argues that Commerce was not accepting comments on the factual information placed on the record on June 19, 2020, Commerce invited parties to submit factual information to rebut, clarify, or correct" the information and stated that it would "not accept sur-rebuttal comments." Commerce did not indicate that it would reject comments on the June 19, 2020 factual information. *Id.*; *see also* Hyundai Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea: Objection to June 19th Information Release and Submission of Rebuttal Factual Information," dated June 24, 2020.

[242] *See* SeAH's Letter, "Administrative Review of Oil Country Tubular Goods from Korea for the 2017-18 Review Period – Request that the Department Remove New Factual Information from the Record," dated June 22, 2020 at 2-3; *see also* Hyundai Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea: Objection to June 19th Information Release and Submission of Rebuttal Factual Information," dated June 24, 2020 at 1-3.

[243] *See* PMS Allegation at Exhibit 55.

deficiencies which would have surprised or otherwise inconvenienced the parties by Commerce placing that data on the record.

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

Third, Commerce acted consistent with its past practice when Commerce has realized, upon consideration of arguments made by the parties later in a proceeding, that supplemental data might be beneficial.[244] Commerce's regulation and practice both are in accordance with Commerce's procedural requirements under the Act.

Fourth, section 782(g) of the Act provides parties with an opportunity to "comment on the information obtained by {Commerce} upon which the parties have not previously had an opportunity to comment." We have satisfied the requirements of that provision by allowing interested parties to respond to the June 19th memorandum. We understand that SeAH and Hyundai Steel argue that, although they were given an opportunity to comment on the steel reports and Wooldridge textbook exceprts, 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.[245] However, SeAH and Hyundai Steel argue for requirements in section 782(g) of the Act that 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

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[244] *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).

[245] *See* SeAH's Letter, "Administrative Review of Oil Country Tubular Goods from Korea for the 2017-18 Review Period – Request that the Department Remove New Factual Information from the Record," dated June 22, 2020 at 2-3; *see also* Hyundai Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea: Objection to June 19th Information Release and Submission of Rebuttal Factual Information," dated June 24, 2020 at 1-3.

be considered by Commerce in applying a potentially modified regression analysis.[246] Hyundai Steel argues 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 Hyundai Steel that in providing information on the record during a proceeding, including late in the proceeding, which Commerce believes might add value to an issue under consideration (in this case, the regression analysis used in Commerce's PMS adjustment), 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 addressed the legitimacy of the steel reports or provided arguments that suggested that the information contained within the 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 declines to remove the factual information from the record and has relied on it in these final results.

Arguments Based on Factual Information Rebutting the June 19th Information

In response to the factual information we placed on the record on June 19th, the parties placed rebuttal factual information on the record.[247] 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.

Hyundai Steel's response includes a 2020 OECD Report, "Latest Developments in Steelmaking Capacity." Hyundai Steel argues that this shows that global steelmaking capacity has been stable from 2015 through 2019 and that global capacity utilization for crude steel production in 2019 was 78.2%, which is the peak level in the 2000-2019 period.[248] However, the OECD report does not support the observation that steelmaking capacity was stable from 2015 through 2019. According to the report, global steelmaking capacity decreased from 2015 through 2018, "but the

[246] *See* U.S. Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea: Information to Rebut, Clarify, or Correct Aspects of Commerce's New Factual Information," dated June 24, 2020; Hyundai Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea: Objection to June 19th Information Release and Submission of Rebuttal Factual Information," dated June 24, 2020.
[247] *See* U.S. Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea: Information to Rebut, Clarify, or Correct Aspects of Commerce's New Factual Information," dated June 24, 2020; and Hyundai Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea: Objection to June 19th Information Release and Submission of Rebuttal Factual Information," dated June 24, 2020.
[248] *See* Hyundai Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea: Objection to June 19th Information Release and Submission of Rebuttal Factual Information," dated June 24, 2020, at Attachment A.

latest data suggests capacity increased in 2019 for the first time since 2014."[249] As shown in Figure 2, capacity grew precipitously in 2019 by more than 35 MMT from 2018 levels, a fluctuation contributing to already unsustainable levels of excess capacity.[250] For comparison, this 2018-2019 global capacity growth figure is more than the 2019 nominal capacity figures listed by the OECD for Canada (15.3 MMT), Mexico (27.7 MMT) or Italy – Europe's second largest steel producer (34.3 MMT).[251]

Hyundai Steel's rebuttal submission also contains another OECD Report, "Steel Market Developments: Q2 2020,"[252] which, Hyundai Steel submits, confirms the peak of crude steel production as a percentage of capacity achieved in 2019 and that global unused capacity declined between 2018 and 2019.[253] However, assessing the steel industry over a five-year period would capture the fluctuations which took place between 2018 and 2019. Although the gap between capacity and production narrowed slightly between 2018 and 2019, substantial excess capacity still remains, causing distortions in the market.[254]

Hyundai Steel's rebuttal submission includes Commerce's "Steel Industry Executive Summary: February 2020," which provides information on the U.S. steel industry situation.[255] Hyundai Steel asserts that the Department's report confirms that U.S. imports of steel products declined in 2019 as compared to 2018, and at the same time, the U.S. steel industry's production and capacity utilization in 2019 was higher than in 2018.[256] We note that assessing the steel industry over a five-year period would capture the experience in the U.S. steel industry in 2018–2019. Even though U.S. steel imports declined in 2019, the report indicates that import penetration/percentage of steel demand captured by imports was24.6%, which is significant.

Hyundai Steel's rebuttal submission also includes an April 2020 news report, "World Steel Association delays release of April Short Range Outlook,"[257] citing the Covid-19 global pandemic and the ensuing economic crisis as impacting U.S. steel demand and supply.[258] We note that a delay in World Steel's release of the April 2020 short range outlook is not material to our determination, given that it pertains to the situation in the spring of 2020 and beyond.

Calculation of the PMS Adjustment

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

[249] *Id.* at Attachment A page 9.
[250] *Id.*
[251] *Id.* at Attachment A pages 34-36.
[252] *Id.* at Attachment B.
[253] *Id.* at 4.
[254] *Id.* at Attachment B page 7.
[255] *Id.* at Attachment C.
[256] *Id.* at 4.
[257] *Id.* at Attachment D.
[258] *Id.* at 4.

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

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),[259] and error term (ε_i).[260] Each of the regression coefficients (*i.e.*, the slope coefficient or "beta") measures the relationship between the dependent variable and the respective independent variable where all other variables are held constant. For the regression model used in this review, the dependent variable is import AUV, and the set of independent variables are global uneconomic capacity, global aluminum prices, global iron ore prices, global scrap prices, the country-specific US$ exchange rate, and country-specific gross fixed capital formation (GFCF).[261]

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:

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

which simplifies to

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

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

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

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

[260] The error term captures the unobserved factors affecting the dependent variable that are uncorrelated with the independent variables

[261] *See* PMS Allegation at Exhibit 25.

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

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

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

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

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

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

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

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

In the instant review, the most contemporaneous year is 2017. The data on the record needed to make the adjustment are the following (units in MT):

$GlobalCap_{2017}$	2,240.10
$GlobalProd_{2017}$	1,729.80
$GlobalProd_{2016}$	1,626.95
$GlobalProd_{2015}$	1,620.00
$GlobalProd_{2014}$	1,669.45
$GlobalProd_{2013}$	1,650.35
$GlobalProd_{max}$	1,669.45
$CapUtilRate$	0.80
$\beta_{UneconCap}$	-.4562

Using the equations defined above:

$$GlobalCap_{cf} = 1{,}65.31 \div 0.80 = 2{,}074.14$$

$$UneconCap_{cf} = 2{,}074.14 - 1{,}669.45 = 404.69$$

$$UneconCap_{2017} = 2{,}240.10 - 1{,}669.45 = 570.65$$

$$change\ in\ AUV = \left(\frac{404.69}{570.65}\right)^{-.4562} - 1 = .1713$$

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

Comment 2: Application of CV Profit and Selling Expense Ratios to PMS-Adjusted Costs

SeAH's Comments:[262]

- If Commerce continues to apply a PMS adjustment to HRC costs, Commerce should either apply the CV profit and selling ratios to the unadjusted manufacturing costs or adjust the ratios to account for the PMS adjustments in the denominators of the ratio calculations.
  - Commerce improperly inflated the selling and profit amounts included in CV due to a mathematically unbalanced calculation whereby the denominators to the ratios and the per-unit costs to which the ratios are applied are not on the same basis.
  - The regression analysis adopted in the *Preliminary Results* indicates that global hot-rolled coil prices are too low, thus, the cost of goods sold reported in the surrogate financial statements would likewise be too low and result in overstated ratios.

Maverick's Rebuttal Comments:[263]

- Commerce should reject SeAH's proposal to either apply the CV profit and selling ratios to unadjusted per-unit costs or to account for the PMS adjustment in the denominators of the ratio calculations.
  - The purpose of the PMS adjustment is to remedy the alleged price distortions and balance the equation, thus, without the adjustment, CV profit and selling expenses would be applied to a distorted per-unit cost of manufacture.
  - There is no evidence that the Tenaris and TMK profits are overstated. Rather, the TMK profits are understated due to the negative currency translation effect on its financial statements.

Commerce Position:

For these final results, we have continued to apply the CV profit and selling expense ratios derived from the surrogate financial statements to respondents' PMS-adjusted costs. The PMS adjustment corrects the distortions induced by the PMS observed in the Korean market and resets the HRC component of the respondents' costs to fair market values. Thus, after the PMS adjustment the respondents' costs more accurately reflect "the COP in the ordinary course of trade" as envisioned under section 773(e) of the Act. Hence, we find applying the CV profit and selling expense ratio to the unadjusted, distorted COPs would result in distorted profit and selling expenses. Furthermore, applying a PMS adjustment to the denominators used in the CV profit and selling expense ratios would likewise distort the calculations. There is no evidence nor any allegation that the costs in the surrogate financial statements are distorted. Accordingly, for

[262] *See* SeAH Case Brief at 46-49.
[263] *See* Maverick Rebuttal Brief at 12-13.

these final results, we have applied the CV profit and selling expense ratios to the PMS-adjusted figures which reflect the respondents' COPs in the ordinary course of trade.

Comment 3: Calculation of CV Profit and Selling Expenses

In the *Preliminary Results*, Commerce relied on the 2018 financial statements of Tenaris S.A. (Tenaris) and PAO TMK (TMK) for the calculation of CV profit and selling expenses under section 772(e)(2)(B)(iii) of the Act. While relying on both financial statements for the calculation of CV profit, Commerce found that the Tenaris financial statements were not sufficiently detailed to remove movement expenses from selling expenses and relied solely on TMK's financial statements for calculating CV selling expenses.[264]

Hyundai Steel's Comments:[265]

- In accordance with the preferred method, Commerce should use Hyundai Steel's non-viable POR home market sales of non-prime OCTG, *i.e.*, actual amounts incurred and realized on home market sales of Korean-produced OCTG, to calculate Hyundai Steel's CV profit and selling expenses.[266] Since Hyundai Steel experienced a loss on its home market sales of non-prime OCTG, Hyundai Steel's CV profit should be set to zero.
- If Commerce determines not to use Hyundai Steel's own data, Commerce should use SeAH's third country OCTG sales which would satisfy the statutory preference to base the components of CV on the experience of other respondents subject to the review.
- If Commerce continues to rely on surrogate financial statements, Commerce should exclude the Tenaris financial statements.
  - With less than four percent of sales in Asia and employees in only two Asian countries, Tenaris has virtually no presence in Asia, much less in the Korean market.
  - Tenaris's products, operations, and customer base are specialized and vastly different, not only from Hyundai Steel, but from most of the world's OCTG producers.
    - Tenaris's product mix and customer base differ from Hyundai Steel's as it produces mostly high-end premium seamless pipe for the energy sector, while Hyundai Steel produces only electric resistance welded (ERW) pipe.
    - Tenaris is predominantly a steel pipe producer, while Hyundai Steel is an integrated steel producer with a wide array of steel products, of which, only a small portion represent steel pipe.
  - Commerce appropriately found in the *Preliminary Results* that the Tenaris financial statements are not sufficiently detailed to calculate CV selling expenses.
- If Commerce continues to rely on surrogate financial statements, Commerce should rely solely on the TMK financial statements. In doing so, Commerce's *Preliminary Results* calculation should be adjusted to include TMK's share of an associate's profit ($(606)) and TMK's share of the loss on disposals of subsidiaries ($23,732) in the total expenses.

SeAH's Comments:[267]

[264] *See Preliminary Results* PDM at 18.
[265] *See* Hyundai Steel's Case Brief at 6-12.
[266] *Id.* at 6 (citing section 772(e)(2)(A) of the Act).
[267] *See* SeAH's Case Brief at 40-45 and 49-50.

- Commerce should use the actual results from SeAH's third country OCTG sales (Canada, the Netherlands, and Kuwait) to calculate CV profit.
  - Although Commerce disregards sales in non-viable markets when calculating CV profit under 772(e)(2)(A) of the Act, Commerce should explain why such sales cannot be considered an "other reasonable method" under 772(e)(2)(B)(iii) of the Act.
  - Although small in comparison to its U.S. sales, SeAH's third-country sales still reflect large quantities and values (*e.g.*, SeAH sold 4,000 tons for US$ 5 million in Canada).
  - Unlike the surrogate financial statements used in the *Preliminary Results*, SeAH's third country sales are not contaminated with the results from non-subject product sales and they represent the actual profit on OCTG sales by a Korean producer.
- Commerce should use the actual selling expenses incurred on SeAH's third country OCTG and home market pipe sales to calculate CV selling expenses since, unlike the surrogate financial statements used in the *Preliminary Results*, these selling expenses represent the actual experience of a Korean OCTG producer.
- If Commerce continues to rely on surrogate financial statements, Commerce should make the following changes.
  - Commerce should exclude the Tenaris financial statements since they are predominantly U.S. sales (48 percent to North America) and reflect massive subsidies ($6,000,000 grant from the government of Texas in 2013).
  - Commerce should include the Chung Hung Steel Corporation (Chung Hung) 2018 financial statements despite largely reflecting non-OCTG sales, since Commerce has previously found it appropriate to use the financial statements of a company whose OCTG sales represent "an extremely small portion" of its total sales.[268]
  - Commerce should find that Hyundai Steel's home market sales of OCTG, and not the sales by the non-Korean surrogates, are the most reasonable choice for the profit cap.

Maverick's Comments:[269]

- Commerce should exclude TMK financial statements since they are an unsuitable surrogate in the instant POR.
  - TMK's 2018 profit was distorted by an unfavorable exchange rate that created a significant translation loss when the functional currency (rubles) was translated to the presentation currency (dollars) and also by the fiscal impact of "sanctions imposed on certain companies and individuals" in its home market.[270]
  - TMK and respondents have dissimilar business operations.
    - TMK is an integrated pipe producer producing from scrap whereas the respondents produce from hot-rolled coil.
    - The majority of TMK's sales are in Russia, while only a negligible portion, 0.17 percent, are in Asia.

[268] *Id.* at 45 (citing *SeAH Steel VINA Corporation v. United States*, Slip Op. 17-133 at 20, n.6. (CIT September 28, 2017)).
[269] *See* Maverick's Case Brief at 1-14.
[270] *Id.* at 9 (citing TMK 2018 Financial Statements).

        - Less than half of TMK's sales were of welded and seamless OCTG. Commerce has previously rejected a company with non-subject sales that "accounted for more than 50 percent of the company's sales during the POR."[271]
- Commerce should find that the Tenaris financial statements are the only suitable surrogate in the current POR.
    - Tenaris's functional currency is the U.S. dollar for nearly all subsidiaries so its consolidated results are undistorted by translation effects and are more representative of a global OCTG producer than TMK, and, consistent with Commerce practice, Tenaris's results better reflect sales in the United States as well as the home market.[272]
    - Tenaris's business operations are more representative of a Korean OCTG producer.
        - Similar to respondents, Tenaris produces from steel coils and plates.
        - Tenaris had sales in virtually every market where OCTG is sold including four percent in Asia, which is significantly greater than TMK's Asian sales.
        - Tenaris sells seamless and welded tubular products mainly for the oil and gas industry, particularly OCTG used in drilling operations.
- Despite Commerce's reservations in the *Preliminary Results*, Tenaris's financial statements can be used for calculating selling expenses by simply treating the entire line item for "commissions, freights, and other selling expenses" as movement expenses.
    - Based on the company's Annual Report, Tenaris would not normally pay commissions to third parties to market and sell products, therefore, such expenses would be negligible.
    - Based on the company's Annual Report, the "other selling expenses" include shipping and handling costs, which Commerce considers to be movement expenses.[273]
    - Consequently, the expenses other than those related to movement in the line item should be negligible and have minimal impact on the CV selling expense ratio.

Hyundai Steel's Rebuttal Comments:[274]

- Contrary to Maverick's claims, Tenaris is not a suitable surrogate – Tenaris's financial data is not representative of the production and sale of OCTG in Korea and Tenaris's products, operations and customer base bear no similarities to Hyundai Steel's.
- Tenaris's financial statements are not sufficiently detailed to allow for a proper calculation of CV selling expenses, thus, at a minimum, Commerce should affirm its decision not to use Tenaris for the calculation of CV selling expenses.
    - Maverick cannot provide support for its assumption that the "commissions, freight, and other selling expenses" line item is mostly comprised of movement expenses.
    - Maverick's proposed CV selling expense calculation would include Tenaris's G&A expenses in a CV calculation that already includes Hyundai Steel's G&A expenses.

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[271] *See* Maverick's Case Brief at 12 (citing *Certain Lined Paper Products from India: Notice of Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 10876 (February 28, 2011) (*Lined Paper India*)).
[272] *Id.* at 10 (citing *Lined Paper India*).
[273] *Id.* at 14 (citing *e.g.*, *Porcelain-on-Steel Cooking Ware from China: Final Results of Antidumping Duty Administrative Review*, 65 FR 31144 (May 16, 2000)).
[274] *See* Hyundai Steel's Rebuttal Brief at 57-62.

- Contrary to Maverick's claims, Commerce appropriately included TMK's financial statements in the calculation of CV profit and selling expenses.
  - Commerce includes currency translation gains and losses in the calculation of financial expenses, as did Hyundai Steel in its reported cost calculations,[275] thus, a currency translation loss is not a reasonable basis to disregard TMK's financial statements.
  - Unlike Tenaris, TMK produces merchandise within the same general category of OCTG and therefore its financial data is very representative of Hyundai Steel's operations.
- Since Maverick remains concerned about the representativeness of the surrogate financial statements, Commerce should find that the best available information is either the Hyundai Steel or SeAH data, which both satisfy the statutory preference for CV profit and selling expenses that reflect amounts incurred and realized on Korean production and sale of OCTG.

SeAH's Rebuttal Comments:[276]

- Contrary to Maverick's contentions, TMK's financial statements are not distortive nor are they less representative of a Korean OCTG producer than the Tenaris financial statements.
  - TMK's currency translation losses are not a reasonable basis to discard the company's financial statements.
    - Commerce routinely uses financial statements with currency translation gains and losses, and, in fact, incorporates these items as part of a company's net financial expenses in its antidumping calculations.[277]
    - Tenaris also recorded currency translation gains and losses in its financial statements.
  - Tenaris's use of a U.S. dollar functional currency does not make it more representative than TMK. In this regard, if such were a criterion, TMK's reporting methodology is more similar to a Korean producer, since SeAH, like TMK, does not use a U.S. dollar functional currency, but rather has global operations that must be converted from various foreign currencies into Korean won.
  - Tenaris sells many non-OCTG products, including line pipe, which Commerce has determined "not to be in the same general category" as OCTG,[278] and provides management services, neither of which are representative of profit from the sale of OCTG.
  - That Tenaris had more sales in Asia than TMK is irrelevant and does not make Tenaris more representative of a Korean producer since the Korean respondents did not have viable home markets nor did they have significant sales in Asia.
  - TMK is a significant OCTG producer with sales around the world, and, in fact, Tenaris recognizes TMK as one of its "principal competitors in steel pipe markets worldwide."[279]

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[275] *See* Hyundai Steel's Rebuttal Brief at 61 (citing Hyundai Steel's April 17, 2019 SDQR at Exhibit D-13).
[276] *See* SeAH Rebuttal Brief at 10-19.
[277] *Id.* at 11-12 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737-01 (March 4, 1997) at Comment 3; and *Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 65 FR 68976 (November 15, 2000), and accompanying IDM at Comment 3).
[278] *See* SeAH's Rebuttal Brief at 14 (citing *Final Redetermination Pursuant to Court Remand in Husteel Co., ltd., et al., v. United States*, Consol. Court No. 14-00215, dated February 22, 2016).
[279] *See* SeAH's Rebuttal Brief at 15 (citing Tenaris 2018 Financial Statements at 15-16).

- Commerce correctly found that Tenaris's financial statements do not permit an accurate calculation of CV selling expenses, therefore, Commerce should not use Maverick's proposed CV selling expense calculation which relies on the Tenaris financial statements.
  - There is no information to determine that the non-movement expenses included in the line item for "commissions, freight and other selling expenses" were in fact negligible.
  - Commerce does not look behind the line items in surrogate financial statements since Commerce does not know "all of the components of the various line items in surrogate financial statements, {thus} adjusting those statements may not make them any more accurate and indeed may only provide the allusion of precision."[280]
- Tenaris's financial statements are not the best information available since the company's results reflect massive subsidies and are predominantly comprised of sales to North America, whereas, Maverick has failed to identify any legitimate basis to disregard the TMK data.

Maverick's Rebuttal Comments:[281]

- The Hyundai Steel and SeAH data cannot be used. Commerce has already considered and rejected the use of non-viable markets for the calculation of CV profit and selling expenses both in the *Preliminary Results* of this review and in prior segments of this proceeding.[282]
  - SeAH provides no support in the law, regulations, or practice for the use of non-viable markets to calculate CV profit and selling expenses. Further, it is illogical and at odds with the statute to use non-viable markets as an "other reasonable method" since Commerce has been forced to this provision precisely because there are no viable home or third country markets.
  - In addition to being non-viable, Hyundai Steel's home market sales cannot be used since 1) they were of non-prime merchandise and are therefore "not in the ordinary course of trade"; and, 2) they were sold at a net loss (Commerce does not rely on information for companies with no profit).[283]
  - In addition to being non-viable, SeAH's home market sales of pipe products cannot be used for CV selling expenses since they were not specific to OCTG and do not fall into the same general category of products as OCTG.[284]
- TMK should be rejected as a surrogate. However, if the TMK financial statements are used in the final results, Commerce should continue to exclude the investment-related activities in accordance with established practice.[285]

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[280] *See* SeAH's Rebuttal Brief at 16-17 (citing *Certain Steel Nail from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 28955 (May 20, 2015) (*Nails from Korea*), and accompanying IDM at Comment 4; and *Wooden Bedroom Furniture from the People's Republic of China: Final Results of the 2005-2005 Semi-Annual New Shipper Reviews*, 71 FR 70739 (December 6, 2006) (*WBF from China*), and accompanying IDM at Comment 5).

[281] *See* Maverick's Rebuttal Brief at 3-15.

[282] *Id.* at 4 (citing *Preliminary Results* PDM at 18; *e.g.*, *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 AR3*)).

[283] *See* Maverick's Rebuttal Brief at 5 (citing section 772 (e)(2)(A) of the Act and *e.g.*, *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review*, 72 FR 52052 (September 12, 2007) (*Shrimp from Vietnam AR1*)).

[284] *Id.* at 6 (citing section 772(e)(2)(B)(i) of the Act; and, *e.g.*, *OCTG Korea AR3*).

[285] *Id.* at 7 (citing, *e.g.*, *Biodiesel from Argentina*).

- Tenaris's sales are not predominantly in the United States.
  - As Commerce found in the investigation, Tenaris's profit experience is representative of OCTG sales across a broad range of geographical markets, including Korea, since over 50 percent of Tenaris's sales are made to non-U.S. customers and Tenaris operates a Korean sales office dedicated to hydrocarbon processing, power generation and OCTG markets.[286]
  - A portion of Tenaris's North American sales are in Canada where Tenaris's wholly owned subsidiary distributes steel products and employs 1000 individuals.
- Tenaris's 2018 financial statements do not indicate the receipt of subsidies.
  - SeAH's assertion regarding subsidies is not based on a formal government finding or statement that these are subsidies within the meaning of U.S. law, but rather on a screenshot from the internet.
  - There is no evidence that the 2013 grant inflated Tenaris's 2018 financial statement profit a full five years later.
- Commerce should continue to reject the Chung Hung financial statements since they primarily reflect the results for sales of products other than OCTG.
  - Commerce rejected the Chung Hung financial statements in the prior two reviews due to the company's low volume of OCTG sales, and, in fact, Commerce has rejected them in results published after the *OCTG from Vietnam* remand determination cited by SeAH.[287]
  - It is not necessary to resort to the Chung Hung financial statements, since there are other financial statements on the record that demonstrate a significantly higher relative portion of OCTG production.
- Commerce reasonably determined that the only possible profit cap is the profit calculated on the surrogate financial statements.
  - Hyundai Steel's home market sales were made at a net loss and cannot be used since Commerce does not rely on information for companies that do not earn a profit.[288]
  - With regard to the profit cap, the CIT has previously affirmed Commerce's reliance on the same financial statements used to calculate the CV profit ratio.[289]

Commerce Position:

Consistent with the *Preliminary Results*, we have continued to use the results from the Tenaris and TMK 2018 financial statements to calculate CV profit and selling expenses in these final results. As explained below, we find that the profit and selling expenses from the Tenaris and TMK financial statements represent the best sources for valuing SeAH's and Hyundai Steel's CV profit and selling expenses in the instant review, based on the criteria established under section 773(e)(2)(B)(iii) of the Act.

[286] *See* Maverick's Rebuttal Brief at 8 (citing Final Redetermination Pursuant to Court Remand, *Husteel Co., Ltd. v. United States*, Consol. Court No. 14-00215 at 17 (February 22, 2016)).
[287] *See* Maverick's Rebuttal Brief at 10-12 (citing *OCTG Korea AR3* and *OCTG Korea AR2*).
[288] *See* Maverick's Rebuttal Brief at 14 (citing, *e.g.*, *Shrimp from Vietnam AR1*).
[289] *See* Maverick's Rebuttal Brief at 14 (citing *Husteel Co. v. United States*, 180 F. Supp. 3d 1330, 1347 (CIT 2016); *NEXTEEL Co. v. United States*, 392 F. Supp. 3d 1276, 1290 (CIT 2019)).

In the instant review, SeAH and Hyundai Steel did not have viable home or third country markets to serve as a basis for NV. Thus, we based NV on CV consistent with section 773(a)(4) of the Act.

When calculating CV, Commerce's preferred method under section 773(e)(2)(A) of the Act is to base CV profit and selling expenses on "the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general and administration expenses, and for profits, in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the foreign market."

Citing 773(e)(2)(A) of the Act, Hyundai Steel argues that its CV profit and selling expenses should be based on the company's POR sales of non-prime OCTG in Korea, which, according to Hyundai Steel, fulfill the statutory preference for sales of the foreign like product in the home market. We find that this potential source for CV profit and selling expenses fails on several counts – it represents sales of non-prime products in a non-viable market, which were admittedly sold at a net loss.[290] Commerce has longstanding practices of disregarding both non-viable markets and non-profitable sales as sources for CV profit and selling expenses under section 773(e)(2)(A) of the Act.[291] Furthermore, Commerce has found that Hyundai Steel's non-prime OCTG is significantly downgraded such that it cannot be used for the same applications as prime product and is, therefore, not OCTG or products in the same general category for purposes of these proceedings.[292] Consequently, we find that Hyundai Steel's POR sales of non-prime OCTG, although transacted in the home market, do not reflect sales of the foreign like product made within the ordinary course of trade.

Absent a viable home or third country market, and absent any evidence of the actual amounts incurred or realized by SeAH or Hyundai Steel for profits in connection with the production and sale of a foreign like product, in the ordinary course of trade in Korea, we are unable to calculate CV profit and selling expenses using the preferred method under section 773(e)(2)(A) of the Act, *i.e.*, based on the respondent's own home market or third country sales made in the ordinary course of trade. In situations where we cannot calculate CV profit and selling expenses under section 773(e)(2)(A) of the Act, section 773(e)(2)(B) of the Act establishes three alternatives:

> (i) the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review… for profits, in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise, (ii) the weighted average of the actual amounts incurred and realized by exporters or producers that are subject to the investigation or review (other than the exporter or

[290] *See* Hyundai Case Brief at 7.
[291] *See e.g.*, *Certain Steel Nails from the Sultanate of Oman: Final Determination of Sales at Less Than Fair Value*, 80 FR 28972 (May 20, 2015), and accompanying IDM at Comment 1; and *Certain Stilbenic Optical Brightening Agents from Taiwan: Final Determination of Sales at Less Than Fair Value*, 77 FR 17027 (March 23, 2012), and accompanying IDM at Comment 2; where respondents did not have viable home or third country markets and Commerce stated it was therefore unable to calculate CV profit and selling expenses under section 772(e)(2)(A) of the Act; *see also e.g.*, *Shrimp from Vietnam AR1*; and, *OCTG Korea AR3*, where Commerce declined to use sources that did not have a profit and stated that a net loss was not a profit.
[292] *See* Comment 14.

> producer described in clause (i))… for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country, or (iii) the amounts incurred and realized… for profits, based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers (other than the exporter or producer described in clause (i)) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise {(*i.e.*, the "profit cap")}.

The statute does not establish a hierarchy for selecting among the alternatives for calculating CV profit and selling expenses.[293] Moreover, as noted in the SAA, "the selection of an alternative will be made on a case-by-case basis, and will depend, to an extent, on available data."[294] Thus, Commerce has discretion to select from any of the three alternative methods, depending on the information available on the record. In this case, Commerce is faced with choosing among several alternatives for CV profit based on available data that reflect at least one of the criteria noted above. We must, therefore, weigh the value of the available data and, in particular, determine which requirement is more relevant for this case based upon the record data before us. With each of the statutory alternatives in mind, we have evaluated the data available in the instant review and weighed each of the statutory alternatives to determine which surrogate data source most closely fulfills the aim of the statute. We continue to find that Commerce cannot rely on alternative (i) to calculate CV profit and selling expenses, or to solely calculate CV selling expenses, as argued by SeAH, because the other steel products produced by SeAH and Hyundai Steel, including Hyundai Steel's non-prime OCTG, are not in the same general category of merchandise as OCTG.[295]

Commerce also cannot rely on alternative (ii) because neither respondent made sales of OCTG in the home market (*i.e.*, Korea) in the ordinary course of trade. Therefore, Commerce must resort to the alternative under subsection (iii) *i.e.*, any other reasonable method.

In conducting this analysis, we note that the specific language of both the preferred and alternative methods appear to show a preference that the profit and selling expenses reflect: (1) production and sales in the foreign country; and (2) the foreign like product, *i.e.*, the merchandise under consideration. However, when selecting a profit rate from available record evidence, we may not be able to find a source that perfectly reflects both factors. In addition, there may be varying degrees to which a potential profit source reflects the merchandise under consideration. Consequently, we must weigh the quality of the data against these factors. For example, we may have profit information that reflects production and sales in the foreign country of merchandise that is similar to the foreign like product, but also includes significant sales of completely different merchandise, or profit information that reflects production and sales of the merchandise under consideration but no sales in the foreign country. Determining how specialized the foreign

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[293] *See* SAA, as reprinted in 1994 U.S.C.C.A.N. at 840 ("At the outset, it should be emphasized, consistent with the Antidumping Agreement, new section 773(e)(2)(B) does not establish a hierarchy or preference among these alternative methods. Further, no one approach is necessarily appropriate for use in all cases.").
[294] *Id.* at 840.
[295] The CIT upheld this decision from the less-than-fair-value investigation of *OCTG from Korea Final Determination. See Husteel Co. v. United States*, 180 F. Supp. 3d 1330, 1338-39 (*Husteel II*).

like product is, what percentage of sales are of the foreign like product or general category of merchandise, what portion of sales are to which markets, *etc.*, judged against the above criteria, may help to determine which profit source to rely upon.

On the record of this proceeding, we are faced with various alternative sources for calculating CV profit and selling expenses: (1) profit associated with SeAH's Canadian market sales, costs, selling and general expenses from *OCTG Korea AR1*; (2) SeAH's third-country sales of OCTG; (3) Hyundai Steel's home market sales of non-prime OCTG; (4) Hyundai Steel's home market sales of line pipe; (5) the audited 2018 and 2017 financial statements of Tenaris; (6) the audited 2018 and 2017 financial statements of TMK; (7) the audited 2018 and 2017 financial statements of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan); (8) the audited 2018 and 2017 financial statements of Chung Hung; (9) the audited 2018 financial statements of Nippon Steel and Sumitomo Metal Corporation (NSSMC); (10) the audited 2018 financial statements of Welspun Corp. Limited (Welspun); and, (11) the audited 2018 financial statements of Maharashtra Seamless Limited (Maharashtra).[296]

In the *Preliminary Results*, we considered the options advocated by interested parties for CV profit and selling expenses, and found that, for various reasons, most were not viable sources.[297] For instance, we found certain options primarily reflect the results of operations for products other than OCTG (*i.e.*, NSSMC, Chung Hung, Welspun) or lack sufficient detail to determine what portion of total sales revenues were OCTG products (*i.e.*, Borusan, Maharashtra), while other options do not show a profit on their sales (Hyundai Steel non-prime OCTG sales, SeAH OCTG sales to Kuwait), reflect sales data from non-viable markets (SeAH sales to Canada, the Netherlands and Kuwait), or reflect profit data for line pipe (*i.e.*, Hyundai Steel home market sales), which Commerce has previously determined not to be the same general category of merchandise as OCTG. Further, we also found that SeAH's CV profit and selling data from the first administrative review, while specific to OCTG and meeting the market viability test during the first administrative review, had become too removed in time to be considered a viable option for determining a CV profit rate for this POR. Consequently, for the *Preliminary Results*, we preliminarily found that the 2018 financial statements for Tenaris and TMK were the best source for determining CV profit and selling expenses in the instant review for both Hyundai Steel and SeAH.

For these final results, the interested parties argue that the combined Tenaris and TMK data used in the *Preliminary Results* should be disregarded and one of the following options adopted as the source for CV profit and selling expenses: (1) Hyundai Steel's home market sales of non-prime OCTG under section 772(e)(2)(A) of the Act; (2) SeAH's non-viable third country market sales of OCTG to Canada, the Netherlands, and Kuwait under section 772(e)(2)(B)(iii) of the Act; (3) the 2018 financial statements for Tenaris (excluding TMK) under provision (iii); (4) the 2018

[296] Hyundai Steel submitted its own home market sales of non-prime OCTG and line pipe, the 2018 financial statements of TMK, Borusan, and NSSMC, and the 2017 financial statements of Chung Hung, Borusan, Tenaris and TMK. *See* Hyundai CV Profit submission. SeAH submitted its own third-country sales of OCTG and the 2018 financial statements of TMK, Borusan, Chung Hung, and Welspun. *See* SeAH CV Profit submission. Maverick submitted the SeAH Canadian sales data from *OCTG Korea AR1*, and the 2018 financial statements of Maharashtra and Tenaris. *See* Maverick CV Profit submission.

[297] *See Preliminary Results* PDM at 18.

financial statements for TMK (excluding Tenaris) under provision (iii); or, (5) the 2018 financial statements for both TMK and Chung Hung under provision (iii).[298]

In evaluating the different alternatives on the record, we continue to find that the combined CV profit and selling expense ratios based on the Tenaris and TMK 2018 financial statements constitute the best information available on the record. We find that Tenaris and TMK are significant producers and sellers of OCTG, thus, their business operations and products are most similar to those of Hyundai Steel and SeAH. Tenaris produces both seamless and welded steel tubular products, particularly OCTG used in drilling operations, and, in 2018, over 50 percent of their sales were to end users in non-U.S. markets.[299] TMK also produces seamless and welded OCTG and, in 2018, TMK identified OCTG as a key segment that comprised 48 percent of the company's sales revenues.[300] TMK also produces drill pipe, a product in the same general category as OCTG.[301] Furthermore, in 2018, TMK boasted a 13 percent share of the global OCTG market with over 75 percent of its sales to end users in non-U.S. markets.[302] Furthermore, we our approach is consistent with the approach in *Husteel II*, where the Court affirmed that Commerce's use of the Tenaris and TMK data for the calculation of CV profit and selling expenses was reasonable.[303] The Court further found that because none of the record data reflected both statutory preferences, *i.e.*, production and sales in the foreign country of the foreign like product, Commerce was forced to choose among imperfect choices and the Court would not undermine such decision so long as it is reasonable.[304]

We do not find the alternatives raised by the interested parties to be superior to the combined CV profit and selling expense ratios based on the Tenaris and TMK data. First, as explained above, the Hyundai Steel home market data fails under section 772(e)(2)(A) of the Act since the non-prime sales are not OCTG and the sales were not made in the ordinary course of business, *i.e.*, transacted in a non-viable market at a net loss. We also find SeAH's third country market data to be unusable under section 772(e)(2)(B)(iii) of the Act because SeAH's sales to the Canadian, Dutch and Kuwaiti markets during the POR failed Commerce's viability test.[305] We perform our viability test to ensure that there is an adequate population of sales to serve as the basis for normal value.[306] As Commerce has previously noted, it would be inconsistent and unreasonable for Commerce to not use certain sales for normal value because the market is not viable, but then use the profit on those same sales to calculate a CV-based normal value.[307] In fact, the use of such data would absurdly result in constructing the very prices that were rejected since price is equal to cost plus profit. Although SeAH contends that non-viable markets should be considered

[298] *See* Hyundai Case Brief at 6-11, advocating its own POR home market data, SeAH's POR third country market data, or the 2018 financial statements for TMK; SeAH Case Brief at 40-44, advocating its own third country data or the 2018 financial statements of TMK and Chung Hung; and, Maverick Case Brief at 1-14, advocating the 2018 financial statements of Tenaris.
[299] *See* Maverick CV Profit submission, Exhibit 14, Tenaris 2018 Annual Report at 13 and 22.
[300] *See* Hyundai CV Profit submission, Exhibit 6, TMK 2018 Annual Report at 14.
[301] *See* Hyundai CV Profit submission, Exhibit 6, TMK 2018 Annual Report at 16.
[302] *See* Hyundai CV Profit submission, Exhibit 6, TMK 2018 Annual Report at 5 and 15.
[303] *See Husteel II* at 1343-1346.
[304] *See Husteel II* at 1346 (citing *Lifestyle Enter, Inc. v. United States*, 751 F. 3d 1371, 1378, 1380 (CAFR 2014)).
[305] *See* SeAH March 27, 2019 SAQR at 2.
[306] *See Nails from Korea* and accompanying IDM at Comment 4.
[307] *See, e.g.*, *Atar S.r.L v. United States*, 637 F. Supp. 2d 1068, 1083 (CIT 2009); *Nails from Korea* and accompanying IDM at Comment 4.

an "other reasonable method," we find this logic, that it is unreasonable to reject non-viable markets for normal value but at the same time use them for constructing CV when normal value is based on CV, prevails both under section 772(e)(2)(A) of the Act as well as under 772(e)(2)(B) of the Act. Moreover, the record contains profit data from OCTG producers, Tenaris and TMK, that does not suffer from viability concerns. Therefore, on balance, we determine that the use of SeAH's POR sales of OCTG to Canada, the Netherlands, and Kuwait, which fail Commerce's viability test, (and given there are alternative sources of data that do not suffer from the market viability concerns), do not provide reasonable methods for the calculation of CV profit and selling expenses under section 772(e)(2)(B)(iii) of the Act.

We also find Chung Hung's financial statements not to be specific to the OCTG industry since only 6.8 percent of the company's 2018 sales pertain to steel pipe, and an even smaller percentage than this amount would reflect sales of OCTG.[308] These non-OCTG products include, among others, hot-rolled steel coils, cold-rolled steel coils, hot-dipped galvanized steel coils, JIS steel pipes, ASTM steel pipes, and PE coated steel pipes.[309] Furthermore, Chung Hung's customer base does not correspond with a global OCTG producer since Chung Hung identifies its main customers as downstream single cold-rolling plants, galvanization plants, and pipe production plants and states that other industries using its products include construction, transportation vehicles, industrial machinery, and electrical machinery.[310] Despite these facts, SeAH argues that in the Vietnam OCTG proceeding Commerce accepted financial statements with very small portion of OCTG sales and should therefore accept the Chung Hung financial statements in this administrative review. We disagree. Our selection of a surrogate is a case specific evaluation that is confined to the information on the record of each specific case. Commerce must weigh the available information to make a case specific decision as to what constitutes the best available information. In *SeAH VINA*, the Court acknowledged that Commerce faced imperfect options which included two potential surrogates, one that had no OCTG sales and one that had very little OCTG sales.[311] Given the unique nature of OCTG, Commerce has found that it is particularly important to use financial statements from a producer of identical merchandise.[312] Therefore, because there was no other option that included OCTG sales, Commerce was compelled to rely on the surrogate financial statements that included only a small portion of OCTG sales. In the instant case, we have on the record two surrogate financial statements which reflect significant OCTG sales. Hence, we find it unnecessary to rely on the Chung Hung financial statements which include OCTG sales that represent less than 6.8 percent of the company's total sales.[313]

Citing various potential flaws, SeAH and Hyundai Steel argue that the Tenaris financial statements must be rejected, while Maverick argues that the TMK financial statements must be rejected. First, all parties allege that their selected surrogate is more representative of a Korean OCTG producer, and in particular, more representative of the products, business operations, and customer bases of the respondents in this administrative review. In this regard, we do not find

[308] *See* SeAH CV Profit submission, Exhibit 2, Chung Hung 2018 Annual Report at 8.
[309] *Id.*, Chung Hung 2018 Annual Report at 11.
[310] *Id.* Chung Hung 2018 Annual Report at 106.
[311] *See SeAH Steel VINA Corp. v. United States*, 269 F. Supp. 3d 1335, 1350 (CIT September 28, 2017).
[312] *Id.*
[313] *See* SeAH CV Profit submission, Exhibit 2, Chung Hung 2018 Annual Report at 8.

that the products, business operations, and customer bases of either Tenaris or TMK align with respondents in such a way that one of the two potential CV profit sources is a superior option. In comparing their business operations and products, we find that SeAH and Tenaris both produce pipe from substrate, while TMK is an integrated producer manufacturing OCTG from self-produced substrate and Hyundai Steel is an integrated producer who manufactured OCTG from both self-produced and purchased substrate. Additionally, both potential surrogates produce seamless and welded OCTG, while both respondents produce only welded OCTG. Citing *Lined Paper India*, Maverick also argues that the TMK data should be rejected since Commerce has rejected companies when greater than 50 percent of their sales were non-subject products. However, the facts in *Lined Paper India* are distinguishable from the instant case. In *Lined Paper India*, Commerce noted that the rejected surrogate had three divisions producing non-subject merchandise, of which, one accounted for more than 50 percent, while the selected surrogate engaged only in the production of lined paper products.[314] In contrast, in the instant case, there is no information to suggest that either Tenaris or TMK only produce OCTG. Furthermore, as noted above, Commerce must weigh the available information on a case by case basis to determine what constitutes the best available information on the record of each case. The interested parties also debate which potential surrogate's results incorporate the most sales in Asia. However, with no evidence of OCTG sales in Korea, *i.e.*, the foreign market, we rather find the crucial point is to confirm that the potential surrogate data is not tainted with a large portion of sales to the United States. As noted above, both TMK and Tenaris have significant non-U.S. sales. Thus, when considering the products, business operations and customer bases of Tenaris and TMK to those of SeAH and Hyundai Steel, we find no compelling distinctions that render one surrogate superior to the other.

Second, SeAH argues that the Tenaris 2018 financial statements are an unsuitable option since they are likely tainted by massive subsidies received in 2013. We have examined Tenaris's 2018 Annual Report and financial statements finding no evidence of recent subsidies or evidence that the 2018 results are distorted by subsidies that may have been received by a Tenaris subsidiary in 2013. Therefore, we do not find that the Tenaris 2018 financial statements should be excluded due to subsidies.

Thirdly, Maverick argues that the TMK financial statements are an unsuitable option since they contain a significant currency translation loss. It is Commerce's practice to include all foreign exchange gains and losses, including translation gains and losses, presented on a company's income statement in the calculation of the reported costs.[315] Consequently, we do not find the presence of foreign currency translation losses on the company's income statement to be an adequate reason to exclude the TMK financial statements.

Hyundai Steel argues that if Commerce continues to use the TMK financial statements in the final results, Commerce's preliminary calculation should be amended to include TMK's share of its associate's profit and TMK's share of the loss on disposals of subsidiaries. We disagree.

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[314] *See Lined Paper India* IDM at Comment 3.

[315] *See, e.g.*, *Fine Denier Polyester Staple Fiber from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 24743 (May 30, 2018), and accompanying IDM at Comment 11; and *Micron Technology v. United States*, 893 F. Supp. 21, Slip Op. 95-107 (CIT 1995) at 5.

Both items constitute investment activities. It is our well-established and consistent practice to exclude gains and losses on investment activities from the reported costs as investment activities are considered a separate profit-making activity not related to the company's normal operations.[316]

Finally, SeAH argues that Hyundai Steel's home market sales of OCTG, and not the sales by the non-Korean companies, are the most reasonable choice for the profit cap. As described above, Hyundai Steel's home market sales were found to be an unsuitable surrogate for the calculation of CV profit and selling expenses since they consist of non-prime product found not to be OCTG or in the same general category of products and were sold in a non-viable market at a net loss. Consequently, for these same reasons we find Hyundai Steel's home market sales to be unsuitable for the profit cap.

Because there is no Korean market general category of products profit information on the record of this proceeding, Commerce is unable to calculate a profit cap based on the actual amounts reported in accordance with the statutory intent under section 773(e)(2)(B)(iii) of the Act, *i.e.*, "the amount normally realized by exporters or producers… in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise." There is no profit information for sales in Korea of OCTG and products in the same general category on the record. Furthermore, the profit cap relied on in the prior review, *i.e.*, SeAH's CV profit and selling data from the first administrative review, while specific to OCTG, does not represent sales in the Korean market and has become too removed in time to be considered a viable option for determining either a CV profit rate or a CV profit cap for this POR. Therefore, the Tenaris and TMK profit data is the best data to be used as the "facts available" profit cap. Moreover, the Tenaris and TMK financial statements were used for both CV profit and the "facts available" profit cap in the redetermination before the CIT.[317] In sustaining Commerce's CV profit calculation, the Court stated that Commerce's use of the same rate for the profit cap was reasonable considering the record of the case.[318] While Commerce's use of the same rate for CV profit and the profit cap is essentially a failure to calculate a profit cap, the court could not say it was unreasonable since Commerce was faced with a difficult decision as all of the information on the record had imperfections.[319] Accordingly, consistent with *Husteel II*, for these final results, we have relied on the Tenaris and TMK data for CV profit and the profit cap.

[316] *See, e.g.*, *Ripe Olives from Spain: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 28193 (June 18, 2018), and accompanying IDM at Comment 26; and *Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Final Results of Antidumping Duty Administrative Review*, 72 FR 9924 (March 6, 2007) (*OCTG Korea 04-05*), and accompanying IDM at Comment 1.
[317] *See Husteel II*, 180 F Supp. 3d at 1337.
[318] *Id.*.
[319] *Id.*.

Comment 4: Differential Pricing

SeAH Case Brief:[320]

Commerce is required to justify the numerical thresholds used in the differential pricing analysis based on substantial evidence on the record.

- In the *Preliminary Results*, Commerce applied its differential pricing analysis to determine whether there was a pattern of prices for comparable merchandise that differed significantly among purchasers, regions, or time periods for SeAH's U.S. sales.[321] Commerce's use of the differential pricing analysis is both mathematically and legally improper.
- In order to adopt apparently arbitrary cut-offs (such as those used in the differential pricing analysis) Commerce must either follow the requirements of the Administrative Procedures Act (including its notice-and-comments requirements), or explain in each case why any of the numerical thresholds used in connection with the test are appropriate in the context of each specific case. Commerce has done neither of those things here.
    - This principle was recognized by the CIT and CAFC in cases addressing the *de minimis* standard applied by Commerce in investigations.[322] In the past, Commerce applied a 0.5 percent *de minimis* standard as a matter of policy, but without a specific provision in the regulations for it at the time. In litigation, the CIT and CAFC held that because the *de minimis* standard had not been promulgated as a regulation in accordance with the provisions of the APA, Commerce was not permitted to apply that rule automatically in every case.[323] Thus, under the principles recognized in *Carlisle Tire* and *Washington Raspberries*, Commerce's use of the differential pricing analysis can be sustained only if it provides both evidence and analysis showing why the cut-offs used the 0.8 cut-off used for the Cohen's *d* test and the 33- and 66-percent cut-offs used for the "ratio test."

The 0.8 cut-off used in the Cohen's d test portion of the differential pricing analysis is not supported by substantial evidence on the record.

- When Commerce first applied its differential pricing analysis, it asserted that the reliance on the Cohen's *d* test (and, in particular, on the 0.8 cut-off for determining whether an effect size is large) is appropriate because the cut-offs proposed by Professor Cohen "have been widely adopted."[324] However, Professor Cohen himself made clear that his proposed cut-offs could only appropriately be applied in specific circumstances —where "samples, each of *n* cases, have been randomly and independently drawn from normal populations," and where the two samples do not have "substantially unequal variances" or "substantially unequal sample sizes (whether small or large)."[325]

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[320] *See* SeAH Case Brief at 61-76.
[321] *See* SeAH's Case Brief at 61-62 (citing Preliminary Calculation Memorandum at 3).
[322] *Id*. at 63-65 (citing *Carlisle Tire v. United States*, 634 F. Supp. 419, 423 (CIT 1986) (*Carlisle Tire*); *Washington Red Raspberry Commission. v. United States*, 859 F.2d 898, 903 (Fed. Cir. 1988) (*Washington Raspberries*); *IPSCO v. United States*, 687 F.Supp. 614, 630-31 (CIT 1988) (*IPSCO*)).
[323] *Id*.
[324] *Id*. at 66 (citing *Final Results of the Antidumping Duty Administrative Review: Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea; 2013-2014*, 81 FR 46647 (July 18, 2016), and accompanying IDM at 15).
[325] *Id*. at 66 (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 31750 (July 10, 2017) and *OCTG Korea AR1 Final*

- In past cases, Commerce admitted that Professor Cohen placed such limitations on his analysis, but maintained that those limitations applied only to the section describing the "Introduction and Use" of his chapter on the "The T Test for Means."[326] According to Commerce, the "The T Test for Means" is irrelevant to the differential pricing analysis, because "this concerns the statistical significance of the difference in the means for two sampled sets of data, and is not relevant when considering whether this difference has a practical difference."[327]
- While Commerce may consider the "The T Test for Means" to be irrelevant to its goal of identifying "targeted dumping," it was very much relevant to Professor Cohen's development and presentation of his *d* statistic, and the various cut-offs he proposed for determining whether *d* is small, medium, or large. While the title of Chapter 2 of *Statistical Power* is "The T Test for Means," Professor Cohen's entire explanation of the *d* statistic is found in Chapter 2 and is the only subject of that chapter.
- In past cases Commerce argued that its differential pricing analysis is not meant to be a "power analysis," and has claimed that the development and presentation of the *d* statistic was meant to establish a framework for something very different from the differential pricing analysis.[328] In other words, Commerce has taken a statistical tool that it claims was intended to provide a "T-Test for Means" in order to "guide researchers in their construction of a project in order to obtain a prescribed 'power,'" and used it for a purpose and in a situation that Professor Cohen never intended. As a result, nothing in *Statistical Power* supports Commerce's claim that the cut-offs used are "fixed thresholds" or can provide justification for Commerce's use of the *d* statistic in its differential pricing analysis in situations that are not consistent with the limitations that Professor Cohen described.
- As noted above, the *d* statistic can only be used where "samples, each of *n* cases, have been randomly and independently drawn from normal populations," and where the two samples do not have substantially unequal variances or sample sizes.[329] Commerce made no such determination with respect to SeAH's U.S. sales data meeting those requirements. In such circumstances, the *d* statistic simply does not provide meaningful results.
- As a separate matter, Commerce has asserted in the past that the conditions laid out by Professor Cohen are irrelevant because it is analyzing the complete population of the respondent's U.S. sales, and not just a sample. Mathematically, that assertion is untenable. Normal distributions — whether consisting of a sample or the entire population — have mathematical characteristics that non-normal distributions do not have. Professor Cohen explicitly relied on the mathematical characteristics of normal distributions in the development and justification of his proposed cut-offs.[330]
- Commerce's assertion that Professor Cohen's proposed cutoffs can be used whenever a complete population is being analyzed is completely unsupported by any evidence on the record. A number of academic analyses demonstrate that, when the conditions set out by

IDM at 22 (citing Cohen, *Statistical Power Analysis for the Behavioral Sciences* (2d ed. 1988) (*Statistical Power*) at 19-20)).

[326] *Id*. (citing *OCTG Korea AR1 Final* IDM at 22).

[327] *Id*.

[328] *Id*. at 68 (citing *OCTG Korea AR1 Final* IDM at 22, note 61; *Welded Line Pipe from Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015), and accompanying IDM at VI.B.1 and Comment 1).

[329] *Id*. (citing *OCTG Korea AR1 Final* IDM at 22, note 61).

[330] *Id*. at 70 (citing *OCTG Korea AR1 Final* IDM at 22-23, note 62).

Professor Cohen are not met, the *d* statistic ceases to be a useful measure of effect sizes. Commerce has not cited to any evidence to support its novel assertion that a parametric test designed for the analysis of two normally-distributed data sets with roughly equal number of data points and roughly equal variance can be used when none of those conditions exist, as long as the entire population is being considered.

The 33- and 66-percent cut-offs used in the "ratio test" portion of the differential pricing analysis are not supported by substantial evidence on the record.

- Commerce has never explained why the thresholds used in the "ratio test" should be 33 and 66 percent, and not some other numbers (such as 40 and 80 percent, 50 and 90 percent, or any two other numbers between 0 and 100), nor has it explained why a ratio between 33 and 66 percent calls for consideration of the transaction-to-average methodology only for the sales that "pass" the Cohen's *d* test, while a ratio of 66 percent or more calls for the application of the transaction-to-average methodology for all sales.[331] Commerce's numerical thresholds have not been established through notice-and-comment rulemaking, then they can only be upheld if supported by substantial evidence on the record in each case in which they are applied.[332]

The "differential pricing analysis" fails to explain why any patterns of price differences were not, or could not be, taken into account using an average-to-average comparison.

- The statute permits Commerce to depart from the normal A-to-A comparison to account for targeted dumping (in investigations) only if it "explains why such differences cannot be taken into account using" an A-to-A or transaction-to-transaction (T-to-T) calculation methodology.[333]
- The price differences that give rise to a finding of targeted dumping are primarily a function of the different treatment of negative dumping margins under Commerce's "standard" methodology where "zeroing" is not used, and its "alternate" methodologies where negative margins are "zeroed." Differences in dumping margins generated by the application of "zeroing" are not the same as differences in dumping margins caused by patterns of price differences by customer, region, or time period, and Commerce has failed to explain why those patterns cannot be addressed using the normal comparison methodologies.
- In addition, Commerce has not provided any support for its assertion that the difference in weighted-average dumping margins is "meaningful" when the weighted-average dumping margin crosses the *de minimis* threshold when using the alternative calculation instead of the average-to-average and alternative calculation method. Therefore, without a reasonable basis for that numerical threshold, Commerce's use of the *de minimis* measure to decide which margin calculation to apply is inherently arbitrary and improper.

[331] *Id*. at 72 (citing, *e.g.*, *OCTG Korea AR1 Final* IDM at 25).
[332] *Id*. at 73 (citing *Carlisle Tire*, 634 F. Supp. at 423; *Washington Raspberries*, 859 F.2d at 903; and *IPSCO*, 687 F. Supp. at 630-1).
[333] *Id*. (citing section 777A(d)(1)(B) of the Act).

Under the relevant provisions of the Statute, Commerce is not permitted to utilize an average-to-transaction comparison methodology for any of SeAH's U.S. sales.

- The Act normally requires Commerce to calculate dumping margins in investigations using one of two methodologies: by comparing an average NV to an average U.S. price, or by comparing the NVs for individual transactions to the U.S. prices for individual transactions.[334] As a general rule, the Act does not permit Commerce to compare an average NV to U.S. prices for individual transactions in an investigation.
- The statute provides an exception to this general rule when targeted dumping is found to exist, but that exception, which might permit Commerce to calculate dumping margins by comparing an average NV to U.S. prices for individual transactions, applies only when there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and if the administering authority explains why such differences cannot be taken into account using a method described in section 777A (d)(1)(A)(i) or (ii) of the Act.[335] If those conditions are not met, Commerce is not permitted to depart from the A-to-A (or T-to-T) methodology that is normally required in investigations.
- The conditions permitting the use of an average-to-transaction (A-to-T) comparison methodology are not satisfied in this case and the exception set forth in section 777A(d)(1)(B) of the Act does not apply, and Commerce is required by statute, to continue to calculate dumping margins using the A-to-A methodology for all of SeAH's U.S. sales in its final results.

Maverick's Rebuttal Brief:[336]

- As in other proceedings, SeAH challenges Commerce's use of its differential pricing analysis to determine whether there was a pattern of prices for comparable merchandise that differs significantly among purchasers, regions, or time period as mathematically and legally improper. More specifically, in this review, SeAH repeats the arguments it submitted most recently in *OCTG Korea AR3 Final*: (a) Commerce has not sufficiently explained or justified its analytical bases for the use of the certain cutoffs in the Cohen's *d* test (0.8 percent) and the ratio test (33 and 66 percent, respectively); (b) Commerce must explain its use of the methodology in every case; (c) that the differential pricing analysis must explain why an A-to-A or T-to-T methodology is insufficient to calculate a dumping margin; and (d) that Commerce's use of an A-to-T comparison methodology is contrary to the statute.[337] In the first three administrative reviews of the AD order on OCTG from Korea, Commerce specifically addressed and rejected these challenges.[338]
- The CIT and CAFC have also upheld Commerce's application of the differential pricing methodology.[339] In fact, the CIT recently upheld Commerce's differential pricing

[334] *Id*. at 75 (citing section 777A(d)(1)(A) of the Act).
[335] *Id*. (citing section 777A(d)(1)(B) of the Act).
[336] *See* Maverick's Rebuttal Brief at 28-32.
[337] *Id*. at 31 (citing *NEXTEEL*, 392 F. Supp. 3d at 1295-97).
[338] *Id*. (citing *OCTG Korea AR3 Final* IDM at 60-71).
[339] *Id*. (citing *Apex Frozen Foods Private Lt. v. United States*, 862 F. 3d 1337, 1344-51 (Fed. Cir. 2017) (*Apex IV*); *NEXTEEL I*, 355 F. Supp. 3d at 1354-57; *NEXTEEL II*, 392 F. Supp. 3d at 1294-97; and *APEX Frozen Foods Private Ltd. v. United States*, 144 F. Supp. 3d 1308, 1314-37 (CIT 2016) (*Apex II*)).

methodology in an appeal of *OCTG Korea AR2 Final*, in which SeAH likewise challenged the exact same aspects of the differential pricing methodology that it now raises before Commerce in its case brief.[340]

Commerce Position:

As an initial matter, we note that there is nothing in section 777A(d) of the Act that mandates how Commerce measures whether there is a pattern of prices that differs significantly or explains why the average-to-average (A-to-A) method or the transaction-to-transaction (T-to-T) method cannot account for such differences. On the contrary, carrying out the purpose of the statute[341] here is a gap filling exercise properly conducted by Commerce.[342] As explained in the *Preliminary Results*, as well as in various other proceedings,[343] Commerce's differential pricing analysis is reasonable, including the use of the Cohen's *d* test as a component in this analysis, and it is in no way contrary to the law.

We disagree with SeAH that the differential pricing analysis, including the Cohen's *d* test, is unreasonable, unlawful, or arbitrary. To the contrary, we note that the CAFC has upheld key aspects of Commerce's differential pricing analysis, including the application of the "meaningful difference" standard, which compares the rate calculated using the A-to-A method not using zeroing and the rate calculated using an alternative comparison method based on the A-to-T method using zeroing; the reasonableness of Commerce's comparison method in fulfilling the relevant statute's aim; Commerce's use of a "benchmark" to illustrate a meaningful difference between the A-A and A-T rates; Commerce's justification for applying the A-to-T methodology to all sales instead of just those that pass the Cohen's *d* test; Commerce's use of zeroing in applying the A-to-T methodology to all transactions; that the statute does not directly apply to reviews; Congress did not dictate how Commerce should determine if the A-to-A method accounts for targeted or masked dumping; Commerce may consider all sales in its "meaningful difference" analysis and consider all sales when calculating a final rate using the A-to-T method;

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[340] *Id*. at 32 (citing *NEXTEEL II*, 392 F. Supp. 3d at 1294-1297).

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

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

[343] *See, e.g., Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015), and accompanying IDM at Comment 1; *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2012-2013, 80 FR 32937 (June 10, 2015), and accompanying IDM at comments 1 and 2, and *Welded ASTM A–312 Stainless Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2013–2014, 81 FR 46647 (July 18, 2016) at Comment 4; and *Certain Hot-Rolled Steel Flat Products from Japan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 53409 (August 12, 2016), and accompanying IDM at Comment 8.

and it is acceptable to apply zeroing when using the A-to-T method.[344] In *NEXTEEL*, the CIT rejected SeAH's challenge to our differential pricing analysis and held that "the steps underlying the differential pricing analysis as applied by Commerce {are} reasonable."[345] As explained in the *Preliminary Results*, Commerce continues to develop its approach pursuant to its authority to address masked dumping.[346] In carrying out this statutory objective, Commerce determines whether "there is a *pattern of export prices* (or constructed export prices) for comparable merchandise *that differs significantly* among purchasers, regions, or periods of time, and…. why such differences cannot be taken into account using {the A-to-A or T-to-T comparison method}."[347] With the statutory language in mind, Commerce relied on the differential pricing analysis to determine whether these criteria are satisfied such that application of an alternative methodology may be appropriate.[348]

Because the statute does not explicitly discuss how Commerce should conduct its determination of less than normal value in reviews,[349] carrying out the purpose of the statute, here, is a gap filling exercise properly conducted by Commerce.[350] Commerce finds that the purpose of section 777A(d)(1)(B) is to evaluate whether the A-to-A method is the appropriate measure to determine whether, and if so to what extent, a given respondent is dumping the merchandise at issue in the U.S. market.[351] While "targeting" and "targeted dumping" may be used as a general expression to denote this provision of the statute, these terms impose no additional requirements beyond those specified in the statute for Commerce to otherwise determine that the A-to-A method is not appropriate based upon a finding that the two statutory requirements have been satisfied.[352] The CIT and the CAFC have upheld Commerce's application of its differential pricing analysis to evaluate the statutory requirements.[353]

SeAH presents several arguments regarding Commerce's differential pricing analysis in the *Preliminary Results*, the first of which is that Commerce should follow the APA to justify the numerical thresholds used in the differential pricing analysis, *i.e.*, the 0.8 cut-off used for the Cohen's *d* test and the 33- and 66-percent cut-offs used for the ratio test. As explained in past determinations, the notice and comment requirements of the APA do not apply "to interpretative

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[344] *See Apex II*; *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1322 (Fed. Cir. 2017) (*Apex III*); *Apex IV; Mid Continent Steel & Wire, Inc. v. United States*, 940 F.3d 662 (Fed. Cir. 2017) (*Mid Continent*).
[345] *See NEXTEEL II.*
[346] *See Preliminary Results* PDM.
[347] *See* section 777A(d)(1)(B) of the Act (emphasis added); *see also Tri Union*, 163 F. Supp. 3d 1255, 1302 ("{h}ad Congress intended to impose upon Commerce a requirement to ensure statistical significance, Congress presumably would have used language more precise than 'differ significantly.'").
[348] *See* 19 CFR 351.414(c)(1).
[349] *See Timken Co. v. United States*, 968 F. Supp. 2d 1279, 1286 & n. 7 (CIT 2014).
[350] *See Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843-44 (1984).
[351] *See* 19 CFR 351.414(c)(1).
[352] *See*, *e.g.*, *Samsung v. United States*, 72 F. Supp. 3d 1359, 1364 (CIT 2015) ("Commerce may apply the A-to-T methodology 'if (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and (ii) the administering authority explains why such differences cannot be taken into account using the A-to-A or T-to-T methodologies. *Id*. 1677f-1(d)(1)(B). Pricing that meets both conditions is known as 'targeted dumping.'").
[353] *See*, *e.g.*, *JBF RAK LLC v. United States*, 991 F. Supp. 2d 1343 (CIT 2014); *JBF RAK LLC v. United States*, 790 F.3d 1358 (Fed. Cir. 2015).

rules, general statements of policy, or rules of agency organization, procedure, or practice."[354] Further, Commerce normally makes these types of changes in practice (*e.g.*, the change from the targeted dumping analysis to the current differential pricing analysis) in the context of our proceedings, on a case-by-case basis.[355] As the CAFC has recognized, Commerce is entitled to make changes and adopt a new approach in the context of its proceedings, provided it explains the basis for the change, and the change is a reasonable interpretation of the statute.[356] The CAFC has also held that Commerce's meaningful difference analysis was reasonable.[357] Moreover, the CIT in *Apex II* held that Commerce's change in practice (from targeted dumping to its differential pricing analysis) was exempt from the APA's rule making requirements, stating:

> Commerce explained that it continues to develop its approach with respect to the use of {A-to-T} "as it gains greater experience with addressing potentially hidden or masked dumping that can occur when {Commerce} determines weighted-average dumping margins using the {A-to-A} comparison method. Commerce additionally explained that the new approach is "a more precise characterization of the purpose and application of {19 U.S.C. 1677f-1(d)(1)(B)}" and is the product of Commerce's "experience over the last several years… further research, analysis and consideration of the numerous comments and suggestions on what guidelines, thresholds, and tests should be used in determining whether to apply an alternative comparison method based on the {A-to-T} method." Commerce developed its approach over time, while gaining experience and obtaining input. Under the standard described above, Commerce's explanation is sufficient. Therefore, Commerce's adoption of the differential pricing analysis was not arbitrary.[358]

Moreover, the CIT acknowledged in *Apex III* that as Commerce "gains greater experience with addressing potentially hidden or masked dumping that can occur when {Commerce} determines weighted-average dumping margins using the {A-to-A} comparison method, {Commerce} expects to continue to develop its approach with respect to the use of an alternative comparison method."[359] Further developments and changes, along with further refinements, are expected in the context of our proceedings based upon an examination of the facts and the parties' comments in each case.

Regarding SeAH's arguments concerning our reliance on the Cohen's *d* test and on the 0.8 cut-off for determining whether an effect size is large, we disagree. As an initial matter, the CAFC

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[354] *See*, *e.g.*, *OCTG Korea AR2 Final* IDM at Comment 8 (citing 5 U.S.C. 553(b)(3)(A)).
[355] *See Differential Pricing Analysis; Request for Comments*, 79 FR 26720, 26722 (May 9, 2014) (*Differential Pricing Comment Request*).
[356] *See Saha Thai Steel Pipe Company v. United States*, 635 F. 3d 1335, 1341 (CAFC 2011); and *Washington Raspberries*, 859 F. 2d at 902-03; *Carlisle Tire*, 634 F. Supp. at 423 (discussing exceptions to the notice and comment requirements of the APA).
[357] *See Apex IV*, 862 F.3d at 1347-1351.
[358] *See Apex II*.
[359] *See Differential Pricing Comment Request*, 79 FR at 26722.

upheld Commerce's threshold in *Mid-Continental*.[360] As stated in the *Preliminary Results*, the purpose of the Cohen's *d* test is to evaluate "the extent to which the prices to a particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise."[361] The Cohen's *d* coefficient is a recognized measure which gauges the extent (or "effect size") of the difference between the means of two groups. Commerce has previously noted that the Cohen's *d* coefficient provides "a simple way of quantifying the difference between two groups and has many advantages over the use of tests of statistical significance alone."[362] Commerce has also previously noted that Robert Coe, in *Effect Size*, has stated that "{e}ffect size quantifies the size of the difference between two groups, and may therefore be said to be a true measure of the significance of the difference."[363] Commerce has noted that *Effect Size* points out that the precise purpose for which Commerce relies on the Cohen's *d* test to satisfy the statutory language, to measure whether a difference is significant.[364] Moreover, the CAFC has affirmed this 0.8 threshold as reasonable.[365]

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

> Dr. Paul Ellis, in *Guide to Effect Sizes*, introduces effect size by asking a question: "So what? Why do this study? What does it mean for the man on the street?" Dr. Ellis continues:
>
> > A statistically significant result is one that is unlikely to be the result of chance. But a practically significant result is meaningful in the real world. It is quite possible, and unfortunately quite common, for a result to be statistically significant and trivial. It is also possible for a result to be statistically nonsignificant and important. Yet scholars, from PhD candidates to old professors, rarely distinguish between the statistical and the practical significance of their results.
>
> In order to evaluate whether such a practically significant result is meaningful, Dr. Ellis states that this "implies an estimation of one or more effect sizes."
>
> > An effect size refers to the magnitude of the result as it occurs, or would be found, in the population. Although effects can be observed in the artificial setting of a laboratory or sample, effect sizes exist in the real world.[366]

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[360] *See Mid-Continent Steel and Wire, Inc. v. United States*, CAFC 18-1229 (October 3, 2019) (*Mid-Continental*).
[361] *See Preliminary Results* PDM.
[362] *See OCTG Korea AR3 Final* IDM at Comment 3 (citing Robert Coe, *It's the Effect Size, Stupid: What "Effect Size" Is and Why It Is Important*, 2002 Annual Conference of the British Educational Research Association, University of Exeter, Exeter, Devon, England, September 12–14, 2002 (*Effect Size*)).
[363] *Id.*
[364] *Id*.
[365] *See Mid Continent*.
[366] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2014-2015*, 81 FR 62717 (September 12, 2016) (*Shrimp from Vietnam 2014-15*), and

Commerce further stated in *Shrimp from Vietnam*:

> As recognized by Dr. Ellis in the quotation above, the results of an analysis may have statistical and/or practical significance, and that these two distinct measures of significance are independent of one another. In its case brief, VASEP {Vietnam Association of Seafood Exporters} accedes to the distinction and meaning of "effect size" when it states "{w}hile application of the t-test {a measure of statistical significance} in addition to Cohen's *d* might at least provide the cover of statistical significance, it still would not ensure practical significance." {Commerce} agrees with this statement -- statistical significance is not relevant to {Commerce's} examination of an exporter's U.S. prices when examining whether such prices differ significantly. {Commerce's} differential pricing analysis, including the Cohen's *d* test, includes all U.S. sales which are used to calculate a respondent's weighted-average dumping margin; therefore, statistical significance, as discussed above, is inapposite. The question is whether there is a practical significance in the differences found to exist in the exporter's U.S. prices among purchasers, regions or time periods. Such practical significance is quantified by the measure of "effect size."[367]

Lastly, in *Shrimp from Vietnam*, Commerce again pointed to where Dr. Ellis addressed populations of data, stating that, "Dr. Ellis also states in his publication that the 'best way to measure an effect is to conduct a census of an entire population but this is seldom feasible in practice.'"[368]

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

The second measurement is whether there is a practical significance of the difference between the means of the two sets of data, as measured by an "effect size" such as the Cohen's *d* coefficient. As noted above, this measures the real-world relevance of this difference "and may therefore be said to be a true measure of the significance of the difference."[369] This is the basis for Commerce's determination of whether prices in a test group differ significantly from prices in a comparison group.

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accompanying IDM at 16-17 (citations omitted) (citing P. Ellis, *The Essential Guide to Effect Sizes* (*Guide to Effect Sizes*) at 3-5).

[367] *Id.*

[368] *See Shrimp from Vietnam 2014-15* IDM at 17 (citing *Guide to Effect Sizes*).

[369] *See OCTG Korea Final* IDM at Comment 3 (citing *Effect Size*).

SeAH claims that Commerce's use of Cohen's stated thresholds to determine whether Cohen's measurement of effect size is significant is not appropriate. SeAH states that:

> Professor Cohen himself made clear that his proposed cut-offs could only appropriately be applied in specific circumstances —where 'samples, each of *n* cases, have been randomly and independently drawn from normal populations,' and where the two samples do not have "substantially unequal variances" or 'substantially unequal sample sizes (whether small or large).'[370]

We find SeAH's claim to be misplaced. As an initial matter, discussions of sampling, sample size, and statistical inferences are irrelevant to the Cohen's *d* test as there is no sampling involved in it. There are no estimates of the means and variances of the test and comparison groups. Furthermore, as Commerce noted in *OCTG Korea Final*, SeAH's quotation is from section 2.1 of Dr. Cohen's text, "Introduction and Use" of "The T Test for Means."[371] As described above, this concerns the statistical significance of the difference in the means for two sampled sets of data and is not relevant when considering whether this difference has a practical difference. This is not to say that sample size and sample distribution have no impact on the description of "effect size" for sampled data,[372] but that is not the basis for Commerce's analysis of SeAH's U.S. sales price data.

Further, Commerce has noted that the subject of *Statistical Power* and the discussion therein is "statistical power analysis."[373] Power analysis involves the interrelationship between statistical and practical significance to attain a specified confidence or "power" in the results of one's analysis. Indeed, the beginning of the "Introduction and Use" of "The T Test for Means," including SeAH's first quotation, is:

> The arithmetic mean is by far the most frequently used measure of location by behavioral scientists, and hypotheses about means the most frequently tested. The tables have been designed to render very simple the procedure for *power analysis* in the case where two samples, each of *n* cases, have been randomly and independently drawn from normal populations, and the investigator wishes to test the null hypothesis that their respective population means are equal…[374]

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

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[370] *See* SeAH Case Brief at 66 (citing *OCTG Korea AR1 Final* IDM at 22 (citing *Statistical Power* at 19-20)).
[371] *See OCTG Korea AR3 Final* IDM at Comment 3.
[372] *Id*. (citing *Statistical Power* at 21-23, section 2.2.1, where Dr. Cohen quantifies the "nonoverlap" of sampled sets of data. The calculation of the overlap must rely on certain assumptions, such as normal distributions and equal variances in order to determine the common or non-common overlap of the two datasets).
[373] *Id.*
[374] *Id.* (citing *Statistical Power* at 19-20 (emphasis in italics, SeAH's quotation underlined)).

with no need to draw statistical inferences regarding sampled price date or the "power" of Commerce's results and conclusions.

The 0.8 threshold for the Cohen's *d* coefficient, which establishes whether the price difference between the test and comparison groups is significant (*i.e.*, the "large" effect size), is arbitrary. Commerce addressed the same argument by the respondent Deosen in *Xanthan Gum*, stating:

> Deosen's claim that the Cohen's *d* test's thresholds of "small," "medium," and "large" are arbitrary is misplaced. In "Difference Between Two Means," the author states that "there is no objective answer" to the question of what constitutes a large effect. Although Deosen focuses on this excerpt for the proposition that the "guidelines are somewhat arbitrary," the author also notes that the guidelines suggested by Cohen as to what constitutes a small effect size, medium effect size, and large effect size "have been widely adopted." The author further explains that Cohen's *d* is a "commonly used measure" to "consider the difference between means in standardized units." At best, the article may indicate that although the Cohen's *d* test is not perfect, it has been widely adopted. And certainly, the article does not support a finding, as Deosen contends, that the Cohen's *d* test is not a reasonable tool for use as part of an analysis to determine whether a pattern of prices differ significantly.[375]

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

> … can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.[376]

Commerce has relied on the most conservative of these three thresholds to determine whether the difference in prices is significant. Dr. Cohen further provided examples which demonstrate the "real world" understanding of the small, medium and large thresholds, where a "large" difference "is represented by the mean IQ difference estimated between holders of the Ph.D.

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[375] *See Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013), and accompanying IDM at Comment 3 (*quoting* Dave Lane, *et al.*, "Effect Size," Section 2 "Difference Between Two Means"); *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013), and accompanying IDM at Comment 4 (*quoting* same); and *Certain Steel Nails from the People's Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014), and accompanying IDM at Comment 7 (*quoting* same).

[376] Nonetheless, these thresholds, as with the approach incorporated in the differential pricing analysis itself, may be modified given factual information and argument on the record of a proceeding. *See Preliminary Results* PDM.

degree and typical college freshmen, or between college graduates and persons with only a 50-50 chance of passing an academic high school curriculum. These seem like grossly perceptible and therefore large differences, as does the mean difference in height between 13- and 18-year-old girls…"[377] In other words, Dr. Cohen was stating that it is obvious on its face that there are differences in intelligence between highly educated individuals and struggling high school students, and between the height of younger and older teenage girls. Likewise, the "large" threshold is a reasonable yardstick to determine whether prices differ significantly.

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

Finally, we note that, in the *Preliminary Results*, we requested that interested parties "present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding."[378] SeAH submitted no factual evidence or argument that these thresholds should be modified or that any other aspects of the differential pricing analysis should be changed for SeAH in this review. Accordingly, SeAH's arguments at this late stage of the review are unsupported by the record and appear to only convey SeAH's disagreement with the results of Commerce's application of a differential pricing analysis in this review, rather than to truly identify some aspect of this approach which is unreasonable or inconsistent with the statute.

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

> In the differential pricing analysis, {Commerce} reasonably established a 33 percent threshold to establish whether there exists a pattern of prices that differ significantly. {Commerce} finds that when a third or less of a respondent's U.S. sales are not at prices that differ significantly, then these significantly different prices are not extensive enough to satisfy the first requirement of the statute…
>
> Likewise, {Commerce} finds reasonable, given its growing experience of applying section 777A(d)(1)(B) of the Act and the application of the A-to-T method as an alternative to the A-to-A method, that when two thirds or more of a respondent's sales are at prices that differ significantly, then the extent of these sales is so pervasive that it would not permit {Commerce} to separate the effect of the sales where prices differ significantly from those where prices do not differ significantly. Accordingly, {Commerce} considered whether, as an appropriate alternative comparison method, the A-to-T method should be applied to all U.S.

[377] *See OCTG Korea AR3 Final* IDM at Comment 3 (citing *Statistical Power* at 27).
[378] *See Preliminary Results* PDM.

> sales. Finally, when {Commerce} finds that between one third and two thirds of U.S. sales are at prices that differ significantly, then there exists a pattern of prices that differ significantly, and that the effect of this pattern can reasonably be separated from the sales whose prices do not differ significantly. Accordingly, in this situation, {Commerce} finds that it is appropriate to address the concern of masked dumping by considering the application of the A-to-T method as an alternative to the A-to-A method for only those sales which constitute the pattern of prices that differ significantly.[379]

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

Commerce disagrees, in part, with SeAH that "the mere existence of different results is plainly insufficient, by itself, to satisfy the statutory requirements"[380] whether the A-to-A method can account for significant price differences which are imbedded in SeAH's pricing behavior in the U.S. market. Commerce does agree with SeAH that this difference is due to the offsetting of lower U.S. prices with higher U.S. prices. When using the A-to-A method, this offsetting occurs implicitly within the average U.S. prices which is compared with normal value, and this offsetting occurs explicitly when offsets are granted for non-dumped, negative comparison results. The A-to-T method, with zeroing, eliminates the masking of dumping by each type of offsetting. When the A-to-T method in not used in conjunction with zeroing, it will always yield identical results to the results under the A-to-A method.

The difference in the calculated results specifically reveals the extent of the masked, or "targeted," dumping which is being concealed when applying the A-to-A method.[381] The difference in these two results is caused by higher U.S. prices offsetting lower U.S. prices where the dumping, which may be found on lower priced U.S. sales, is hidden or masked by higher

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

[380] *See* SeAH Case Brief at 74.

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

U.S. prices,[382] such that the A-to-A method would be unable to account for such differences.[383] Such masking or offsetting of lower prices with higher prices may occur implicitly within the averaging groups or explicitly when aggregating the A-to-A comparison results. Therefore, in order to understand the impact of the unmasked "targeted dumping," Commerce finds that the comparison of each of the calculated weighted-average dumping margins using the standard and alternative comparison methodologies exactly quantifies the extent of the unmasked "targeted dumping."

The simple comparison of the two calculated results belies the complexities in calculating and aggregating individual dumping margins (*i.e.*, individual results from comparing EP, or CEP, with NV). It is the interaction of these many comparisons of EP or CEP with NV, and the aggregation of these comparison results, which determine whether there is a meaningful difference in these two calculated weighted-average dumping margins. When using the A-to-A method, lower-priced U.S. sales (*i.e.*, sales which may be dumped) are offset by higher-priced U.S. sales. Congress was concerned about offsetting and that concern is reflected in the SAA, which states that "targeted dumping" is a situation where "an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions."[384] The comparison of a weighted-average dumping margin based on comparisons of weighted-average U.S. prices that also reflects offsets for non-dumped sales, with a weighted-average dumping margin based on comparisons of individual U.S. prices without such offsets (*i.e.*, with zeroing) precisely examines the impact on the amount of dumping which is hidden or masked by the A-to-A method. Both the weighted-average U.S. price and the individual U.S. prices are compared to an NV that is independent from the type of U.S. price used for comparison, and the basis for NV will be constant because the characteristics of the individual U.S. sales[385] remain constant, whether weighted-average U.S. prices or individual U.S. prices are used in the analysis.

Consider the simple situation where there is a single, weighted-average U.S. price, and this average is made up of a number of individual U.S. sales which exhibit different prices, and the two comparison methods under consideration are the A-to-A method with offsets (*i.e.*, without zeroing) and the A-to-T method with zeroing.[386] The NV used to calculate a weighted-average

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[382] *See* SAA at 842.

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

[384] *See* SAA at 842.

[385] These characteristics include may include such items as product, level-of-trade, time period, and whether the product is considered as prime- or second-quality merchandise.

[386] The calculated results using the A-to-A method with offsets (*i.e.*, no zeroing) and the calculated results using the A-to-T method with offsets (*i.e.*, no zeroing) will be identical. *See* SeAH Final Analysis Memorandum at Attachment 2, where the calculation results of the A--to-A method, the A-to-T method and the "mixed" method are summarized (*e.g.*, pages 127-129 of SeAH's SAS output for the Margin program). The sum of the "Positive Comparison Results" and the "Negative Comparison Results" for each of the three comparison methods are identical, *i.e.*, with offsets for all non-dumped sales (*i.e.*, negative comparison results); the amount of dumping is identical. As such, the difference between the calculated results of these comparison methods is whether negative comparison results are used as offsets or set to zero (*i.e.*, zeroing) when using the A-to-T method.

dumping margin for these sales will fall into one of five scenarios with respect to the range of these different, individual U.S. sale prices:

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

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

3) the NV is nominally greater than the lowest U.S. prices such that there is a minimal amount of dumping and a significant amount of offsets from non-dumped sales;[387]

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

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

Under scenarios (1) and (2), either there is no dumping, or all U.S. sales are dumped such that there is no difference between the weighted-average dumping margins calculated using offsets or zeroing and there is no meaningful difference in the calculated results and the A-to-A method will be used. Under scenario (3), there is a minimal (*i.e.*, *de minimis*) amount of dumping, such that the application of offsets will result in a zero or *de minimis* amount of dumping (*i.e.*, the A-to-A method with offsets and the A-to-T method with zeroing both result in a weighted-average dumping margin which is either zero or *de minimis*) and which also does not constitute a meaningful difference and the A-to-A method will be used. Under scenario (4), there is a significant (*i.e.*, non-*de minimis*) amount of dumping with only a minimal amount of non-dumped sales, such that the application of the offsets for non-dumped sales does not change the calculated results by more than 25 percent or cause the weighted-average dumping margin to be *de minimis*, and again there is not a meaningful difference in the weighted-average dumping margins calculated using offsets or zeroing and the A-to-A method will be used. Lastly, under scenario (5), there is a significant, non-*de minimis* amount of dumping and a significant amount of offsets generated from non-dumped sales, such that there is a meaningful difference in the weighted-average dumping margins calculated using offsets or zeroing. Only under the fifth scenario can Commerce consider the use of an alternative comparison method.

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

[387] As discussed further below, please note that scenarios 3, 4 and 5 imply that there is a wide enough spread between the lowest and highest U.S. prices so that the differences between the U.S. prices and normal value can result in a significant amount of dumping and/or offsets, both of which are measured relative to the U.S. prices.

compared to the A-to-A / A-to-T method with offsets. This difference in the calculated results is meaningful in that a non-*de minimis* amount of dumping is now masked or hidden to the extent where the dumping is found to be zero or *de minimis* or to have decreased by 25 percent of the amount of the dumping with the applied offsets.

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

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

Therefore, we find that the meaningful difference test reasonably fills the gap in the statute to consider why, or why not, the A-to-A method (or T-to-T method) cannot account for the significant price differences in SeAH's pricing behavior in the U.S. market. Congress's intent of addressing "targeted dumping," when the requirements of section 777A(d)(1)(B) of the Act are satisfied,[388] would be thwarted if the A-to-T method without zeroing were applied since this will always produce the identical results when the standard A-to-A method without zeroing is applied. Under that scenario, both methods would inherently mask dumping. It is for this reason that we find that the A-to-A method cannot take into account the pattern of prices that differ significantly for SeAH, *i.e.*, Commerce identified conditions where "targeted" or masked dumping "may be occurring" in satisfying the pattern requirement, and Commerce demonstrated that the A-to-A method could not account for the significant price differences, as exemplified by the pattern of prices that differ significantly. Thus, we continue to find that application of the A-to-T method, with zeroing, is an appropriate tool to address masked "targeted dumping."[389]

[388] *See* SAA at 842-843.
[389] *See Apex I*, 37 F. Supp. 3d at 1296.

We disagree with SeAH that Commerce has failed to satisfy the statutory requirements of section 777A(d)(1)(B) of the Act and consider the application of an alternative comparison method based on the A-to-T method. As set forth in the *Preliminary Results*[390] and as further discussed in these final results, Commerce's differential pricing analysis for SeAH in this administrative review is both lawful, reasonable, and completely within Commerce's discretion in executing the trade statute.

Hyundai Steel-Specific Issues

Comment 5: Hyundai Steel's Cost Reconciliation

U.S. Steel's Comments:[391]

- Commerce should apply partial AFA to Hyundai Steel's costs for the final results due to the following significant discrepancies in the company's reported cost reconciliation.
  - Hyundai Steel made wholesale revisions to its latest cost reconciliation that are seemingly unresponsive to Commerce's supplemental questionnaire. For example, Hyundai Steel provided inconsistent translations for a particular general ledger account that was excluded from the reported costs in the cost reconciliation.
  - The most recent unrequested revision to the particular general ledger account name now calls into question whether Hyundai Steel appropriately excluded the amount in its cost reconciliation or whether the amount should have been treated as additional manufacturing or direct selling expenses.
  - Hyundai Steel's cost reconciliation does not reconcile and is unusable since the company failed to substantiate all excluded amounts. Specifically, Hyundai Steel failed to reconcile the cost of sales for merchandise, duty drawback, and other, all of which were excluded from the reported costs, from the submitted cost reconciliation to the underlying accounts in the trial balance.
  - There are significant unexplained discrepancies between the costs excluded in the cost reconciliation and the costs based on a summation of trial balance accounts that Hyundai Steel has not adequately addressed.
- The Courts have affirmed that the burden of reporting complete and accurate responses lies with the respondent.[392] In the instant review, Hyundai Steel has not met that burden as it has provided a reconciliation that does not reconcile, submitted incorrect translations of its reconciling items, and made unexplained changes to its reconciliation.
- Hyundai Steel has therefore withheld information and failed to cooperate to the best of its ability. Based on the statute and Commerce practice, any one of these failures warrants the application of AFA,[393] therefore, Commerce should reject Hyundai Steel's cost reconciliation and apply partial AFA to Hyundai Steel's costs in these final results.

[390] *See Preliminary Results* PDM.
[391] *See* U.S. Steel's Case Brief at 5-10.
[392] *See* U.S. Steel's Case Brief at 9 (citing, *e.g.*, *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F. 3d 1330, 1336 (Fed. Cir. 2002)).
[393] *See* U.S. Steel's Case Brief at 9-10 (citing section 776(a)(2)(B) and (C) of the Act, *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1383 (Fed. Cir. 2003); and, *e.g.*, *Final Results of the 2015-2016 Antidumping Duty*

- As partial AFA, Commerce should make an upward adjustment equal to the greatest difference between the reported and actual costs for the unsubstantiated reconciling items.

Hyundai Steel's Rebuttal Comments:[394]

- Hyundai Steel has reported a complete and accurate cost reconciliation that ties to the company's accounting records and explains all excluded items. Thus, U.S. Steel's arguments for the application of partial AFA to Hyundai Steel's costs are a mischaracterization of the record evidence and have no merit.
  - The alleged revisions and translation inconsistencies in the reported cost reconciliation are based on a single instance where Hyundai Steel, in separate submissions, provided two different descriptions for the same general ledger account.
  - It is clear from the revised translation of the general ledger account at question that the amount does not relate to either manufacturing costs or to selling expenses and was therefore appropriately excluded on Hyundai Steel's cost reconciliation.
  - If Commerce were to treat the account at question as part of the cost of manufacturing, the amount would be double counted since Commerce already deducted the account from the cost of sales denominators used to calculate the G&A and financial expense ratios.
  - Hyundai Steel's submitted reconciliation worksheets do in fact demonstrate how the total cost of sales (COS) from the audited financial statements and how each excluded COS figure on the cost reconciliation reconcile to the underlying trial balance accounts.
  - Hyundai Steel's submissions clearly demonstrate that the COS for merchandise, duty drawback, and other were appropriately excluded from the reported costs and do not constitute unexplained discrepancies.
- Based on the record evidence, there is no basis for the application of partial AFA to Hyundai Steel's costs for these final results.

Commerce Position:

U.S. Steel argues that Commerce should apply partial AFA to Hyundai Steel's costs due to what they call significant discrepancies in the company's reported cost reconciliation. U.S. Steel alleges that Hyundai Steel's cost reconciliation does not reconcile to supporting records and includes wholesale and unrequested revisions, inconsistent translations and unexplained changes. Hyundai Steel asserts that U.S. Steel's arguments for the application of partial AFA to Hyundai Steel's costs are a mischaracterization of the record evidence and have no merit.

Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Mexico, 82 FR 23190 (May 22, 2017), and accompanying IDM at 4-8; *Grain-Oriented Electrical Steel From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 59226 (October 1, 2014) (*GOES China INV*), and accompanying IDM at Comment 1).

[394] *See* Hyundai Steel's Rebuttal Brief at 4-8.

In light of these arguments, we reexamined the record evidence as it pertains to Hyundai Steel's cost reconciliation. In its response to the section D questionnaire, Hyundai Steel provided the requested reconciliation of the fiscal year (FY) 2018 COS in the audited financial statements to the total extended per-unit manufacturing costs submitted to Commerce.[395] As requested in the questionnaire, Hyundai Steel provided a summary cost reconciliation that tied the FY 2018 COS and reconciling items to supporting documentation that included the FY 2018 income statement, the FY 2018 summary trial balance cross referenced to the corresponding summarized line item on the FY 2018 income statement, COM statements by plant, finished goods inventory movement details, *etc.*[396]

In the first supplemental section D questionnaire, regarding the FY 2018 COS denominator used in Hyundai Steel's G&A expense rate calculation, Commerce requested that Hyundai Steel describe each COS line item.[397] In its response to the supplemental questionnaire, Hyundai Steel provided a schedule that listed and described, as requested, the line items that comprised the FY 2018 COS by account code in the trial balance (*i.e.*, general ledger (GL) account number*)*.[398] This schedule shows the single instance where Hyundai Steel provided a different translation for one GL account.[399] We note that the FY 2018 COS denominator used in Hyundai Steel's G&A expense rate calculation is the same COS used in the cost reconciliation.[400] The COS line items provided in the schedule reconcile to the FY 2018 trial balance provided with the cost reconciliation. Further, the total of the COS line items reconciles to the FY 2018 COS reported in the income statement also provided with the cost reconciliation.[401]

In the second supplemental section D questionnaire, Commerce requested that Hyundai Steel reconcile the "Duty Drawback" amount used to adjust the FY 2018 COS denominator of the G&A expense rate calculation to the "Duty Drawback and Other COS" amount used to adjust the FY 2018 COS in the cost reconciliation.[402] In its response to the supplemental questionnaire, Hyundai Steel provided a schedule showing the items that comprised the total "Duty Drawback and Other COS" amount.[403] Hyundai Steel also explained that the total "Duty Drawback and Other COS" amount included the "Duty Drawback" amount used to adjust the FY 2018 COS denominator of the G&A expense rate calculation and other COS amounts that were not related to the production or sale of finished goods, including both OCTG and non-subject products.[404]

In the comments U.S. Steel filed in advance of the *Preliminary Results* and again in its case briefs, U.S. Steel includes a table that shows significant, unexplained discrepancies in Hyundai Steel's cost reconciliation. The table lists the trial balance GL accounts that comprise the FY

[395] *See* Hyundai April 17, 2019 DQR at D-31 to D-34 and Exhibit D-14.
[396] *Id*.
[397] *See* Commerce's Letter, "Antidumping Duty Administrative Review of Oil Country Tubular Goods from the Republic of Korea: First Supplemental Questionnaire for Section D," dated June 17, 2019 at 8, question 37.
[398] *See* Hyundai July 9, 2019 SDQR at SD-36 to SD-37 and Exhibit SD-34.
[399] *Id.* at Exhibit SD-34.
[400] *See* Hyundai April 17, 2019 DQR at Exhibits D-12 and D-14.
[401] *See* Hyundai July 9, 2019 SDQR at Exhibit SD-34; and Hyundai April 17, 2019 DQR at Exhibit D-14.
[402] *See* Commerce's Letter, "Antidumping Duty Administrative Review of Oil Country Tubular Goods from the Republic of Korea: Supplemental Questionnaire for Sections C and D," dated September 17, 2019 at 7, question 13.
[403] *See* Hyundai Steel September 27, 2019 2SDQR at 2SD-26 to 2SD-27 and Exhibit 2SD-23.
[404] *Id*.

2018 COS; classifies them under "Finished Goods COS," "Merchandise COS" and "Duty Drawback and Other COS;" and, compares the totals under each category to the amounts in Hyundai Steel's cost reconciliation.[405] However, we analyzed this table before the *Preliminary Results* and found that it was flawed. First, U.S. Steel classified several GL accounts incorrectly. Second, U.S. Steel failed to classify one of the GL accounts under a category. Third, U.S. Steel incorrectly classified a GL account under only one category, instead of segregating the amount amongst all three categories as demonstrated by Hyundai Steel at Exhibit 2SD-23.[406] Consequently, had U.S. Steel classified these GL accounts correctly, the table would have demonstrated that Hyundai Steel's cost reconciliation did indeed reconcile and was therefore usable.

As demonstrated above, record evidence does not support U.S. Steel's allegations that Hyundai Steel's cost reconciliation does not reconcile and includes wholesale and unrequested revisions, inconsistent translations and unexplained changes. Further, record evidence does not support U.S. Steel's claim that Hyundai Steel has not met the burden of reporting complete and accurate responses. Neither does record evidence support U.S. Steel's claim that Hyundai Steel withheld information and failed to cooperate to the best of its ability.

U.S. Steel reliance in *GOES China INV* is misplaced.[407] In that case, Commerce found Baoshan's responses were incomplete or unclear with respect to key information needed to calculate an individual dumping margin. In addition, Commerce found the totality of Baoshan's responses to be so contradictory and incomplete that its submissions could not be used with any confidence of calculating an accurate margin. In the instant case, except for the single instance where Hyundai Steel provided a different translation for one GL account, Hyundai Steel was responsive to Commerce and only provided information requested by Commerce in the supplemental questionnaires. Further, we reviewed Hyundai Steel's reported cost reconciliation and its supporting documentation and found no significant discrepancies.

Under section 776(a) of the Act, Commerce may make determinations based on the facts available if: (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested by Commerce, (B) fails to provide such information by the deadlines established or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides such information but the information cannot be verified as provided by section 782(i) of the Act. In the instant case, the necessary information to calculate an accurate margin is on the record; Hyundai Steel did not withhold information requested by Commerce; and, Hyundai Steel filed its responses by the deadlines established and, in the manner requested by Commerce. Therefore, for these final results, we do not find that the application of partial AFA to Hyundai Steel's reported costs is warranted.

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[405] *See* U.S. Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea: U. S. Steel's Comments in Advance of the Preliminary Results," dated October 18, 2019, at 7-8; and U.S. Steel's Case Brief at 7-9.
[406] *See* U.S. Steel's Case Brief at 7-9; and Hyundai September 27, 2019 2SDQR at Exhibit 2SD-23.
[407] *See GOES China INV* IDM at Comment 1.

Comment 6: Minor Inputs Obtained from Affiliated Parties

U.S. Steel's Comments:[408]

- Commerce should find that Hyundai Steel's affiliated party purchases were not at arm's length where the transfer prices paid were less than or virtually equal to the affiliate's cost of production since such prices do not provide a reasonable rate of return for the input or service provider.
- Hyundai Steel's reported calculations of its affiliated parties' production costs are distortive and need to be revised to include a reasonable rate of return based on each affiliate's reported profit rate for the period of the POR in which it had above-cost sales.
- Commerce should rely on U.S. Steel's proposed adjustment factor, which incorporates the proposed revision to Hyundai Steel's calculations of its affiliated parties' production costs, to increase Hyundai Steel's transfer prices for the minor inputs that do not reflect arm's length values.

Hyundai Steel's Rebuttal Comments:[409]

- Commerce should not make any adjustments to the cost of minor inputs obtained from affiliated parties, since, as U.S. Steel recognizes, all of the inputs in question are "minor" in nature and, if accurately calculated, the potential adjustment is negligible.
- If Commerce concludes that an adjustment is warranted, it should not adopt U.S. Steel's calculation of the adjustment factor which is based on faulty logic and erroneous data.
  - U.S. Steel's calculation focuses on fiscal year 2018 data rather than data that covers the entire POR.
  - U.S. Steel calculates a total adjustment percentage using the difference between the affiliated suppliers' profit ratios for fiscal years 2018 and 2017, but it is unclear why this would represent an arm's length adjustment.
  - U.S. Steel attempts to apportion the total adjustment percentage based on a ratio of POR months to fiscal year 2018 months but miscalculates the ratio.
- If an adjustment is required, Commerce should rely on one of the two adjustment calculations provided by Hyundai Steel, both of which demonstrate that only one of the three minor inputs at question may require adjustment.

Commerce Position:

During the POR, Hyundai Steel obtained certain services from affiliated parties. Because Hyundai Steel did not procure the same services from unaffiliated companies and the affiliated parties only provided these services to Hyundai Steel, no market prices were available.[410] Accordingly, Hyundai Steel analyzed the arm's-length nature of the services provided by each affiliated party using the affiliated party's COP, in lieu of market price.[411]

[408] *See* U.S. Steel's Case Brief at 10-12.
[409] *See* Hyundai Steel's Rebuttal Brief at 8-10.
[410] *See* Hyundai July 9, 2019 SDQR at SD-15.
[411] *Id.* at Exhibits SD-13-C to SD-13-H.

U.S. Steel argues that Hyundai Steel's calculations of its affiliated parties' COP need to be revised to include a reasonable rate of return based on each affiliate's reported profit rate for the period of the POR in which it had above-cost sales. However, there is no requirement for a "reasonable rate of return" in the statute. Under section 773(f)(2) of the Act, transactions between affiliated parties may be disregarded if the transfer price does not fairly reflect the amount usually reflected in the market under consideration. In applying the Act, Commerce normally compares the transfer price paid by the respondent to affiliated parties for production inputs or services to the price paid to unaffiliated suppliers, or, if this is unavailable, to the price at which the affiliated parties sold the input to unaffiliated purchasers in the market under consideration. If the affiliated supplier made no such sales during the POR, we may use the supplier's COP as a surrogate market price.

We reexamined the analyses provided by Hyundai Steel in its supplemental response.[412] We agree with Hyundai Steel that in the one instance where the affiliated party's COP exceeded the transfer price, the resulting adjustment is negligible.[413] Consequently, the transactions between Hyundai Steel and the affiliated party can be considered at arm's-length. Therefore, consistent with section 773(f)(2) of the Act, we determined that no adjustment is required under the transaction disregarded rule.

Comment 7: Expenses Related to Raw Material Purchases

U.S. Steel's Comments:[414]

- Commerce should increase Hyundai Steel's costs to account for the omission of certain other expenses associated with the company's raw material purchases.
- Hyundai Steel has failed to adequately explain why there are significant differences between the other purchase expenses reported based on purchase quantities and those if calculated based on consumption quantities. Consequently, the other purchase expenses associated with raw material consumption may have been massively understated.
- It is a respondent's burden to provide "all the requested information and create an adequate record."[415] Accordingly, because Hyundai Steel has not explained why its reporting of other purchase expenses is reasonable, Commerce should resort to facts otherwise available and increase Hyundai Steel's costs in the final results for the difference between the other purchase expenses incurred on POR purchase quantities and those that should have been recognized based on POR consumption quantities.

Hyundai Steel's Rebuttal Comments:[416]

- U.S. Steel's argument is misplaced, and no adjustment is warranted.
- The record clearly demonstrates that Hyundai Steel captured all the other purchase expenses that were incurred during the POR.

[412] *Id.*
[413] *Id.*; and Hyundai Steel's Rebuttal Brief at 9.
[414] *See* U.S. Steel's Case Brief at 12-14.
[415] *See* U.S. Steel's Case Brief at 14 (citing *ABB Inc. v. United States*, 355 F. Supp. 3d 1206, 1222 (CIT 2018)).
[416] *See* Hyundai Steel's Rebuttal Brief at 10-11.

- U.S. Steel's comparison of the other expenses related to purchased raw materials versus consumed raw materials fails to recognize that in any industry, it is common that raw materials are not consumed as soon as they are imported, but rather, are maintained in raw material inventory and consumed when needed.
- Hyundai Steel's reporting of the other purchase expense information comports with the specific inquiries made by Commerce, thus, there is no basis to adjust Hyundai Steel's other purchase expenses.

Commerce Position:

We have not adjusted Hyundai Steel's reported other purchase expenses in these final results. Based on our review of the record evidence, we find that Hyundai Steel has appropriately reported the other purchase expenses that were associated with the quantities of raw material consumed during the POR. Consequently, we do not find that an adjustment is warranted. Due to the proprietary nature of the underlying information, *see* the Analysis Memo for more detailed discussion of the issue.

Comment 8: Byproducts Reintroduced into Production

U.S. Steel's Comments:[417]

- Commerce should increase Hyundai Steel's unexplained valuation of certain byproducts that are reintroduced into production to reflect the cost of purchased inputs in the same general category.
- Hyundai Steel has provided no support for the reported valuation other than attorney arguments that, in addition to being insufficient, contradictory and untimely, are not evidence.[418]

Hyundai Steel's Rebuttal Comments:[419]

- No adjustment is warranted since Hyundai Steel has demonstrated that it accurately reported the costs of the reintroduced byproducts and such costs are consistent with its normal accounting records.
- Record evidence demonstrates that the reported per-unit cost of the byproduct when reintroduced into production is consistent with the reported per-unit byproduct offset used to reduce manufacturing costs when the byproduct was generated.
- Record evidence confirms that the unit price of the byproduct is lower than the purchased items in the same general category and should not be revalued.

[417] *See* U.S. Steel's Case Brief at 14-15.
[418] *See* U.S. Steel's Case Brief at 15 (citing *Icon Health & Fitness, Inc. v. Strava, Inc.*, 849 F. 3d 1034, 1043 (CAFR 2017)).
[419] *See* Hyundai Steel's Rebuttal Brief at 12-13.

Commerce Position:

We have not adjusted Hyundai Steel's valuation of the reintroduced byproducts. Pursuant to section 773(f)(1)(A) of the Act, costs shall normally be calculated based on a respondent's normal books and records, provided those records "are kept in accordance with the generally accepted accounting principles {(GAAP)} of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise."

There is no dispute that Hyundai Steel's reported costs are based on its GAAP-based records, thus, at question is whether the value assigned to a certain byproduct in Hyundai Steel's normal books and records is reasonable or whether it warrants adjustment. In light of this issue, we reexamined the record evidence as it pertains to Hyundai Steel's treatment of scrap and byproducts in its normal books and records. In its submissions to Commerce, Hyundai Steel first explained that "{d}ifferent types of scrap or by-products are generated during steel making and HRC production in the Dangjin Integrated plant. This scrap is reintroduced into the steel making process. The same scrap values are credited to manufacturing cost when they are generated and debited when they are reintroduced."[420] In its general overview of its accounting practices, Hyundai Steel also stated that it values the scrap or byproducts recovered during production at their estimated sales price.[421] Furthermore, in response to Commerce's supplemental questions on the topic, Hyundai Steel provided a list of the various iron ore, scrapped coal, and powder coke byproducts that were generated during production and were later reintroduced into production.[422]

U.S. Steel now questions the value that Hyundai Steel assigned to one of the byproducts on the detailed list, claiming that the reintroduced value is too low and should be increased to reflect the average value of the purchased inputs from the same general category. In rebutting U.S. Steel's argument, Hyundai Steel agrees that the value of the recovered byproduct is indeed lower than the general items in this category, but regardless of the byproduct's actual value, Hyundai Steel asserts that no adjustment is warranted since the same low value is assigned to both the generated (*i.e.*, the credit taken against production costs) and the reintroduced byproduct quantities (*i.e.*, the debit added to production costs).

Based on our review of the record evidence, we did not request support for the market value (or estimated sales price) that Hyundai Steel assigned to this particular byproduct. However, we can confirm Hyundai Steel's assertions that it assigned the same per-unit value to the byproduct both when it was generated (*i.e.*, for the byproduct offset that reduced production costs) and when it was reintroduced (*i.e.*, for the byproduct consumption that increased production costs).[423] In fact, based on the submitted cost accounting records, we find that for this particular byproduct the quantities and values of the generated and reintroduced byproducts completely offset each other and therefore, have no net effect on the reported costs.[424] Consequently, based on the

[420] *See* Hyundai April 17, 2019 DQR at D-6.
[421] *Id.* at D-22.
[422] *See* Hyundai September 24, 2019 2SDQR at SD2-5 and SD2-6.
[423] *See* Hyundai April 17, 2019 DQR at Exhibit D-10-B.
[424] *Id*.; *see also* Hyundai Steel's Rebuttal Brief at 12.

record evidence, any revaluation of these byproducts would equally affect the value of the byproduct offset which reduces production costs and the value of the reintroduced byproduct which increases production costs. Hence, the net effect of such an adjustment is nil.

Based on the foregoing, Hyundai Steel's reporting of the reintroduced byproducts is in accordance with the company's normal books and records. Furthermore, Hyundai Steel has assigned consistent per-unit values to the byproduct both when it was generated (decrease to costs) and when it was reintroduced to production (increase to costs). Finally, U.S. Steel's comments address only the reintroduced byproduct value, however, any revaluation of the byproduct at question should be applied both to the generated and reintroduced quantities, which based on record evidence, would result in a net adjustment of zero. Therefore, for the final results, we have not adjusted Hyundai Steel's valuation of its reintroduced byproducts.

Comment 9: Scrap Offsets

U.S. Steel's Comments:[425]

- In accordance with established practice, Commerce should adjust Hyundai Steel's claimed scrap offsets for the hot-rolled coil (HRC) processing stage to reflect the POR quantities reintroduced rather than the POR quantities generated.[426]
- Hyundai Steel wrongly claims that its reported scrap offset is only based on the scrap generated during the OCTG pipe-making stages and has nothing to do with the HRC production stages. Rather, the record clearly demonstrates that there are scrap offsets embedded in the HRC inputs that Hyundai Steel consumed in the production of OCTG.
- Because Hyundai Steel has not provided sufficient data relative to the HRC scrap offsets, Commerce should adjust all of Hyundai Steel's claimed scrap offsets uniformly.

Hyundai Steel's Rebuttal Comments:[427]

- U.S. Steel mistakenly conflates two separate discussions of scrap – one concerning the scrap generated and reintroduced in the HRC production stages and one concerning the scrap offset reported to Commerce for the OCTG pipe-making stages.
- No adjustment is necessary since the record demonstrates that the reported scrap offset is calculated based on the OCTG pipe-making stages only and has nothing to do with the scrap generated and reintroduced during HRC production.

[425] *See* U.S. Steel's Case Brief at 15-16.
[426] *See* U.S. Steel's Case Brief at 16 (citing *Final Results of the Antidumping Duty Administrative Review: Certain Steel Nails from the Sultanate of Oman*, 83 FR 4030 (January 29, 2018) (*Nails from Oman*), and accompanying IDM at Comment 11; and *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China*, 70 FR 54897 (September 19, 2005) (*Tools from China*), and accompanying IDM at Comment 8E).
[427] *See* Hyundai Steel's Rebuttal Brief at 13-14.

Commerce Position:

We have not adjusted Hyundai Steel's reported scrap offsets for the final results. However, as an initial matter for clarification purposes, we disagree with Hyundai Steel's contention that the reported scrap offset is only related to the OCTG pipe-making stages. The cost accounting records submitted with the sample cost buildup worksheets clearly demonstrate that there are scrap offsets embedded in the costs reported for all of the OCTG-related production stages, including the production of HRC, the main input into OCTG.[428] Thus, while the sample scrap offset calculation worksheet provided by Hyundai Steel only demonstrates the calculation for the final OCTG pipe-making stage, Hyundai Steel's reported costs still include other scrap offsets that were taken against costs in the earlier stages of production that lead up to the pipe-making stage.

When a company's production of the merchandise under consideration also generates scrap or byproducts that are shown to have commercial value, Commerce's practice is to allow an offset to production costs for the value of the scrap or byproduct quantities generated from production during the cost reporting period.[429] Though U.S. Steel argues that Commerce's practice is to further limit the scrap generated offset to the quantities that are either sold or reintroduced during the period, we disagree. Even if the quantity of scrap generated during the period exceeds that sold or reintroduced into production, we may allow an offset if it can be established that such scrap has commercial value. In both cases cited by U.S. Steel, *Nails from Oman* and *Tools from China*, the respondents failed to track scrap generated and therefore based their reported scrap offsets on scrap sold.[430] Hence, in *Nails from Oman* and *Tools from China,* the issue before Commerce was whether the respondents had reasonably linked the scrap quantities sold during the period to the scrap quantities that could have been generated during the period.[431]

In contrast, Hyundai Steel tracks the scrap generated during production and offsets production costs accordingly.[432] Furthermore, Hyundai Steel has demonstrated that the scrap generated is reintroduced to production and therefore has commercial value.[433] Consequently, we do not find that an adjustment to Hyundai Steel's reported scrap offset is warranted for these final results.

[428] *See* Hyundai April 17, 2019 DQR at Exhibit D-10-B.
[429] *See e.g.*, *Steel Propane Cylinders from Thailand: Final Determination of Sales at Less Than Fair Value*, 84 FR 29168 (June 21, 2019), and accompanying IDM at Comment 10; *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany: Final Determination of Sales at Less Than Fair Value*, 82 FR 16360 (April 4, 2017), and accompanying IDM at Comment 18.
[430] *See Nails from Oman* IDM at Comment 11; and *Tools from China* IDM at Comment 8E.
[431] *See Nails from Oman* IDM at Comment 11; and *Tools from China* IDM at Comment 8E.
[432] *See* Hyundai April 17, 2019 DQR at D-6.
[433] *Id.* at D-6.

Comment 10: **U.S. Warehousing Expenses**[434,435]

U.S. Steel Comments:

- For Hyundai Steel's back-to-back and inventory sales in the U.S., Hyundai Steel provided conflicting record information on the extent to which expenses associated with warehousing and other similar services are passed onto the unaffiliated customer by Hyundai Steel.
- The inconsistent record information calls for Commerce to use facts otherwise available. In selecting from facts otherwise available, Commerce should use its discretion and apply an adverse inference, given the conflicting information, finding that Hyundai Steel failed to cooperate to the best of its ability with respect to such information. Specifically, Commerce should use information from SeAH's U.S. sales database as a plug for the expenses associated with the services at issue.
- Hyundai Steel failed to report certain packing expenses for a large segment of its U.S. sales transactions, despite Commerce's requests to do so in the initial and supplemental questionnaires.

Hyundai Steel's Rebuttal Comments[436]

- The record clearly establishes the fact that HSU's unaffiliated U.S. customers, not Hyundai Steel or HSU, incur warehousing and other expenses. Thus, there is no record evidence to support petitioners' suggestion that Commerce penalize Hyundai Steel by deducting expenses incurred by the other mandatory respondent from HSU's prices to unaffiliated U.S. customers.
- Because HSU's customers are responsible for the costs of U.S. warehousing, such expenses are not included in the prices that HSU charges its customers. In this regard, Commerce cannot determine that Hyundai Steel failed to cooperate by not reporting the expenses at issue if such expenses are not incurred by Hyundai Steel or HSU.

Commerce's Position:

We disagree with the DIPs that application of facts available is warranted with respect to the warehousing expenses in question. In our initial and supplemental questionnaires,[437] we requested Hyundai Steel provide information pertaining to warehousing charges to which Hyundai Steel fully responded that it does not incur such charges.[438] Further, in response to our

[434] *See* Hyundai Steel's Case Brief at 16-20. Because certain aspects of Hyundai Steel's information are business proprietary, certain aspects of U.S. Steel's comment summaries are business proprietary, in nature. Additional information concerning this argument is included in Hyundai Steel's Final Calculation Memoranda.
[435] *See* Hyundai Steel's Case Brief at 16-20. Because certain aspects of Hyundai Steel's information is business proprietary, certain aspects of U.S. Steel's comment summaries are business proprietary, in nature. Additional information concerning this argument is included in Hyundai Steel's Final Calculation Memoranda.
[436] *See* Hyundai Steel's Rebuttal Brief at 14.
[437] *See* Commerce's Letter, "Antidumping Duty Administrative Review of Oil Country Tubular Goods from the Republic of Korea: First Supplemental Questionnaire for Section C," dated July 30, 2019, at 7.
[438] *See* Hyundai Steel's Initial Response at C-45.

request for evidence to support that fact that Hyundai Steel and/or its U.S. affiliate, HSU, did not incur these charges during the POR, Hyundai Steel submitted requisite information to confirm that it did not bear the cost of warehousing.[439] Thus, there is no missing information that would warrant resorting to facts available based on Hyundai Steel's provision of complete responses to our questionnaires. Further, we do not find Hyundai Steel's record information to be inconsistent. On the contrary, the information on the record is reasonable, given how this industry operates within the United States with respect to imports of OCTG. Commerce does not capriciously apply facts available to a respondent where expenses are not applicable to that company. To do so would lend itself to the manufacture of data and dumping rates by the administering authority. In this instance, absent verification, we find no reason to suspect that Hyundai Steel's certified responses are inaccurate or contain missing information. As such, we have not resorted to facts available with respect to the warehousing expenses in question for the final results of review.

Comment 11: Warranty Expenses

***U.S. Steel Comment*:**[440]

- Hyundai Steel incorrectly reported warranty expenses for only those sales that had customer-specific warranty expenses, which is contrary to Commerce's practice. Further, Hyundai Steel submitted inconsistent information on the record, ultimately stating that requested information is not available. Consequently, Commerce should resort to facts otherwise available, given Hyundai' Steel s inability to reconcile contrary statements on the record and the long lead time involved with warranty claims and expenses.[441] That is, Commerce should apply Hyundai Steel's reported customer-specific warranty expenses to the customers involved and the weighted-average warranty expense to all of Hyundai Steel's other U.S. sales for which no warranty expenses were reported.
- Hyundai Steel reported warranty expenses only for sales that had customer-specific warranty expenses. Given inconsistencies on the record, Commerce should rely on both customer-specific warranty claims during the POR and historical data on warranty claims, which Hyundai Steel argues would overstate warranty expenses by including those already recognized and those not yet realized on sales made to the United States.
- For the final results of review, Commerce should continue to rely upon the approach used in the *Preliminary Results* and apply Hyundai Steel's reported customer-specific warranty expenses to the customers involved and the weighted-average warranty expense to all of Hyundai Steel's other U.S. sales.

[439] *See* Hyundai Steel's Supplemental Section C Questionnaire Response at SC-22 and Exhibit SC-10.
[440] *See* U.S. Steel's Case Brief at 16-21.
[441] *Id.* at 20 (citing *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 84 FR 10784 (March 22, 2019), and accompanying IDM at Comment 15).

Hyundai Steel's Rebuttal Comments[442]

- Petitioners unreasonably argue that Commerce should apply warranty expenses to all U.S. sales using a mix-and-match methodology by applying historical warranty expense to customers that did not incur such expenses.
- Commerce should either accept the customer-specific warranty approach and apply such expenses to those customers that incurred this expense or, Commerce should apply the historical warranty expense to all U.S. sales; Commerce should not however, use both approaches, which would result in overstating Hyundai Steel's warranty expenses.
- Hyundai Steel's three-year historical warranty expenses demonstrate that HSU's warranty expenses pertaining to U.S. sales are negligible. There is nothing on the record to indicate that the POR warranty expenses are inconsistent with historical experience.
- Record evidence shows that Hyundai Steel's reported POR warranty costs exceed historical experience at nearly double the annual average of its past three fiscal years. For these reasons, adopting Petitioner's suggestion is not only unfair but, would result in double counting warranty costs for a large number of U.S. customers that did not incur these expenses.

Commerce's Position:

We disagree with U.S. Steel. Commerce adjusts for warranty expenses incurred during the POR under 19 CFR 351.410(c) where such expenses are incurred because the sale was made. That is, because warranty expenses can be tied to particular sales, they are considered to be direct selling expenses because they are incurred as a result of particular sales. In this review, Hyundai Steel reported customer-specific warranty expenses, which we deducted from U.S. price in the preliminary results of review.

Commerce's practice is to rely on the reported warranty expenses of a respondent company, which can be customer- or model-specific if those expenses are not distortive. Commerce resorts to the use of a three-year historical average of warranty expenses in those situations in which such expenses during a given year are found to be distortive.[443] In this case however, the record does not demonstrate that Hyundai Steel's warranty expenses are distortive or aberrational in any way.

Regarding the issue of long lead times and the need for warranty agreements, the absence of which, the DIPs claim, render the need to apply facts available, there is nothing in Commerce's regulations that require warranty agreements be in place in order to rely upon a respondent's reported warranty expenses. Further, the fact that warranty expenses were reported for some customers and not for others also does not support the use of facts available. Commerce does not employ a mixed methodology using, for instance, customer-specific warranty expenses for some sales transactions and a three-year average of warranty expenses for other transactions, as

[442] *See* Hyundai Steel's Rebuttal Brief at 15.
[443] *See, e.g.*, *Notice of Final Determination of the Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Mexico* (May 9, 2005), and accompanying IDM at Comment 6; *see also Husteel Co., Ltd. v. U.S.*, Slip Op. 15-100, Consol. Ct. No. 14-00215 (9/2/2015).

suggested by the DIPs. Thus, there is no reason to use Hyundai Steel's three-year historical average to calculate its warranty expenses. For the final results of review, we continue to rely upon Hyundai Steel's reported warranty expenses for the final margin calculation.

Comment 12: Packing Expenses for Hyundai Steel's Prime Sales[444]

***U.S. Steel Comment*:**

- Hyundai Steel failed to report certain packing expenses for a large segment of its U.S. sales transactions, despite Commerce's requests to do so in the initial and supplemental questionnaires.
- While Hyundai Steel indicates that it reported packings costs, other than caps, as a cost of manufacture, this methodology can only be used where packing is a physical characteristic of the control number (CONNUM), which it is not for OCTG, a fact that Hyundai Steel did not dispute in its pre-preliminary response to Petitioners' comments.
- The record indicates that for some of the U.S. sales transactions for which no packing expense was reported, packing activity was undertaken, as demonstrated by sample sales documentation submitted by Hyundai Steel.
- Because the record is void of packing expenses for a large number of U.S. sales transactions, necessary information is missing from the record of this review with respect to Hyundai Steel. Thus, for the final results, Commerce should use the highest average packing cost for all U.S. sales transactions for which Hyundai Steel reported no packing expenses.

Hyundai Steel's Rebuttal Comments[445]

- Hyundai Steel did not report packing costs for the segment of U.S. sales transactions at issue because such expenses were not incurred on said merchandise, which is discussed at length in Hyundai Steel's supplemental questionnaire response. Therefore, no adjustment to U.S. packing expenses is necessary.
- The petitioners falsely claim that sample documentation demonstrates that packing expenses were incurred on certain U.S. sales transactions for which no packing expenses were reported, as there is no information on the record to support petitioners' assertion.

Commerce's Position:

We disagree with the petitioners that facts available is warranted for transactions for which Hyundai Steel did not report a packing cost. To calculate an "ex-factory" price for U.S. sales, Commerce accounts for various expenses associated with the sale made to the United States, including packing costs. Under section 773(a)(6)(A) and (B) of the Act, Commerce is instructed to deduct home market packing costs and add an amount for U.S. packing costs. Commerce

[444] *Id.*
[445] *See* Hyundai Steel's Rebuttal Brief at 17.

looks towards calculating a cost that will result in a calculation that would most accurately reflect the true price of the merchandise at the time of sale.[446]

In its questionnaire response, Hyundai Steel identified the subject merchandise that requires packing (*i.e.*, with caps) and thus, incurs packing costs.[447] Hyundai Steel also provided relevant support that identifies the material(s) used for packing purposes.[448] The fact that Hyundai Steel did not incur packing expenses on the sales of certain reported subject merchandise does not translate to missing information on the record such that gaps need to be filled through a facts available approach, as suggested by the petitioners. Because we look to calculate the most accurate dumping margin, which includes the selling expenses and costs that contribute to building the sales price used in our margin calculation, it is incumbent upon Commerce to ensure that we use information on the record as provided and certified by the respondent. Therefore, for the final results of review, we have not made a change to our calculation methodology with respect to this expense and continue to use the packing expenses as reported by Hyundai Steel.

Comment 13: CEP Profit Calculation[449]

Hyundai Steel's Comments

- Commerce calculated a CEP profit rate of 7.98 percent for the *Preliminary Results*, using a simple average of the 2018 audited financial data of Tenaris S.A. and TMK IPSCO, which was the same source used for CV profit. Commerce reasoned that it used this rate for the *Preliminary Results* of review because Hyundai Steel had no comparison market.
- There is nothing in the statute that requires Commerce to base CEP profit on the same source used to calculate CV profit where a respondent has no viable comparison market. Section 19 U.S.C. 1677a(f)(2)(D) directs Commerce to calculate total profit as the "total profit earned by the foreign producer, exporter, and affiliated parties…with respect to the sale of the same merchandise for which total expenses are determined under such subparagraph."
- For the final results of review, Commerce should use Hyundai Steel's actual profit ratio of 2.91%, as calculated from the company's 2018 audited financial statements. This profit ratio most closely corresponds to the instant POR and serves as the same fiscal year that forms the basis of Hyundai Steel's G&A and net interest expense ratios. Hyundai Steel's own data, which has been audited and is consistent with Korean International Financial Reporting Standards, are more representative of the company's profit experience than the data of Tenaris and TMK IPSCO, with little or no operations in Korea, whose data Commerce relied upon for the preliminary results of review.

No other interested parties commented on this issue.

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[446] *See*, *e.g.*, *Notice of Amendment of Final Determinations of Sales at Less than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea; Stainless Steel Sheet and Strip in Coils from the Republic of Korea,* 66 FR 45279 (August 28, 2001) at Comment 3. Here, the Department based the average credit period on POSCO's average terms of sale during the POI, as it "…most accurately reflects the true price of the merchandise at issue at the time of sale."

[447] *See* Hyundai Steel's IQR at C-63; SQR at SC-33-35.

[448] *See* Hyundai Steel's IQR at Exhibit C-25.

[449] *See* Hyundai Steel's Case Brief at 11-12.

Commerce's Position:

We disagree with Hyundai Steel that we erred in the *Preliminary Results* by relying upon the 2018 financial statements of Tenaris and TMK to calculate Hyundai Steel's CEP profit rate. To determine the appropriate CEP profit rate, in accordance with 772(d)(3) and 772(f) of the Act, we make a deduction from the starting price in the U.S. market for profit allocable to selling, distribution and further manufacturing activities in the United States. The CEP profit rate is normally calculated on the basis of total revenue and total expenses on sales in the comparison and the U.S. markets. However, when the home market is not viable, CEP profit is based on the financial report data, pursuant to section 772(f)(2)(C) of the Act.

To ensure we are using revenue from comparable sales in both markets in our profit calculation, we have relied on the financial statements of Tenaris and TMK to calculate Hyundai Steel's CEP profit rate of 7.98 percent for the final results of review.

While the statute does not require Commerce to base CEP profit on the same source used to calculate CV profit where a respondent has no viable comparison market; the statute does not require Commerce to rely upon a company's own financial data when using constructed value for the home market. Accordingly, Commerce has discretion to use a methodology that best represents market principles in calculating CEP profit in a constructed-value situation.[450] As discussed above in Comment 3 above, Hyundai Steel's home market sales consist of non-prime product that was not OCTG or in the same general category of products. Furthermore, those products were sold in a non-viable market at a net loss. Thus, we find reliance upon Hyundai Steel's own financial statements to be unsuitable for purposes of calculating CEP profit. Tenaris and TMK are significant multinational producers and sellers of OCTG and are therefore, representative of Hyundai Steel's experience. Because Tenaris and TMK have different selling experiences, we used a simple average of their profit ratios as a proxy for Hyundai Steel's CEP profit rate. *See* Hyundai Steel's Final Calculation Memorandum for additional information underlying the calculation of the CEP profit rate for the final results of review.

Comment 14: Cost of Prime Products Sold in the United States

In the *Preliminary Results*, Commerce allocated the difference between the full production cost and sales revenue of the non-prime products to total prime OCTG products. Commerce explained that these non-prime products should not be assigned the same cost as prime OCTG because, according to Hyundai Steel, non-prime products are not capable of being used (*i.e.*, warranted) for the same applications as prime OCTG (*i.e.*, oil drilling applications).

Hyundai Steel's Comments:[451]

- Commerce's adjustment made in the *Preliminary Results* should be reversed for the final results.

[450] *See, e.g.*, *OCTG Korea 04-05* IDM at Comment 2.
[451] *See* Hyundai Steel's Case Brief at 12-14.

- The non-prime products sold in the U.S. during the POR were produced by Hyundai Steel's predecessor company, Hyundai HYSCO, long before the start of the POR.[452]
- Hyundai Steel produced a small quantity of non-prime products that were sold only in the home market during the POR. However, these sales have not been reported because the home market was not viable.[453]
- There is no need to reassign the cost of non-prime products sold only in the home market to prime products exported to the U.S. Hyundai Steel demonstrated that there is virtually no difference between the COM of prime and non-prime products of CONNUMs sold in both the home market and the U.S.[454]
- Commerce stated that, "according to Hyundai Steel, non-prime products are not capable of being used (*i.e.*, warranted) for the same applications as prime OCTG (*i.e.*, oil drilling applications)."[455] However, in actuality, Hyundai Steel stated that it had no knowledge of the home market customers' usage of the non-prime products because non-prime products were sold through auction rather than through the normal sales process, and that non-prime products generally do not meet the required performance standards under the specification for the prime OCTG because of certain defects.[456] But even though customers likely do not use non-prime products for oil drilling or line pipe applications, they are still used for similar applications, such as piling pipes and structural usage.[457]

U.S. Steel's Rebuttal Comments:[458]

- In *OCTG Korea Investigation*,[459] Commerce addressed the appropriateness of assigning full cost to non-prime products. Specifically, Commerce allocated a portion of the manufacturing costs of respondent's non-prime products to prime OCTG because it found that downgraded non-prime pipe cannot be used in the same applications as the subject merchandise. Commerce found it distortive to allocate full cost to non-prime products because the company's normal books and records did not reasonably reflect the costs associated with the production and sale of the merchandise under consideration (*i.e.,* OCTG) within the meaning of section 773(f)(1)(A) of the Act.
- In the instant case, Commerce correctly determined that non-prime products should not be allocated full costs in accordance with established practice.

Commerce Position:

Hyundai Steel's non-prime products should not be allocated full cost because they are not capable of being used for the same applications as prime OCTG, and do not command the same

[452] *Id.* at 13 (citing Hyundai July 9, 2019 SDQR at D-2).
[453] *Id.*
[454] *Id.* at 13 (citing Hyundai July 9, 2019 SDQR at Exhibit SD-2).
[455] *Id.* at 13 (citing Hyundai Steel's Preliminary Calculation Memorandum at 6).
[456] *Id.* at 13-14 (citing Hyundai July 9, 2019 SDQR at D-4).
[457] *Id.*
[458] *See* U.S. Steel's Rebuttal Brief at 4-5.
[459] *Id.* at 5 (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014) (*OCTG Korea Investigation*), and accompanying IDM at Comment 18).

prices. As explained in *OCTG Investigation*, *OCTG Korea AR1* and *OCTG Korea AR3*, the issue here is whether the non-prime products can still be used in the same down hole applications as the subject merchandise (*i.e.*, whether it is still OCTG).[460] The downgrading of a product from one grade to another will vary from case to case. Sometimes the downgrading is minor, and the product remains within a product group, while at other times the downgraded product differs significantly, and it no longer belongs to the same group and cannot be used in the same applications as the prime product. Consequently, if the product is not capable of being used for the same core applications, the product's market value is usually significantly impaired, often to a point where its full cost cannot be recovered. Therefore, instead of attempting to judge the relative values and qualities between grades, Commerce adopted the reasonable practice of looking at whether the downgraded product can still be used in the same applications as its prime counterparts.[461]

With this distinction in mind, we have reviewed the information on the record of this review related to the downgraded products Hyundai Steel categorizes as prime or non-prime during final inspection (*i.e.*, after all production activities have been completed). Hyundai Steel explains that it does not know the exact applications for which home market purchasers consumed the non-prime products because this non-prime merchandise was sold through auction rather than through the normal sales process.[462] However, Hyundai Steel adds that, because non-prime products have defects, such as cracks, they cannot satisfy all aspects of a specification.[463] Although Hyundai Steel did not exactly say that "non-prime products are not capable of being used (*i.e.*, warranted) for the same down hole applications as prime OCTG (*i.e.*, oil drilling applications)," Hyundai Steel did state that non-prime products have defects, such as cracks, and would not be used for the same specific oil and gas in the well applications as prime OCTG, nor would non-prime products be used for analogous line pipe applications, because the non-prime pipes cannot satisfy all aspects of the relevant specification.[464] Hyundai Steel does not provide mill certificates or any other guarantees to the customer that the product meets the nominal specification or is fit for use in the end-use application for which the particular pipe specification was designed.[465] In addition, the sales (*i.e.*, market) price of Hyundai Steel's downgraded non-prime products is considerably less than the full production costs that the company assigns to them in the normal course of business.[466] The difference between the cost and the sales price of the non-prime products is in large part due to the fact that these products are not OCTG and cannot be used in the same down hole applications as the specialized, high-value OCTG products.

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[460] *See OCTG Korea Investigation* IDM at Comment 18; *see also OCTG Korea AR1* IDM at Comment 33; and *OCTG Korea AR3* IDM at Comment 12.
[461] *See OCTG Korea Investigation* IDM at Comment 18; *see also OCTG Korea AR1* IDM at Comment 33; *OCTG Korea AR3* IDM at Comment 12; *Steel Concrete Reinforcing Bar From Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 79 FR 21986 (September 15, 2014) (*Rebar from Turkey*), and accompanying IDM at Comment 15; and *Welded Line Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015), and accompanying IDM at Comment 9.
[462] *See* Hyundai July 9, 2019 SDQR at D-4.
[463] *Id*.
[464] *Id*.
[465] *Id.*
[466] *See* Hyundai Steel's Preliminary Cost Calculation Memorandum at Attachments 2A and 2B.

Hyundai Steel states that it demonstrated that there is virtually no difference between the COM of prime and non-prime products of CONNUMs sold in both the home market and the U.S. As such, Hyundai Steel argues, there is no need to reassign the cost of non-prime products sold only in the home market to prime products exported to the U.S. We disagree with the premise of Hyundai Steel's argument, that Commerce allocated the costs unrecovered by the non-prime sales only to U.S. sold products. To the contrary, the unrecovered costs were allocated over all prime OCTG products produced during the period. The information discussed above demonstrates that the products categorized as non-prime by Hyundai Steel are not capable of being used for the same down hole applications as prime OCTG. Consequently, assigning full costs to these products does not reasonably reflect the costs associated with the production and sale of the merchandise. These costs must still be recovered by Hyundai Steel and it is reasonable to associate them with prime OCTG because the production of prime OCTG will inevitably result in some non-prime products. Therefore, for the final results, we have continued to adjust Hyundai Steel's reported costs to value the downgraded non-prime products at their sales price, while allocating the difference between the full production cost and market value of the non-prime products to the production costs of prime-quality OCTG.

SeAH-Specific Issues

Comment 15: Freight Revenue Cap[467]

SeAH's Comments:

- Commerce "capped" SeAH's reported freight revenue for the preliminary results of review. In previous reviews, Commerce's capping of SeAH's freight revenue based on the grounds that it considers freight to be a service and not a part of the sale of the subject merchandise.
- SeAH nor its U.S. affiliates provide freight services. Instead, the additional amount charged to its customers for freight is merely an additional amount for freight, which is a disaggregation of a delivered price into arbitrary amounts for the merchandise and for freight.
- While the Courts have given Commerce the discretion to treat separately invoiced freight revenue as wholly apart from the U.S. price, Commerce did not reasonably conclude that freight services are included in the price of the merchandise.
- If profits from the sale of services are disregarded, then negative profits on the sale of services must also be excluded. That is, Commerce must either ignore both profits and losses on separately invoiced freight revenue or it must include both in its calculations. To do otherwise is biased and unfair and cannot be reconciled with the statute.

Commerce Position:

We disagree with SeAH and have continued to apply the freight revenue cap for its sales in these final results. This this methodology for capping freight revenue was affirmed by the CIT in litigation on *OCTG from Korea POR 1*. Primarily, according to section 772(c)(2)(A) of the Act,

[467] *See* SeAH's Case Brief at 57.

"the price used to establish export price and constructed export price shall be… reduced by… the amount, if any, included in such price, attributable to any additional costs, charges, or expenses… which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States."[468] Section 772(c)(2)(A) of the Act requires Commerce to make certain adjustments to the starting U.S. price to bring it to the same level as normal value, so that a proper comparison can be made with normal value.

In this review, SeAH argues that Commerce's application of the freight revenue cap in the *Preliminary Results* was inappropriate because the additional charge for freight is a disaggregation of the delivered price into one amount for the goods and another for freight, not a charge for a service rendered by SeAH. However, we continue to find here, as in *Welded Steel Pipe from Thailand*, that it is inappropriate to increase the gross unit selling price for subject merchandise as a result of any profit earned by SeAH on the sale of freight. It is Commerce's normal practice to cap freight revenue at the corresponding amount of freight charges incurred because it is inappropriate to increase the gross unit selling price for subject merchandise as a result of profit earned on the sale of services (*i.e.*, freight).[469] This methodology prevents an exporter from improperly inflating its export price or CEP of a good by charging a customer more for freight than the exporter's actual freight expenses.

Finally, we disagree with SeAH's assertion that Commerce must either include both profits and losses on separately invoiced freight revenue in its calculations or exclude both. Section 772(c)(2)(A) of the Act requires only that freight expenses be deducted from the price charged to the customer to establish the price of the subject merchandise. As the CIT held in *Dongguan Sunrise Furniture*, the "plain language of {section 772(c)(2) of the Act} deals exclusively with downward adjustments to U.S. price."[470] The CIT explained that "adjustments are necessary because the reported prices 'represent prices in different markets affected by a variety of differences in the chain of commerce' and must be adjusted 'to reconstruct the price at a specific 'common' point… so that value can be fairly compared on an equivalent basis.'"[471]

This allows Commerce to achieve an "apples-to-apples" comparison between the CEP (or EP) and NV. Commerce does not apply the freight revenue cap when the exporter pays for delivery; rather it deducts from the starting price the freight expenses that the exporter incurred in delivering goods to bring the price to the *ex-factory* level (*i.e.*, price of goods alone without any additional charges). Ultimately, the freight costs would not be included in the constructed export price. When a customer pays for delivery and the exporter charges more for freight services than the cost it incurred in delivering goods, the freight expense is likewise excluded from the constructed export price of the subject merchandise. In both scenarios, Commerce would bring the price to the *ex-factory* level (*i.e.*, the price of goods alone) and would not artificially inflate

[468] *See Dongguan Sunrise Furniture*, 865 F. Supp. 2d at 1249-50.
[469] *See*, *e.g.*, *Welded Steel Pipe from Thailand* IDM at Comment 12; *Wood Flooring from China LTFV Final Determination* IDM at Comment 39; *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying IDM at Comment 2.
[470] *See Dongguan Sunrise Furniture*, 865 F. Supp. 2d at 1249-50.
[471] *Id.*, 865 F. Supp. 2d at 1249.

the price of subject merchandise (a good) by the profit from selling freight (a service).[472] Accordingly, we continue to find for these final results that it is appropriate to apply the freight revenue cap to SeAH's sales in the instant review.

Comment 16: Calculation of G&A Expenses Incurred by SeAH's U.S. Affiliate

In the *Preliminary Results*, Commerce applied the G&A expenses of SeAH's U.S. affiliate, Pusan Pipe America, Inc. (PPA), to the cost of all products sold by PPA, both further manufactured products and resold (non-further manufactured) products.[473] For further manufactured products, the G&A expenses were deducted from CEP as further manufacturing costs, while for resold products the G&A expenses were deducted from CEP as selling expenses.

SeAH's Comments:[474]

- Commerce's decision to deduct from CEP the G&A expenses related to the non-further manufactured pipe is contrary to both long-standing practice and the statute.
- When a company is only engaged in sales activities, Commerce's long-standing practice is to treat all G&A expenses as selling expenses; inversely, when a company is engaged in both selling and manufacturing activities, Commerce only applies the company-wide G&A expense ratio to further manufacturing costs and does not classify any G&A expenses as selling expenses.[475]
- Section 772(d) of the Act does not direct Commerce to deduct all administrative expenses from CEP. Rather, the statute specifically limits CEP adjustments to selling expenses and further manufacturing costs; therefore, because G&A expenses are not selling expenses Commerce's decision to deduct from CEP the G&A expenses related to non-further manufactured products is contrary to the statute.
- This treatment of PPA's G&A expenses as a selling expense creates an imbalance in Commerce's calculations since SeAH engages in both manufacturing and sales operations in Korea, yet, Commerce does not include any portion of SeAH's G&A expenses as a home market indirect selling expense for which a "CEP offset" might be allowed.
- Commerce's preliminary treatment of PPA's G&A expenses has been rejected by the CIT in the appeals for both the first and second reviews.[476] Therefore, in accordance with those decisions and well-established practice, Commerce should only deduct from CEP the G&A expenses attributable to PPA's further manufacturing activities.

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[472] *Id.* ("Thus, it was reasonable for Commerce not to consider freight revenue as part of the price of the subject merchandise.").
[473] *See Preliminary Results* PDM at 17.
[474] *See* SeAH's Case Brief at 53-57.
[475] *See* SeAH's Case Brief at 54-55 (citing Commerce Policy Paper #H "Definition of 'Selling Expenses' in the Context of the Exporter's Sales Price Provisions," Potts/Eiss (undated) (Policy Paper #H); *Calcium Aluminum Cement, Cement Clinker, and Flux from France*, 59 FR 14136, 14146-47 (March 25, 1994) (*Cement from France*); *First Administrative Review of Certain Activated Carbon from the Peoples Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 57995 (November 10, 2009) (*Activated Carbon from the PRC*), and accompanying IDM at Comment 5(b)).
[476] *See* SeAH Case Brief at 56-57 (citing *NEXTEEL v. United States*, 399 F. Supp. 3d 1353, 1361 (CIT 2019); *NEXTEEL v. United States*, 355 F. Supp. 3d 1336, 1361 (CIT 2019)).

Maverick's Rebuttal Comments:[477]

- Consistent with recent cases, Commerce should continue to apply PPA's G&A expense ratio to all products sold in the U.S. market, *i.e.*, to both the resold and further manufactured products.[478]
- SeAH's arguments were already rejected in the third review when Commerce found that PPA's G&A activities support both resold and further manufactured products, thus, the adjustments were required to properly capture the expenses associated with these activities.[479]
- The undated policy memorandum and the prior Commerce decisions cited by SeAH fail to address the treatment of G&A expenses when a U.S. company engages in both selling and further manufacturing activities.
- Contrary to SeAH's assertions, the CIT did not reject Commerce's treatment of PPA's G&A expenses, but rather requested that Commerce clarify or reconsider its approach on remand. Furthermore, while slightly modifying its calculation methodology, Commerce continued to allocate PPA's G&A expenses proportionately to all products sold by PPA.[480]

Commerce Position:

We continue to find that PPA's G&A expenses should be allocated to all products that PPA sold in the U.S. market whether further manufactured or not. However, for these final results, we have modified the manner in which we allocate PPA's G&A expenses to the products sold in the U.S. market to be consistent with Commerce's recent final results of redeterminations related to the remand orders referenced by SeAH. While not final and conclusive, the Court asked Commerce to produce additional explanation, after which, we found that it was appropriate to treat the G&A expenses of SeAH's U.S. affiliated selling entity as part of the deduction for indirect selling expenses and not as part of the deduction for further manufacturing.[481] Therefore, as described below and consistent with our remand redeterminations, we have adopted this alternative calculation methodology for these final results.

Although we have adopted an alternative calculation methodology for the final results, we still find that our approach in the *Preliminary Results* was reasonable. Conceptually, Commerce's

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[477] *See* Maverick's Rebuttal Brief at 18-23.
[478] *Id.* at 19-21 (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 AR3*), and accompanying IDM at Comment 6; *Cold-Rolled Steel Flat Products from Brazil: Final Determination of Sales at Less Than Fair Value*, 81 FR 49946 (July 29, 2016), and accompanying IDM at Comment 7; and *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015)).
[479] *Id.* at 20 (citing *OCTG Korea AR3* IDM at Comment 6).
[480] *Id.* at 22 (citing Final Results of Redetermination Pursuant to Court Remand, *NEXTEEL CO., v. United States*, Consol. Court No. 18-00083 Slip. Op. 19-73 (CIT June 17, 2019); Final Results of Redetermination Pursuant to Court Remand, *NEXTEEL CO., v. United States*, Consol. Court No. 17-00091 Slip. Op. 19-116 (CIT September 4, 2019).
[481] *See* November 20, 2019 Final Results of Redetermination Pursuant to Court Remand, *NEXTEEL CO., v. United States*, Consol. Court No. 18-00083 Slip. Op. 19-73 (CIT June 17, 2019).

original approach avoids burdening only the further manufactured sales with PPA's G&A expenses (which would have been obviously distortive). Further, Commerce's original approach is consistent with its approach when calculating the cost of production of the merchandise under consideration, whereby G&A expenses, which are related to the general activities of the entire company, are allocated to both manufactured and resold products. Thus, it was reasonable to allocate proportionally such G&A expenses to all sales of the company, which, in this case, incorporates both directly resold products and products resold after further processing. Nevertheless, we have reconsidered our approach in light of the recent remand redeterminations in the prior reviews of this proceeding.

First, we note that PPA is SeAH's U.S. affiliate purposed with generating sales in North America.[482] SeAH explains that it has two channels of distribution in the United States: (1) back-to-back sales through the head office of PPA, and (2) inventory sales through PPA's PMT division.[483] SeAH also states that PPA performs negotiations with customers, processing sales documentation, invoicing customers, collecting payment, and maintaining contact with customers.[484] Thus, PPA's primary function is to facilitate SeAH's sales.

Further, SeAH explained in its further manufacturing response that "PPA did not have any production facilities in the United States" and all "U.S. processing was performed by outside processors who were paid a fee by PPA for the processing services provided."[485] Thus, the extent of PPA's further manufacturing costs is the fee it pays to outside processors. Apart from paying the processing fee, in terms of PPA's activities, there is little, if any, difference between the directly resold and the further manufactured sales.[486] Clearly, PPA's G&A expenses support the general operations of this selling entity and are recovered by PPA though both direct and further processed sales.

Section 772(d) of the Act provides that the price used to establish CEP must be reduced by:

> (1) the amount of any of the following expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise (or subject merchandise to which value has been added)—
> (A) commissions for selling the subject merchandise in the United States;
> (B) expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees, and warranties;
> (C) any selling expenses that the seller pays on behalf of the purchaser; and
> (D) any selling expenses not deducted under subparagraph (A), (B), or (C).

Further, under section 772(d)(2) of the Act, Commerce is also directed to reduce CEP by "the cost of any further manufacture or assembly (including additional material and labor)… ." The plain language of section 772(d)(2) of the Act specifically deals with further manufacturing costs

[482] *See* SeAH's March 27, 2019 SAQR at 10 and 22-23.
[483] *Id.* at 22-23.
[484] *Id.* at 21.
[485] *See* SeAH's April 17, 2019 SEQR at 1 and 3.
[486] *Id.* at 2.

such as additional material and labor costs, but, unlike the statutory language for cost of production and constructed value in sections 773(b)(3) and 773(e) of the Act, G&A expenses are not explicitly defined as being included in further manufacturing under section 772(d)(2) of the Act. On the other hand, the statutory language under section 772(d)(1)(D) of the Act, covering the adjustments to CEP, is broadly written to include "any selling expenses not deducted" under the other subparagraphs. Moreover, the SAA explains that section 772(d)(1)(D) of the Act provides for the deduction of indirect selling expense from constructed export price."[487] The SAA further defines "indirect selling expenses" as "expenses which do not meet the criteria of 'resulting from and bearing a direct relationship to' the sale of the subject merchandise, do not qualify as assumptions, and are not commissions."[488] In calculating indirect selling expenses, Commerce "will generally include the G&A expenses incurred by the United States selling arm of a foreign producer" and this longstanding practice has been previously sustained by the Court.[489] Therefore, after further consideration of the plain language of the statute, the SAA, our practice, judicial decisions, and the record evidence, we find the G&A expenses of SeAH's U.S. affiliated selling entity should be treated as part of the deduction for indirect selling expenses and not part of the deduction for further manufacturing.

The record evidence demonstrates that PPA is the United States selling arm of SeAH. Although PPA does incur some further manufacturing expenses by paying a processing fee to outside processors, which further manufacture some of SeAH's pipe, PPA's involvement in the further manufacturing activities is perfunctory. PPA does not have any further manufacturing facilities and does not conduct any further manufacturing processes on its own. We can properly account for the further manufacturing activities of PPA by treating the processing fee that PPA pays to the unaffiliated processors as further manufacturing expenses, while including the G&A expenses of PPA, a selling arm of SeAH, in the calculation of indirect selling expenses.[490]

G&A expenses are not attributable to specific products (thus, they are not inventoriable expenses, but recognized as period costs), because they support the general operation of a company as a whole. The G&A expenses of the U.S. affiliated selling entity are associated with supporting and accomplishing the functions of the entity, which exists in order to advance sales in the U.S. market for a respondent. The record evidence cited above supports the finding that PPA is primarily a selling arm of SeAH in North America and that its G&A activities primarily, if not exclusively, support those operations. This is consistent with Commerce's policy that if the U.S. affiliated selling entity provides no further manufacturing services, then everything that the entity does is considered part of its selling activities.[491] Therefore, to comport with the plain language of the statute, the SAA, judicial decisions, our practice, and record evidence, PPA's G&A expenses should be considered to support sales activities and, thereby, included in indirect selling expenses.

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[487] *See* SAA at 824.
[488] *Id.*
[489] *See Aramide Maatschappij V.o.F. v. United States*, Consol. Court No. 94-07-00424, Slip. Op. 95-147 (August 18, 1995).
[490] *Id*., affirming Commerce's practice of including G&A expenses of the selling arm of a foreign exporter in the calculation of indirect selling expenses.
[491] *Id.*

Consequently, we have slightly modified our calculation methodology. Previously, the G&A expenses of the U.S. selling entity (*i.e.*, PPA) were allocated based on relative cost of sales, whereas under the new method, the G&A expenses of the U.S. selling entity will be allocated based on relative sales revenue (*i.e.*, the total G&A expenses will be included with other indirect selling expenses and allocated to all sales). Although we continue to believe that our original allocation was reasonable, we believe that the modified approach is also reasonable and removes any confusion by reflecting the statutory intent more precisely. Additionally, if the U.S. affiliated selling entity's financial activities are not consolidated with the respondent's financial activities and, thus, the U.S. affiliated selling entity's own interest expense was not already captured at the consolidated level, Commerce would also treat the U.S. affiliated selling entity's interest expense as an indirect selling expense.

SeAH incorrectly contends that where a U.S. affiliate both resells and further manufacturers Commerce only applies a further manufacturer's company-wide G&A expense ratio to further manufacturing costs and does not classify any G&A expenses as selling expenses, *i.e.*, Commerce does not allocate G&A expenses to the values of the imported or resold products. In misstating Commerce's practice, SeAH cites to a 1995 policy paper. However, as we explained in a prior decision, the policy paper is inapposite because the topic of Policy Paper #H – the question of the proper allocation of selling expenses between direct and indirect expenses – is separate and distinguishable from the issue here - how to properly account for the G&A expenses of a U.S. selling entity.[492] More importantly, SeAH does not provide any cites addressing whether the G&A expenses of a U.S. reseller are related to both directly resold and further manufactured products. Instead, SeAH cites only to *Activated Carbon from the PRC* and to *Cement from France*, neither of which directly address the issue at hand of how to account for a U.S. affiliate's G&A expenses where the company both resells and further processes products. Rather, both cases address the classification of expenses as selling or G&A where the further manufacturers had actual production facilities and do not address the issue of whether all products sold should be burdened with those expenses.[493] Thus, neither of these cases are representative of Commerce's practice nor address the issue of whether all products sold by a U.S. selling entity should be burdened with the company's G&A expenses.

Finally, SeAH also argues that because it engages in both manufacturing and sales operations in Korea "there is an imbalance in Commerce's calculations — since it deducts U.S. G&A expenses as an indirect selling expense, but does not include Korean G&A expenses as a home-market (or third-country) indirect selling expense for which a 'CEP offset' might be allowed." As discussed above, PPA's G&A expenses are selling expenses, because PPA is a selling arm of SeAH in the United States. In contrast, SeAH's G&A expenses relate to all functions performed by SeAH, a major OCTG producer with manufacturing facilities, not just to selling functions performed by SeAH.[494] Therefore, there are no "equivalent" G&A expenses.

[492] *See Certain Oil Country Tubular Goods from Korea*, 83 FR 17146 (April 18, 2018), and accompanying IDM at Comment 13.
[493] *See Cement from France* IDM at Comment 18; and *Activated Carbon from the PRC* IDM at Comment 5b.
[494] *See* SeAH's April 17, 2019 SDQR at 2.

We find that Commerce's alternative method for allocating the U.S. affiliated selling entity's G&A expenses as indirect selling expenses is based on a reasonable interpretation of sections 772(d)(1)(D) and 772(d)(2) of the Act, given that the statute is silent on how to treat the U.S. affiliated selling entity's G&A expenses in the calculation of CEP. It is also consistent with the SAA and our practice of how we treat G&A expenses of selling entities, which was previously affirmed by the Court. Thus, based on the reasons explained above, for these final results, we are allocating PPA's G&A expenses proportionately to all of the products PPA sold (*i.e.*, products which PPA directly resold and products which PPA further processed and then resold) as indirect selling expenses under section 772(d)(1)(D) of the Act.

VIII. RECOMMENDATION

We recommend following the above methodology for these final results.

☒ ☐

Agree Disagree

7/6/2020

X

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

Appendix

List of Companies Not Individually Examined

AJU Besteel Co., Ltd.
BDP International
Daewoo International Corporation
Daewoo America
Dong-A Steel Co. Ltd.
Dong Yang Steel Pipe
Dongbu Incheon Steel
DSEC
Erndtebruecker Eisenwerk and Company
Hansol Metal
Husteel Co., Ltd.
HYSCO
Hyundai RB
Hyundai Steel Co., Ltd.
Hyundai Steel Company[495]
ILJIN Steel Corporation
Jim And Freight Co., Ltd.
Kia Steel Co. Ltd.
KSP Steel Company
Kukje Steel
Kurvers
POSCO Daewoo Corporation
POSCO Daewoo America
Steel Canada
Sumitomo Corporation
TGS Pipe
Yonghyun Base Materials
ZEECO Asia

[495] On September 21, 2016, Commerce published the final results of a changed circumstances review with respect to OCTG from Korea, finding that Hyundai Steel Corporation is the successor-in-interest to Hyundai HYSCO for purposes of determining antidumping duty cash deposits and liabilities. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Oil Country Tubular Goods from the Republic of Korea*, 81 FR 64873 (September 21, 2016). Hyundai Steel Corporation is also known as Hyundai Steel Company and Hyundai Steel Co. Ltd.