



A-580-883

Administrative Review

POR: 10/01/2017 – 9/30/2018

**Public Document**

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**DATE:** September 30, 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 Antidumping Duty Administrative Review of Certain  
Hot-Rolled Steel Flat Products from the Republic of Korea, and  
Rescission of Administrative Review, in Part

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## I. SUMMARY

The Department of Commerce (Commerce) has analyzed the comments submitted by the interested parties in the 2017 – 2018 administrative review of the antidumping duty (AD) order on certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Korea (Korea). As a result of our analysis, we made certain changes to the margins found in the *Preliminary Results*, as discussed below.<sup>1</sup> We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

Below is the complete list of issues for which we received comments from the interested parties:

1. Whether and How a Cost-Based Particular Market Situation (PMS) Exists
2. Whether Commerce Has the Statutory Authority to Adjust the Cost of Production (COP)
3. Calculating the PMS Adjustment
4. Steel Quality Code “43”
5. Hyundai Corporation USA’s (HCUSA’s) Indirect Selling Expense (ISE) Ratio
6. Rate Assigned for POSCO<sup>2</sup>

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<sup>1</sup> See *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 68407 (December 16, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

<sup>2</sup> POSCO consists of POSCO and POSCO Daewoo Corporation, which were previously collapsed into a single entity. See *Preliminary Results* PDM at 6 (citing *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 32720 (July 9, 2019) (*Korea HRS 2016*), and accompanying Issues and Decision Memorandum (IDM) at footnote 3). No interested party requested we reevaluate our treatment of POSCO and POSCO Daewoo Corporation as a single entity either prior, or subsequent, to the *Preliminary Results*; therefore, we continue to treat them as a single entity for these final results.

## 7. Double Deduction of U.S. Packing and Inventory Carrying Costs

### II. BACKGROUND

On December 9, 2019, Commerce preliminarily determined that a cost-based PMS existed in Korea during the period of review (POR).<sup>3</sup> On December 16, 2019, Commerce published the *Preliminary Results* of this review, covering the POR, October 1, 2017 through September 30, 2018.<sup>4</sup> We invited interested parties to comment on the *Preliminary Results*.<sup>5</sup>

On January 30, 2020, ArcelorMittal USA, LLC; AK Steel Corporation; Nucor Corporation; Steel Dynamics, Inc.; SSAB Enterprises, LLC; and United States Steel Corporation (collectively, the petitioners) and Hyundai Steel Company (Hyundai) filed case briefs.<sup>6</sup> The petitioners and Hyundai filed rebuttal briefs on February 13, 2020.<sup>7</sup> On March 12, 2020, Commerce extended the deadline for the final results of this review by 59 days, to June 12, 2020.<sup>8</sup> On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.<sup>9</sup> On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.<sup>10</sup> The deadline for the final results of this review is now September 30, 2020.

After analyzing the comments received, we made certain changes to the margins from those presented in the *Preliminary Results*, as discussed below. Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

### III. SCOPE OF THE ORDER

The products covered by this *Order* are certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (“width”) of 12.7 mm or greater, regardless of thickness, and regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products

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<sup>3</sup> See Memorandum, “2017-2018 Administrative Review of the Antidumping Duty Order on Certain Hot-Rolled Steel Products from the Republic of Korea: Decision on Particular Market Situation Allegation,” dated December 9, 2019 (PMS Memorandum).

<sup>4</sup> See *Preliminary Results*.

<sup>5</sup> *Id.*

<sup>6</sup> See Petitioners’ Letter, “Petitioners’ Case Brief Regarding Hyundai Steel,” dated January 30, 2020 (Petitioners Case Brief); and Hyundai’s Letter, “Certain Hot-Rolled Steel Flat Products from the Republic of Korea, 2017 – 2018, Case No. A-580-883: Hyundai Steel’s Case Brief,” dated January 30, 2020 (Hyundai Case Brief).

<sup>7</sup> See Petitioners’ Letter, “Petitioners’ Rebuttal Brief,” dated February 13, 2020 (Petitioners Rebuttal Brief); and Hyundai’s Letter, “Certain Hot-Rolled Steel Flat Products from the Republic of Korea, 2017 – 2018, Case No. A-580-883: Hyundai Steel’s Rebuttal Brief,” dated February 13, 2020 (Hyundai Rebuttal Brief).

<sup>8</sup> See Memorandum, “Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Extension of Deadline for Final Results of Antidumping Duty Administrative Review, 2017 – 2018,” dated March 12, 2020.

<sup>9</sup> 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.

<sup>10</sup> See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the resulting measurement makes the product covered by the existing antidumping<sup>11</sup> or countervailing duty<sup>12</sup> orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products From the Republic of Korea (A-580-836; C-580-837), and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies. Steel products included in the scope of this *Order* are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

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

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

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, the

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<sup>11</sup> See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products from France, India, Indonesia, Italy, Japan and the Republic of Korea, 65 FR 6585 (February 10, 2000).

<sup>12</sup> See Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate from India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea, 65 FR 6587 (February 10, 2000).

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

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

- Universal mill plates (*i.e.*, hot-rolled, flat-rolled products not in coils that have been rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, of a thickness not less than 4.0 mm, and without patterns in relief);
- Products that have been cold-rolled (cold-reduced) after hot-rolling;<sup>13</sup>
- Ball bearing steels;<sup>14</sup>
- Tool steels;<sup>15</sup> and
- Silico-manganese steels;<sup>16</sup>

The products subject to this *Order* are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.10.1500, 7208.10.3000, 7208.10.6000,

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<sup>13</sup> For purposes of this scope exclusion, rolling operations such as a skin pass, levelling, temper rolling or other minor rolling operations after the hot-rolling process for purposes of surface finish, flatness, shape control, or gauge control do not constitute cold-rolling sufficient to meet this exclusion.

<sup>14</sup> Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

<sup>15</sup> Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

<sup>16</sup> Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

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

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

#### **IV. CHANGES SINCE THE *PRELIMINARY RESULTS***

1. We are rescinding the review with respect to POSCO.
2. We are correcting an error in Hyundai's margin calculation to remove double counting of U.S. packing and inventory carrying costs.

#### **V. RESCISSION OF REVIEW AS TO POSCO**

In the *Preliminary Results*, we determined that POSCO had “no shipments” of subject merchandise into the United States during the POR.<sup>17</sup> POSCO provided comments that corroborated its earlier claim,<sup>18</sup> and we received no information that contradicts POSCO's claim that it had “no reviewable entries, exports, or sales of subject merchandise.”<sup>19</sup> For these final results, although we find that POSCO did have a shipment of subject merchandise during the POR,<sup>20</sup> Commerce finds that POSCO had “no reviewable sales” of subject merchandise during the POR, and, accordingly, we are rescinding this review with respect to POSCO.

In the *Preliminary Results*, we inadvertently assigned POSCO a weighted-average dumping margin despite the preliminary determination of “no shipments.”<sup>21</sup> Because Commerce is rescinding this review with respect to POSCO, Commerce is not assigning a weighted-average dumping margin to POSCO in these final results. For further discussion, *see* Comment 6, below.

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<sup>17</sup> See *Preliminary Results* PDM at 6.

<sup>18</sup> See POSCO's Letters, “Hot-Rolled Steel from the Republic of Korea, Case No. A-580-883: Comments on CBP Entry Documents,” dated February 18, 2020; and “Certain Hot-Rolled Steel Flat Products from South Korea, Case No. A-580-883: No Shipment Letter,” dated January 10, 2019 (POSCO January 10 Letter).

<sup>19</sup> *Id.*; and Memorandum, “U.S. Customs and Border Protection Entry Documents,” dated February 11, 2020.

<sup>20</sup> See Memorandum “Administrative Review of Certain Hot-Rolled Steel Flat Products from the Republic of Korea, 2017-2018: Respondent Selection” dated January 30, 2019; and POSCO January 10 Letter at 1-2.

<sup>21</sup> See *Preliminary Results*, 84 FR at 68408, erroneously assigning POSCO a dumping margin of 0.94 percent.

## VI. DISCUSSION OF THE ISSUES

### Comment 1: Whether and How a Cost-Based PMS Exists

In the *Preliminary Results*, we determined that a cost-based PMS, pursuant to section 773(e) of the Act, distorted the COP of hot-rolled steel during the POR<sup>22</sup> via the COP of the steel slab input to hot-rolled steel.<sup>23</sup> We found this PMS based on (1) the cumulative effects of global steel overcapacity and associated Chinese steel policies; (2) Korean government subsidization of steel production; (3) distorted Korean electricity costs; and (4) strategic alliances among Korean steel producers.<sup>24</sup> We rejected the petitioners' arguments that shipping rates for hot-rolled steel inputs and iron ore costs from Australia also contributed to the PMS finding.<sup>25</sup>

#### *Petitioners' Argument*

- Commerce should revisit its prior determination that iron ore market distortions in Australia and Korea did not contribute to a Korean PMS.<sup>26</sup> The record is unclear as to the data Commerce considered in assessing iron ore market prices, and Commerce erred in failing to address evidence of market distortion as the threshold issue, distinct from pricing data.<sup>27</sup>
- Even adjusting for differences in freight costs between Brazilian and Australian iron ore sources, Brazilian ore is still significantly more expensive than Australian ore, indicating that Australian ore is impacted by major subsidies provided by the Australian government which are passed on to Korean purchasers; these subsidies are creating significant distortions in the Korean iron ore market.<sup>28</sup>
- Pricing comparisons for iron ore provided by Hyundai are not probative due to issues with the grades, shapes, market fluctuations, and suppliers.<sup>29</sup>
- Hyundai failed to rebut Commerce's finding that global overcapacity of steel production manifests distortion differently in different economies.<sup>30</sup> Commerce has previously found that market distortions caused by global overcapacity may vary across countries or may be present in more than one country.<sup>31</sup>
- Commerce correctly found in the *Preliminary Results* that Korea is uniquely impacted by global overcapacity of steel production, and that the resulting non-market distortion of steel prices is a component of a PMS and not a normal market reaction to excess supply.<sup>32</sup>

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<sup>22</sup> See *Preliminary Results* PDM at 8-9.

<sup>23</sup> See PMS Memorandum at 10.

<sup>24</sup> *Id.* at 11-14.

<sup>25</sup> *Id.* at 14-15.

<sup>26</sup> See Petitioners Case Brief at 23.

<sup>27</sup> *Id.* at 23-29.

<sup>28</sup> *Id.* at 27-29.

<sup>29</sup> *Id.* at 30-33.

<sup>30</sup> See Petitioners Rebuttal Brief at 15.

<sup>31</sup> *Id.* at 17.

<sup>32</sup> *Id.* at 17-18.

## *Hyundai's Argument*

- Finding a PMS should be reserved only for extremely unusual situations in which there is evidence that prices are distorted in a way that prevents a reasonable comparison between normal value (NV) and the export price (EP) or constructed export price (CEP).<sup>33</sup> The petitioners failed to provide evidence that non-market forces intervened in the Korean steel market, and the petitioners' contention that global overcapacity of steel will increase supply and lower market prices is in fact evidence of a functioning competitive marketplace.<sup>34</sup>
- Commerce erred in finding a PMS based on the cumulative effect of multiple factors on the Korean steel slab market, and record evidence did not support a PMS finding on the factors when considered individually.<sup>35</sup> The United States Court of International Trade (CIT) has held that PMS analyses which rely on multiple, cumulative factors of market distortion must actually contain substantial evidence of distortion on the individual factors which comprise the cumulative distortion claim.<sup>36</sup> PMS claims which individually fail to meet the bar to sustain a PMS allegation cannot collectively sustain a PMS allegation, and PMS analyses which rely on multiple, cumulative factors of market distortion must actually contain substantial evidence of distortion.<sup>37</sup>
- The petitioners did not sufficiently establish that the PMS was specific to Korea because it is based on factors that impact steel markets worldwide.<sup>38</sup> When the issues underlying the PMS claim are global, making adjustments in one market in an attempt to level the field for comparison with another market is nonsensical when all markets are impacted.<sup>39</sup>
- Overcapacity of steel slab inputs in Korea should impact domestic and export market prices equally. Therefore, EP and CEP values are directly comparable to NV, without the need for PMS adjustments.<sup>40</sup>
- The petitioners' regression analysis of the steel slab average unit value (AUV) for imports into Korea fails to establish the existence of a PMS and incorrectly quantifies the PMS.<sup>41</sup> The petitioners' regression analysis is flawed because it considers expected *versus* actual AUVs, as well as factors that were not taken into account in the provided economic model.<sup>42</sup>
- The petitioners' data indicated Japan was the largest slab supplier to Korea during the period examined, and Chinese slab imports comprised less than one percent of the slab imported to Korea during the POR.<sup>43</sup> Thus, the petitioners' reliance on Chinese

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<sup>33</sup> See Hyundai Case Brief at 9 (citing Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 (1994) (SAA) at 822).

<sup>34</sup> *Id.* at 9-10.

<sup>35</sup> *Id.* at 14.

<sup>36</sup> *Id.* at 15-16.

<sup>37</sup> *Id.* at 14-16.

<sup>38</sup> *Id.* at 7-8, 16-17.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 11.

<sup>42</sup> *Id.* at 12 (citing Hyundai's Letter, "Certain Hot-Rolled Steel Flat Products from Korea 10/01/2017-9/30/2018 Administrative Review, Case No. A-580-883: Hyundai Steel's Comments in Response to Petitioner's Particular Market Situation Allegation," dated November 4, 2019 (Hyundai November 4 PMS Comments) at Exhibit 1, p. 21-22).

<sup>43</sup> *Id.* at 17-18.

overcapacity of steel production in claiming a PMS in the Korean slab market is not probative.<sup>44</sup>

- The petitioners did not provide any record evidence that the Korean government is subsidizing the production of steel slab or inputs to steel slab. Subsidies related to the production of downstream steel products are irrelevant to the cost of inputs to hot-rolled steel products (*i.e.*, steel slab).<sup>45</sup> Further, the rates cited by petitioners as evidence of government subsidization originated in the investigation as an adverse facts available (AFA) finding and are not probative of actual subsidies provided, which were found only slightly above *de minimis* in subsequent reviews that better align with the instant POR.<sup>46</sup>
- Strategic alliances among hot-rolled steel producers have no relevance to the COP for hot-rolled steel. The petitioners did not provide an explanation of how input prices may have been impacted by such alliances, nor any record evidence regarding these alliances that pertain specifically to this POR.<sup>47</sup>
- Commerce has never found that countervailable subsidies of Korean electricity have conferred benefits to producers of hot-rolled steel.<sup>48</sup> Commerce erred in finding that distorted Korean electricity prices contributed to a PMS, and it should reverse this finding for these *Final Results*.<sup>49</sup>
- Commerce properly found that transportation of iron ore to Korea, and purchases of iron ore as an input, did not form a basis for the PMS finding. Commerce should sustain that finding for these *Final Results*.<sup>50</sup>

## Commerce's Position

We have determined to make no changes from the *Preliminary Results* with regard to whether a PMS existed in Korea during the POR. Contrary to Hyundai's arguments, we continue to find that a PMS exists with regard to steel slab as a component of the COP for Korean hot-rolled steel, but that no PMS adjustment is appropriate because Hyundai self-produced its steel slabs.

Section 504 of the Trade Preferences Extension Act of 2015 (TPEA)<sup>51</sup> added the concept of "particular market situation" in the definition of the term "ordinary course of trade," under section 771(15) of the Act, for purposes of constructed value (CV) under section 773(e) of the Act, and through these provisions for purposes of the COP under section 773(b)(3) of the Act. Section 773(e) of the Act states that, "if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the {COP} in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology."

Thus, under section 504 of the TPEA, Congress has granted Commerce the authority to determine whether a PMS exists within the foreign market from which the subject merchandise

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 18-19.

<sup>46</sup> *Id.* at 19.

<sup>47</sup> *Id.* at 20-21.

<sup>48</sup> *Id.* at 21-22.

<sup>49</sup> *Id.* at 22.

<sup>50</sup> *Id.* at 22-24.

<sup>51</sup> See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015).



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.<sup>52</sup>

We find Hyundai's interpretation of the Act to be impermissibly narrow and contrary to the intent of the statute. As Commerce stated in the PMS Memorandum, contrary to the respondents' assertion, the Act permits Commerce to address distortions in reported costs through various calculation methodologies, including cost adjustments for purposes of the sales-below-cost test.<sup>53</sup> Nonetheless, in applying a cost adjustment, Commerce must achieve a "fair comparison" between NV and U.S. price, regardless of how NV is calculated.<sup>54</sup> Further, in stipulating the manner in which NV is to be calculated, the Act also requires that NV reflect home market prices that are in the "ordinary course of trade."<sup>55</sup>

We further note that the TPEA generally expanded the meaning of "ordinary course of trade" to include "situations in which the administering authority determines that the particular market situation prevents a proper comparison {of NV} with the {EP} or {CEP}."<sup>56</sup> Thus, where a PMS affects the COP for the foreign like product through distortions to the cost of inputs, it is reasonable to conclude that such a situation may prevent a proper comparison of the EP or CEP with NV based on home market prices, which may include sales made below the COP that are outside the ordinary course of trade, just as with NV based on CV. Hyundai claims that an examination of a PMS for purposes of the sales-below-cost test goes beyond the plain language of the Act and fails to consider part of section 773(e) of the Act that specifically includes the term "ordinary course of trade." Thus, the definition of that term, found in section 771(15) of the Act, is integral to PMS provisions in the Act.

The statute does not define "particular market situation," but the SAA explains that such a situation may exist for sales "where there is government control over pricing to such an extent that home market prices cannot be considered competitively set."<sup>57</sup> Prior to the TPEA, in a limited number of cases, Commerce found that a PMS existed and, as a result, declined to use an entire market for purposes of calculating NV, as provided for in section 773(a)(1) of the Act and

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<sup>52</sup> See section 773(e) of the Act.

<sup>53</sup> See PMS Memorandum at 10; section 773(e) of the Act; *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 10784 (March 22, 2019), and accompanying IDM at Comment 1; and *Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 15114 (March 17, 2020) (*CORE Korea AR 17-18*)), and accompanying IDM at Comment 1. While we acknowledge that in *Saha Thai Steel Pipe Pub. Co. Ltd. v. United States*, 422 F. Supp. 3d 1363 (CIT 2019) (*Saha Thai*), the CIT held that Commerce was not permitted to apply a cost-based PMS adjustment to a respondent's COP when applying the sales-below-cost test under section 773(b)(3) of the Act, *Saha Thai*, as well as *Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. v. United States*, 426 F. Supp. 3d 1395 (CIT 2020) (*Borusan Mannesmann*), and *Husteel Co. v. United States*, 426 F. Supp. 3d 1376 (CIT 2020) (*Husteel*) are not final and conclusive and remain subject to appeal. Furthermore, the CIT's conclusions in those cases do not bind our analysis in this administrative review.

<sup>54</sup> See section 773(a) of the Act.

<sup>55</sup> See section 773(a)(1)(B)(i) of the Act.

<sup>56</sup> See section 771(15)(C) of the Act (Commerce "shall consider" such transactions outside ordinary course of trade).

<sup>57</sup> See SAA at 822.

19 CFR 351.404(c)(2).<sup>58</sup> More recently, Commerce determined that a PMS existed which distorted the domestic costs of major inputs used in the production of subject merchandise.<sup>59</sup>

In this administrative review, as in *OCTG Korea AR 16-17*, *CWP Korea AR 16-17*, and *CORE Korea AR 17-18*, we found a single PMS based on four of the alleged factors comprising the PMS allegation as a whole, based on their cumulative effects on the COP for the primary input to subject merchandise in Korea.<sup>60</sup> Section 504 of the TPEA does not provide a structural framework in which to analyze such allegations separately or collectively. In *OCTG Korea AR 16-17*, *CWP Korea AR 16-17*, and *CORE Korea AR 17-18*, the PMS alleged was predicated on nearly identical factors, and the record evidence in the instant case is nearly identical.

As such, we continue to find that a single cost-based PMS distorted the cost of steel slab, impacting the COP for hot-rolled steel during the POR. The PMS that we find to have existed in Korea during the POR results from the collective impact of the continued effects of global steel overcapacity, the unfairly-traded Chinese slab contributing to it, and the resulting steel industry restructuring effort by the government of Korea (GOK); the GOK's subsidization of steel producers; the GOK's distortive involvement in the Korean electricity market; and the strategic alliances between Korean steel producers.<sup>61</sup>

In this review, we considered the components of the PMS Allegation as a whole, based on their cumulative effect on the Korean slab market.<sup>62</sup> Based on the totality of the conditions in the Korean slab market, Commerce continues to find that the factors described above represent aspects of a single PMS in Korea.

With respect to Hyundai's assertions that the petitioners failed to substantiate their arguments regarding the four contributing factors of the PMS, we find that the petitioners did provide sufficient record evidence to support these claims, taken individually and cumulatively.

The petitioners provided evidence that the excess capacity and associated Chinese government policies that caused Commerce to find a PMS in other cases has continued into the instant

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<sup>58</sup> Examples of investigations or reviews where we have found a price-based particular market situation include *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile*, 63 FR 31411 (June 9, 1998); and *Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 72 FR 7011 (February 14, 2007).

<sup>59</sup> See, e.g., *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), and accompanying IDM.

<sup>60</sup> See *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 AR 16-17*), and accompanying IDM at 10; *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 26401 (June 6, 2019) (*CWP Korea AR 16-17*), and accompanying IDM at 6; and *CORE Korea AR 17-18* IDM at 17.

<sup>61</sup> See PMS Memorandum at 10; and *Preliminary Results PDM* at 8-9.

<sup>62</sup> See Petitioners' Letter, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea – Petitioner's Particular Market Situation Allegation," dated August 19, 2019 (PMS Allegation); and, generally, the Petitioners' Letter, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea – Petitioner's Response to the Department's Supplemental Question Regarding Petitioner's Particular Market Situation Allegation," dated October 23, 2019, in which the petitioners made various changes to their regression analysis but continued to base their analysis on imports of steel slab.

POR.<sup>63</sup> Additionally, the petitioners provided substantial documentation of the Chinese government policies which contributed to the ongoing overcapacity distortions, including incentives for expanding production capacity, and tax, lending, and electricity policies that support production of steel, independent of market forces.<sup>64</sup> They further provided evidence that these non-market-based conditions have impacted global steel supplies and prices, and linked these impacts directly to the Korean market for steel slab.<sup>65</sup> Specifically, we noted evidence that imports of Chinese-origin steel slab into Korea increased by a factor of seven from the 2008-2012 period as compared to the 2013-2017 time period, depressing the AUV of Korean slab imports, and supporting the petitioners' claims that slab imports from China contributed to a PMS.<sup>66</sup> We find Hyundai's assertion that the effects of global overcapacity on the Korean steel market are merely indicative of a functioning competitive market unpersuasive, because the overcapacity itself is due to non-market conditions in China, and because of the specific ways in which it is impacting the Korean market. Namely, the Korean government has responded to the cheap imports of Chinese steel slab by intervening to protect and shore up Korean steelmakers.

Consistent with our recent findings that steel input prices in Korea were distorted in *CWP from Korea AR 16-17*, we find here that global steel overcapacity impacted Korean steel markets during the instant POR.<sup>67</sup> Hyundai argued that Chinese slab imports into Korea are insignificant, since the total imported volume of Chinese slab in 2017 was about 8.6 percent of total Korean slab imports, and in 2018 was less than one percent of Korean slab imports.<sup>68</sup> However, as shown in figure 7 of the PMS Allegation, prices of imports from all sources for steel slab into Korea were depressed, consistent with the widely acknowledged global crisis in excess capacity.<sup>69</sup>

In arguing that the PMS Allegation is not particular to Korea, Hyundai asserts that the global overcapacity crisis 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.<sup>70</sup> They further argue that a global issue permits direct comparisons of EP and CEP prices to NV, and contraindicates finding a PMS.<sup>71</sup> We do not find these arguments persuasive, because the global overcapacity crisis will manifest its distortive effects differently in different markets. In the Korean market particularly, the government provided subsidization to steel producers, aimed at supporting domestic steel production and capacity expansions, a scenario of further distortions that is unique to Korea.<sup>72</sup> This GOK subsidization of Korean steel producers exerted downward pressure on hot-rolled steel prices in Korea, and therefore on transactions involving consumers of steel slab (*i.e.*, hot-rolled steel producers). Additionally, the price suppression in steel slab import prices caused by global overcapacity causes Korean producers to adjust their prices downward to

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<sup>63</sup> See PMS Allegation at Exhibit 2, providing capacity information from 2017 and 2018.

<sup>64</sup> *Id.* at 11-14.

<sup>65</sup> *Id.* at 16-25.

<sup>66</sup> See PMS Memorandum at 11.

<sup>67</sup> See *CWP from Korea AR 16-17* IDM at 12.

<sup>68</sup> See Hyundai Case Brief at 17-18 (citing Hyundai November 4 PMS Comments at Exhibit 7).

<sup>69</sup> See PMS Allegation at 25.

<sup>70</sup> See Hyundai Case Brief at 7-8 and 16-17.

<sup>71</sup> *Id.* at 16-17.

<sup>72</sup> See PMS Allegation at 40-41, and 46.

compete with imported products.<sup>73</sup> These downward adjustments are enabled by the GOK's subsidization, further distorting the market.

As to Hyundai's arguments and the petitioners' counter-arguments regarding the additional contributing factors to the PMS – the GOK's subsidization of steel slab producers, the GOK's subsidization of electricity, and strategic alliances among Korean steel producers – we continue to find that the petitioners provided sufficient evidence of each factor as a contributor to the PMS.

#### *GOK Subsidization of Hot-Rolled Coil*

As stated in the PMS Memorandum, Commerce found that the GOK provided subsidies to the biggest hot-rolled steel producers in Korea.<sup>74</sup> Hyundai argues that, regardless of the evidence for GOK subsidization of hot-rolled steel producers, there is no evidence on the record that establishes GOK subsidization of steel slab production. We disagree that this is the relevant issue; we find that there is sufficient evidence that Hyundai received subsidies from the GOK, and we further find that these subsidies contributed to the PMS. The actual level of subsidization of hot-rolled steel is above *de minimis* levels, which is acknowledged by the respondents.<sup>75</sup> The GOK subsidies provided to Korean steel producers exerted downward pressure on the steel slab prices in Korea. The domestic hot-rolled steel market must compensate for the suppression in import prices triggered by global overcapacity, and subsidies are an additional distortion to costs that flow directly to the COP of hot-rolled steel.

#### *Anticompetitive Behavior Among Korean Steel Producers*

Commerce further continues to find that record evidence shows that Korean steel producers do attempt to compete by engaging in strategic alliances.<sup>76</sup> This evidence supports the allegation that these strategic alliances may have impacted prices in the period covered by the original less-than-fair-value investigation and are likely to have impacted prior administrative reviews, up to and including this POR. For example, the Korea Fair Trade Commission (KFTC) fined six Korean steel producers, including Hyundai, over \$100 million U.S. dollars for colluding to regulate steel rebar prices in 2015 and 2016.<sup>77</sup> Hyundai was additionally fined for participating in a bid-rigging scheme with other Korean producers of steel pipe between 2003 and 2013.<sup>78</sup> Although the periods for which Hyundai was found to have participated in these schemes was before the POR of this instant review, these decisions by the KFTC provide ample evidence that strategic alliances and price fixing schemes are prevalent, long-term practices in the Korean market and may have created distortions in the prices of steel slab during the POR.

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<sup>73</sup> *Id.* at 16.

<sup>74</sup> See PMS Memorandum at 12-13; and *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) (*HRS Korea Amended CVD Order*).

<sup>75</sup> See Hyundai Case Brief at 19.

<sup>76</sup> See PMS Memorandum at 13.

<sup>77</sup> See PMS Allegation at Exhibits 87-89, 93.

<sup>78</sup> *Id.* at Exhibits 90-92.

This evidence of non-competitive behavior alone is not definitive of a PMS, but it is an integral part of Commerce's consideration of the totality of the circumstances in Korea in evaluating the full effect of all of these elements on the Korean slab market.

### *Distorted Electricity Costs*

We continue to find that the price of electricity is set by the GOK and that electricity in Korea functions as a tool of the government's industrial policy. As the record demonstrates, the GOK acts as the majority shareholder in the Korean Electric Power Company (KEPCO).<sup>79</sup> This GOK control of KEPCO allows the GOK to exercise control over the prices that KEPCO charges.<sup>80</sup> Based upon the foregoing, we continue to conclude that the prices charged by KEPCO are set by the GOK and that electricity in Korea functions as a tool of the Korean government's industrial policy.

We additionally 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.<sup>81</sup> Considering the government control over KEPCO, it is significant that KEPCO reported its first operating loss in six years for 2018, 208 billion won, and a 2.4 trillion won loss is expected for 2019. 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.<sup>82</sup> Moreover, electricity constitutes a significant portion of the cost of manufacturing (COM) of hot-rolled steel. Based on these facts, we find that the GOK's interest in, and involvement with, the electricity market in Korea, contributes to the distortion of the price of electricity in Korea and the COM of hot-rolled steel.

### *Distorted Shipping Rates for Steel Slab Inputs*

In the PMS Memorandum, 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.<sup>83</sup> Commerce determined that the evidence provided by the petitioner related to the shipbuilding industry, not the shipping industry, and that these industries are not interchangeable.<sup>84</sup> 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.<sup>85</sup> Commerce concluded that there was insufficient record evidence to support the petitioners' claim that shipping rates contributed to this PMS.<sup>86</sup>

Commerce continues not to rely on shipping rates as contributing to the totality of the circumstances in finding a PMS for these final results. Although the petitioners made arguments

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<sup>79</sup> See PMS Memorandum at 14.

<sup>80</sup> *Id.* (citing PMS Allegation at 42-43).

<sup>81</sup> See SAA at 822.

<sup>82</sup> See PMS Memorandum at 14 (citing PMS Allegation at 42).

<sup>83</sup> *Id.* at 14-15.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 14.

<sup>86</sup> *Id.* at 14-15.

regarding subsidies provided to the shipbuilding industry, the petitioners did not establish a connection between the shipbuilding industry and shipping costs. Additionally, as we previously explained, (1) shipping and shipbuilding costs are not interchangeable, and (2) the information provided by the petitioners is not specific to the shipping mode generally used to transport iron ore or coking coal that is used to manufacture hot-rolled steel.

### *Iron Ore Inputs*

Finally, we disagree with the petitioners' assertion that Commerce should reassess its PMS determination not to rely on alleged distortions in the iron ore market. We considered the data provided by the petitioners, which indicated that the Korean iron ore market consists of imports from a diverse array of countries, and provided context on the relative production and export quantities of iron ore from major producers of iron ore.<sup>87</sup> We find that Australia's position as the largest producer and exporter of iron ore in the world suggests potential market-based reasons for the price disparities noted by the petitioners between Australian-sourced iron ore and Brazilian-sourced ore, including increased efficiencies, longstanding export relationships, and investments in equipment, research, and development.<sup>88</sup> Further, we continue to find there is insufficient evidence to support the petitioners' claims that leasing agreements, tax evasion, and other potential non-market distortions of the Australian iron ore market are causing specific impacts on the Korean market for iron ore. Regarding iron ore prices specifically, the petitioners provided comparison data for Australian and Brazilian iron ore, but these data were limited in time and grade comparisons. We find that the petitioners' data were not probative in establishing distortions in the Korean iron ore market because of these limitations. Conversely, Hyundai did provide significant data comparing prices paid for specific grades of ore from multiple countries, as well as documentation to support its freight prices paid.<sup>89</sup> In performing a fulsome analysis of the range of data provided by Hyundai and the petitioners, we find that there is not sufficient information on the record to establish that the distortions alleged in the Australian iron ore market are causing distortions in the Korean iron ore market, nor that these alleged distortions are contributing to a Korean PMS.

With regard to the petitioners' assertions that Commerce should accept transportation costs as an additional contributing factor to the PMS, which we addressed in the PMS Memorandum, we continue to find that the record does not support the petitioners' claim.<sup>90</sup>

### **Comment 2: Whether Commerce Has the Statutory Authority to Adjust COP**

Section 504 of the TPEA indicates that Commerce may "use another calculation methodology under this subtitle or any other calculation methodology" when a PMS has been found.<sup>91</sup> In the

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<sup>87</sup> See PMS Allegation at Exhibit 29, showing imports comprising at least one percent of total imports during the POR from the following countries: Australia, Brazil, Canada, Chile, India, South Africa, and Ukraine, and at Exhibit 51, indicating that Australia is responsible for 57 percent of global seaborne exports of iron ore, while Brazil is responsible for 24 percent.

<sup>88</sup> *Id.* at Exhibit 51, p. 2-4.

<sup>89</sup> See Hyundai November 4 PMS Comments at Exhibits 10 and 11.

<sup>90</sup> See PMS Memorandum at 14-15.

<sup>91</sup> See TPEA 504, 129 Stat. 385 (2015).

*Preliminary Results*, and consistent with our practice,<sup>92</sup> we explained that Commerce has the statutory authority to adjust the COP.<sup>93</sup>

#### *Petitioners' Argument*

- The plain language of the TPEA unambiguously provides Commerce with the statutory authority to make adjustments under any calculation methodology, including the sales-below-cost test, to achieve its aim of computing an accurate COP in the ordinary course of trade when a PMS has been found to exist.<sup>94</sup>
- Even if ambiguity is found to exist, Commerce's interpretation of the TPEA, codified at 19 USC 1677b(e), is reasonable because the COP is, by definition, distorted when the constructed value (CV) is distorted.<sup>95</sup> Applying the cost calculation methodology across both the CV and sales-below-cost analysis would resolve these distortions, and it is, therefore, a logical application of the statutory language.<sup>96</sup>

#### *Hyundai's Argument*

- Commerce lacks the statutory authority to make adjustments to COP because section 504 of the TPEA made changes only to the CV calculation section, and it did not make any adjustments to the sections which pertain to calculating COP or the sales-below-cost test.<sup>97</sup>
- The addition of subsection C, which addresses PMS, to the "ordinary course of trade" definition of 19 USC 1677(15), applies to CV calculations and not to the calculations for COP or for the sales-below-cost test.<sup>98</sup> The statute governing COP calculations, conversely, does not provide for any PMS adjustments.<sup>99</sup> Therefore, the antidumping statute does not permit Commerce to adjust Hyundai's COP values for the purposes of the sales-below-cost test.
- The CIT has repeatedly found that Commerce erred when it applied a COP adjustment in performing the sales-below-cost test, because this adjustment is not permitted by the Act.<sup>100</sup>

#### **Commerce's Position**

Section 773 of the Act requires Commerce in antidumping proceedings to determine NV based on the rules set forth to achieve a "fair comparison" between NV and EP.<sup>101</sup> The Act in its definition of NV requires that NV reflect a price that is in the "ordinary course of trade."<sup>102</sup>

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<sup>92</sup> See e.g., *CORE Korea AR 17-18* IDM at 17-18.

<sup>93</sup> See *Preliminary Results* PDM at 8; and PMS Memorandum at 10.

<sup>94</sup> See Petitioners Rebuttal Brief at 5-9.

<sup>95</sup> *Id.* at 10 (citing 19 USC 1677(b)(e)(1)).

<sup>96</sup> *Id.* at 10-13.

<sup>97</sup> See *Hyundai Case* Brief at 6.

<sup>98</sup> *Id.* at 5-6.

<sup>99</sup> *Id.* at 6.

<sup>100</sup> *Id.* at 6-7 (citing *Borusan Mannesmann*; *Husteel*; and *Saha Thai*).

<sup>101</sup> See section 773(a) of the Act.

<sup>102</sup> *Id.* at section 773(a)(1)(B)(i) of the Act.

The TPEA generally expanded the meaning of “ordinary course of trade” to include “situations in which the administering authority determines that the particular market situation prevents a proper comparison {of NV} with the export price or constructed export price.”<sup>103</sup> Thus, where a PMS affects the COP for the foreign like product through distortions to the cost of inputs, it is reasonable to conclude that such a situation may prevent a proper comparison of the EP with NV based on home market prices, just as with NV based on CV.

Hyundai’s claim that an examination of a PMS for purposes of the sales-below-cost test goes beyond the plain language of the Act fails to consider that the provision at issue, section 773(e) of the Act, specifically includes the term “ordinary course of trade.” Thus, the definition of that term, again, found in section 771(15) of the Act, is integral to that PMS provision.

Section 773(e) of the Act addresses CV and provides Commerce with broad authority to use “any other calculation methodology” if it determines that a “particular market situation exists such that the cost of materials. . . does not accurately reflect the cost of production in the ordinary course of trade.”<sup>104</sup> Although section 773(e) of the Act is applicable to CV, it is unreasonable to conclude that, while Congress intended for Commerce not to rely on costs distorted by a PMS for CV, it would have intended for Commerce to continue to rely on those same distorted costs for purposes of the COP used in the sales below-cost test. Thus, Hyundai’s arguments in support of its statutory interpretation are unpersuasive, given the language of the Act and its context, which support the conclusion that Congress intended for Commerce to have flexibility in this area.<sup>105</sup>

Further, the relevant legislative history indicates that the TPEA permits Commerce to adjust the respondents’ costs based upon the PMS. The Senate Report indicated that the amendments ultimately enacted in the TPEA “provide that where a particular market situation exists that *distorts pricing or cost in a foreign producer’s home market*, {Commerce} has *flexibility* in calculating a duty that is not based on distorted pricing or costs.”<sup>106</sup> Based on the statutory language and evidence of legislative intent, Commerce has consistently found that Section 504 of the TPEA added the concept of PMS in the definition of the term “ordinary course of trade,” for purposes of CV, “and through these provisions for purposes of the cost of production under {section 773(b)(3)}.”<sup>107</sup> Thus, where a PMS affects the COP of the foreign like product, it is

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<sup>103</sup> *Id.* at section 771(15)(C) of the Act, stating that Commerce “shall consider” such transactions outside the ordinary course of trade.

<sup>104</sup> *Id.*

<sup>105</sup> See *Norfolk & W. Ry. Co. v. American Train Dispatchers’ Ass’n*, 499 U.S. 117, 129 (1991) (declining to resort to a canon of construction that supported a particular interpretation of a statute when the “whole context,” including the statute’s plain language, “dictate a different conclusion” process).

<sup>106</sup> See S. Rep. No. 114-45 at 37 (2015) (emphasis added); and *NEXTEEL Co., Ltd. v. United States*, 355 F. Supp. 3d 1336, 1349 (CIT 2019) (quoting same).

<sup>107</sup> See, e.g., *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 18105 (April 17, 2017), and accompanying IDM at Comment 3; and *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 27541 (June 13, 2018), and accompanying IDM at Comment 1.



reasonable to conclude that such a PMS may prevent an accurate evaluation of the sales-below-cost test.<sup>108</sup>

Regarding Hyundai's reliance on *Borusan Mannesmann*, *Husteel*, and *Saha Thai* in disputing Commerce's authority to make PMS adjustments to the COP, we note that litigation is ongoing in these cases. We therefore continue to disagree with Hyundai's assertion that the Act does not give Commerce the authority to make adjustments to COP for purposes of the sales-below-cost test in addressing a PMS. As we indicated in the PMS Memo, the Act permits Commerce to address distortions in reported costs through various calculation methodologies, including cost adjustments.<sup>109</sup>

### **Comment 3: Calculating the PMS Adjustment**

We preliminarily found that a PMS existed based on four of the six factors the petitioners cited in their PMS Allegation,<sup>110</sup> which provided a regression analysis using AUVs of imported steel slab as the primary input to hot-rolled steel.<sup>111</sup> We found there was insufficient evidence provided on the record to sustain the petitioners' arguments that iron ore market distortions and shipping industry conditions contributed to the PMS.<sup>112</sup> In the *Preliminary Results*, we declined to calculate adjustments to Hyundai's input costs for steel slab, because Hyundai self-produced steel slab and did not purchase any steel slab.<sup>113</sup>

#### *Petitioners' Argument*

- Commerce should use record evidence provided by the petitioners to conclude that iron ore is contributing to the PMS, and to calculate a COP adjustment based on the difference between Australian and Brazilian ore prices.<sup>114</sup>
- Commerce erred in finding that no PMS adjustments could be applied to Hyundai's steel slab costs because they were self-produced. The conditions which create the PMS apply across the Korean market and equally affect steel slab regardless of whether it is purchased or self-produced.<sup>115</sup> The inputs for steel slab are subject to the same Korean domestic market conditions as purchased slab, because slab produced by other Korean manufacturers requires the same inputs.<sup>116</sup>

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<sup>108</sup> In *Saha Thai*, the CIT held that because Commerce determined it could compare the respondents' U.S. and home market sales, Commerce was not permitted to apply a cost-based PMS to a respondent's COP when applying the below-cost test under section 773(b)(3) of the Act. That decision, as well as *Borusan Mannesman* and *Husteel*, are not final and conclusive and remain subject to appeal. Accordingly, these cases do not apply to Commerce's application of its PMS methodology in this administrative review.

<sup>109</sup> See PMS Memorandum at 10.

<sup>110</sup> See, generally, PMS Allegation.

<sup>111</sup> See PMS Memorandum at 2-5.

<sup>112</sup> *Id.* at 14-15.

<sup>113</sup> *Id.* at 16.

<sup>114</sup> *Id.* at 32-35.

<sup>115</sup> See Petitioners Case Brief at 7-8.

<sup>116</sup> *Id.* at 11.

- If Hyundai were structured differently so that a subsidiary was providing self-produced slab as an input at less than market price, then Commerce would make the PMS adjustment.<sup>117</sup>
- Government-subsidized Korean electricity costs and global overcapacity of steel production create market-wide conditions that benefit Hyundai's self-production of steel slab and distort the true costs of self-producing slab.<sup>118</sup> Hyundai's decision to self-produce slab is affected by the market price for slab, because a rational economic actor will seek to self-produce slab when the market price is more expensive.<sup>119</sup> Therefore, subsidies and low-cost electricity provided to companies which self-produce slab are distorting the costs to self-produce slab, and do not reflect the actual costs of production in the ordinary course of trade.<sup>120</sup>
- Hyundai's accounting practices for inventory valuation directly link self-produced steel slab to the domestic market for steel slab, because Hyundai values its inventories of slab, per Korean accounting principles, at the lower of: (1) the COP; or (2) net realizable value.<sup>121</sup>
- Commerce has previously made PMS adjustments for self-produced inputs.<sup>122</sup> Additionally, Commerce has recognized that a PMS applies to the entire market whether the product is imported, self-produced, or purchased domestically.<sup>123</sup> Commerce adjusted the price of self-produced hot-rolled coil used as an input in *CORE Korea AR 16-17* and *WLP Korea AR 15-16* for the production of corrosion-resistant steel and welded line pipe, respectively.<sup>124</sup>
- Commerce should use an 85 percent counterfactual capacity utilization to calculate the PMS adjustment and not the 80 percent figure that it has recently applied in *CWP India AR 17-18*.<sup>125</sup> An 85 percent figure would be appropriate because utilization was at 85 percent globally as of 2007, before China initiated investments in its domestic steel industry that heavily contributed to the ongoing global overcapacity problems.<sup>126</sup> The mere fact that the industry has not reached an 85 percent capacity utilization rate since

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<sup>117</sup> *Id.* at 12.

<sup>118</sup> *Id.* at 9.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* at 9-10.

<sup>121</sup> *Id.* at 10-11.

<sup>122</sup> *Id.* at 5-6 (citing *Welded Line Pipe from Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 1023 (January 9, 2018), and accompanying PDM at footnote 44, unchanged in *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 33919 (July 18, 2018) (*WLP Korea AR 15-16*), and accompanying IDM at 15-16).

<sup>123</sup> *Id.* (citing *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 84 FR 64041 (November 20, 2019) (*CWP Korea AR 17-18*), and accompanying IDM, and *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 10784 (March 22, 2019) (*CORE Korea AR 16-17*), and accompanying IDM).

<sup>124</sup> *Id.* at footnote 26 (citing *CWP Thailand AR 17-18* IDM at Comment 2; *CORE Korea AR 16-17* IDM at Comment 1; and *WLP Korea AR 15-16* IDM at 15-16).

<sup>125</sup> *Id.* at 16 (citing *Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2715 (January 16, 2020) (*CWP India AR 17-18*), and accompanying IDM at 2, 66-67).

<sup>126</sup> *Id.* at 16-17.

2007 does not negate the accuracy of this 85 percent figure.<sup>127</sup> Industry and government sources on the record indicate that an 80 percent figure is too low.<sup>128</sup>

- Further, Commerce's 80 percent capacity utilization number represents a minimum viability threshold based on the U.S. domestic market only and its more efficient production processes, while foreign producers would require a higher target.<sup>129</sup>
- The regression data set provided by the petitioners properly included data from 2008 and 2009, because these data directly relate to the global steel overcapacity from 2008 onward.<sup>130</sup>
- Commerce should calculate the PMS adjustment with the regression coefficient for uneconomic capacity based on the petitioners' provided example, and not as Commerce did previously in *CWP India AR 17-18*. To achieve an economically and mathematically sound comparison of logarithmic values, Commerce should apply the method suggested by the petitioners.<sup>131</sup>
- The PMS valuation methodology the petitioners used makes a PMS adjustment only on the regression coefficient for uneconomic capacity and not on AUVs and factors that determine AUVs, as Hyundai asserts.<sup>132</sup> The narrow confidence intervals calculated using the petitioners' methodology demonstrate that the PMS adjustments they advocate for are more accurate than Hyundai argues.<sup>133</sup>

#### *Hyundai's Argument*

- No PMS adjustment may be made for self-produced steel slab, because the petitioners provided a regression analysis measuring the effect of global overcapacity of steel on imported steel slab. Therefore, the petitioners failed to quantify any PMS adjustments to production costs for self-produced slab.<sup>134</sup>
- The petitioners' proposed PMS adjustment relies on the simple average of data in 2017 and 2018 and fails to take into account the actual POR periods within each year, resulting in an inaccurately high adjustment.<sup>135</sup>
- The petitioners' arguments advocating for an 85 percent capacity utilization are incorrect, and their regression analysis is flawed because it fails to properly consider the impact of the recession in 2008 and 2009, the impact of energy prices, the relationship between excess capacity and AUVs, the impact of other variables on AUVs, and the relationship of AUVs across countries.<sup>136</sup> The petitioners arbitrarily removed some variables from their analysis without any legitimate basis.<sup>137</sup>
- No PMS adjustment may be made for self-produced steel slab, because the petitioners' regression analysis did not provide evidence that the cost of inputs to self-produced steel

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<sup>127</sup> See Petitioners Rebuttal Brief at 21-22.

<sup>128</sup> See Petitioners Case Brief at 17-22.

<sup>129</sup> *Id.* at 22-23.

<sup>130</sup> *Id.* at 24.

<sup>131</sup> *Id.* at 22 (citing *CWP India AR 17-18* IDM at 65).

<sup>132</sup> See Petitioners Rebuttal Brief at 19-21.

<sup>133</sup> *Id.*

<sup>134</sup> See Hyundai Case Brief at 1-2.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 12-14.

<sup>137</sup> *Id.* at 13-14.

slab was impacted by the global overcapacity cited, only that steel slab was impacted.<sup>138</sup> Any attempt to substantiate a PMS as to inputs to steel slab is untimely.<sup>139</sup>

## Commerce's Position

We have determined to make no changes from the *Preliminary Results* with regard to calculating an adjusted COP due to the PMS. In particular, we continue to find that the PMS adjustment on the record – which measures the effect of global excess capacity on prices of steel slab – is not suitable for adjusting Hyundai's costs, because Hyundai did not purchase any steel slab during the POR. Rather, all of Hyundai's steel slab is self-produced.

The petitioners correctly contend that the PMS affects the entire Korean market for steel slab. However, Hyundai was not a participant in this market during the POR. Hyundai's production operations for its hot-rolled steel begins with producing steel slab, which is then converted to hot-rolled steel.<sup>140</sup> The inputs for Hyundai's production of slab are iron ore, coal, and scrap. The petitioners have not shown that the distortions impacting the market for steel slab are also distortive of the markets for the inputs to steel slab.

While the record shows that Hyundai values the inventories at year-end, including inventories of these self-produced slab intermediate goods at the lower of cost and net realizable value, this does not mean that the reported costs were based on these lower-of-cost-or-market (LCM) values. The LCM adjustment is to a contra-inventory account and the reported costs are not affected by this adjustment.<sup>141</sup> Given that the PMS finding and PMS adjustment here are based on distortions in the acquisition price for slab in Korea, the method by which Hyundai values the inventory of the self-produced intermediate products, including slab, is irrelevant to our PMS finding.

The petitioners argue that the major input rule would apply in this case if the respondent had a different corporate structure. However, this argument is premised on the incorrect assumption that Commerce's analysis should lead to the same result, regardless of the structure of Hyundai's business. In many areas of Commerce's practice, the structure of a business affects the contours of the analysis. In this case, the question before Commerce is whether to adjust Hyundai's cost of producing steel slab, by using a regression analysis that measures distortions to the price of steel slab. The nature of Hyundai's business is such that it does not purchase steel slab, so Commerce has not made such an adjustment.

The petitioners argue that in *CORE Korea AR 16-17* and *WLP Korea AR 15-16*, Commerce applied a PMS adjustment to self-produced inputs, and therefore, Commerce should do so here as well. However, the nature of the PMS adjustment was different in those cases. In particular, the PMS adjustments were based on several subsidy programs (*e.g.*, loans, tax exemptions,

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<sup>138</sup> *Id.* at 24.

<sup>139</sup> See Hyundai Rebuttal Brief at 14-15.

<sup>140</sup> See Hyundai's Letter, "Certain Hot-Rolled Steel Flat Products from Korea, 10/01/2017-9/30/2018 Administrative Review; Case No. A-580-883: Section A Questionnaire Response," dated March 22, 2019 at Exhibit A-26.

<sup>141</sup> See *OCTG from Korea AR 16-17* IDM at Comment 8 ("On the balance sheet, the adjustments are recorded to separate contra-inventory accounts which, as SeAH pointed out, do not impact the item-specific raw material and {work in process} values that are ultimately used to calculate product-specific costs.").

provision of electricity for less than adequate remuneration) that provided benefits directly to the production of hot-rolled coil, as found in *HRS Korea Amended CVD Order*.<sup>142</sup> For that reason, we applied the subsidy-based PMS adjustment to both purchased and self-produced hot-rolled coil. However, the regression method on the record in this case is not designed to capture distortions associated with the production of steel slab.

To be clear, in general, Commerce remains willing to apply a PMS adjustment to self-produced inputs, as we did previously in *CORE Korea AR 16-17* and *WLP Korea AR 15-16*. To do so, Commerce would have to find that the PMS affects the cost of production for the self-produced input at issue, and Commerce would also need a way of measuring the magnitude of the associated distortion to the cost of production. Such information is not on the record of this particular case.

#### **Comment 4: Steel Quality Code “43”**

Hyundai classified products manufactured to meet the specific American Petroleum Institute (API) Oil Country Tubular Goods (OCTG) standard API 5CT under a separate, self-reported quality code (code 43) from other kinds of steel tubing that were not produced to OCTG standards.<sup>143</sup> Hyundai also reported its quality codes in the same manner in the most recently-completed segment of this proceeding, and Commerce accepted this information.

In comments made prior to the preliminary results in this review, the petitioners argued that Commerce should not accept this added quality code, and these items should be reported under an existing quality code.<sup>144</sup> In the *Preliminary Results*, we accepted Hyundai’s home market and U.S. sales databases containing the additional quality code of 43 to calculate Hyundai’s dumping margin.<sup>145</sup>

#### *Petitioners’ Argument*

- Commerce erred in relying on the prior administrative review’s acceptance of quality code 43 to establish its appropriateness in the instant review because no analysis of the appropriateness of this additional code occurred during that review, nor in any other prior segment of this proceeding.<sup>146</sup>

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<sup>142</sup> See *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 *HRS Korea Amended CVD Order*.

<sup>143</sup> See Hyundai’s Letter, “Certain Hot-Rolled Steel Flat Products from Korea, 10/01/2017-9/30/2018 Administrative Review; Case No. A-580-883: Hyundai Steel’s Initial Sections B-D Questionnaire Response,” dated April 5, 2019 (Hyundai’s April 5, 2019 Sections B-D IQR) at B-15 – B-16, explaining the quality codes provided for Field Number 3.3.

<sup>144</sup> See Petitioners’ Letter, “Certain Hot-Rolled Steel Flat Products from the Republic of Korea – Petitioner’s Comments Regarding the Department’s Upcoming Preliminary Results,” dated October 11, 2019 (Petitioners’ Pre-Preliminary Comments) at 17-21.

<sup>145</sup> See *Preliminary Results* PDM at 12.

<sup>146</sup> See Petitioners Case Brief at 36-37.

- Each proceeding is governed by its own record, and the determination of appropriateness should be made in the review at hand, based on the facts on the record of this review.<sup>147</sup>
- Contrary to Commerce’s assertions in the *Preliminary Results*, the petitioners provided evidence that Hyundai’s designation of products under quality code 43 should be reported under quality code 50 instead. The petitioners discussed various products that Hyundai reported under quality codes 43 and 50 and argued that Hyundai had failed to explain why it had classified the API 5CT tubing under quality code 43, but other welded and seamless tubing products under quality code 50.<sup>148</sup>
- Commerce’s practice is to accept additional product matching categories only when the items have significant physical differences from the existing categories. Commerce’s initial questionnaire provided quality code 50 for structural steel that does not fall into another category. Further, Hyundai acknowledged that API 5CT is structural steel.<sup>149</sup> Therefore, Hyundai should have reported its OCTG-rated steel under quality code 50, and Commerce should not accept an additional quality code.<sup>150</sup>

### *Hyundai’s Argument*

- Hyundai followed Commerce’s instructions in providing an additional quality code, along with a detailed narrative description, because the API 5CT specification at issue is not listed under any other quality code.<sup>151</sup>
- Hyundai’s reporting is consistent with its reporting in the last administrative review, and Commerce accepted this code there.<sup>152</sup>
- There are distinct physical and chemical differences between OCTG and other kinds of energy pipe, such as line pipe, as compared to normal structural steel pipe, which may be used to convey liquids at lower temperatures and pressures.<sup>153</sup> Because Commerce has designated a separate quality code for line pipe, Commerce has already acknowledged the intrinsic differences between basic structural steel *versus* steel manufactured with special chemical and physical properties to meet stringent, industry-specific standards. Therefore, it would not be appropriate to include the steel at issue under code 50 because it is not “structural steel that is not classifiable under another listed Quality subcategory.”<sup>154</sup>
- Commerce itself has distinguished OCTG casing and tubing from other kinds of steel pipe such as line pipe because of their chemical, physical, and mechanical differences.<sup>155</sup>

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<sup>147</sup> *Id.* at 37-38 (citing, e.g., *Stainless Steel Bar from India: Final Results of Administrative Review of the Antidumping Duty Order; 2017-2018*, 84 FR 56179 (October 21, 2019) (*SSB India AR 17-18*), and accompanying IDM at Comment 1).

<sup>148</sup> See Petitioners’ Pre-Preliminary Comments at 17-19.

<sup>149</sup> *Id.* at 39-40.

<sup>150</sup> *Id.* at 17.

<sup>151</sup> See Hyundai Rebuttal Brief at 28-29.

<sup>152</sup> *Id.* at 29.

<sup>153</sup> *Id.* at 31-32.

<sup>154</sup> *Id.* at 29.

<sup>155</sup> *Id.* at 30 (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), and accompanying IDM at 17).

- Commerce’s questionnaire directs respondents to propose additional quality codes and provide support for their reasoning, but it does not direct respondents to create additional codes for other product characteristics.<sup>156</sup> Therefore, Commerce recognizes that there may be legitimate reasons to separate out some merchandise based on additional quality codes. Hyundai followed this process and provided sufficient supporting documentation to establish the additional quality code.<sup>157</sup>

## Commerce’s Position

We agree with the petitioners that Commerce has not previously examined this issue in the investigation or in the prior administrative review, and that it is appropriate for Commerce to make a determination based on the record of this current administrative review. We, therefore, disagree with Hyundai’s argument that this additional quality code should be accepted simply because it was accepted during the last administrative review, and we have fully considered the record of this instant review in our analysis. For the reasons explained below, we determine that Hyundai provided sufficient explanation and documentation for Commerce to accept Hyundai’s additional quality code for purposes of these final results.

Commerce’s questionnaire instructions state: “{u}se additional number codes for each additional Quality you propose. Provide a detailed narrative description of each additional Quality you propose, and explain what differentiates each of those from the ones which are listed above.”<sup>158</sup> Commerce’s questionnaire set out a process for respondents to propose additional quality codes, indicating that Commerce intended to consider the specific materials at issue in each administrative review and accept quality codes that indicated meaningful differences in product qualities.

Hyundai initially provided a brief explanation that the additional code 43 was for “steels designated with properties for OCTG specifications (*e.g.*, API 5CT),” as well as several hundred pages of specification documentation indicating the distinctions between various API designations and explaining the technical specifications of line pipe, casing and tubing, and other products.<sup>159</sup> We requested additional explanation as to why these products should not be classified with line pipe under quality code 40, and Hyundai indicated that the API 5CT designation is distinct from line pipe specifications (*e.g.*, API 5L) because it is used for different applications, is produced using different manufacturing processes, possesses different chemical and mechanical characteristics, and requires different quality control tests.<sup>160</sup> We, therefore, find that Hyundai provided sufficient and detailed record evidence to support its decision to report an additional quality code.

Regarding the petitioners’ argument that Hyundai did not adequately explain why some seamless and welded tube products were reported under quality code 50, while others were reported under

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<sup>156</sup> See Hyundai Rebuttal Brief at 30.

<sup>157</sup> *Id.* at 30-31.

<sup>158</sup> See Commerce Letter, Antidumping Duty Questionnaire, dated January 30, 2019.

<sup>159</sup> See Hyundai’s April 5, 2019 Sections B-D IQR at B-17 and Exhibit B-3.

<sup>160</sup> See Hyundai’s July 1, 2019 Supplemental Questionnaire Response (Hyundai’s July 1, 2019 Section B SQR) at 17-18.

43, we examined the record evidence and find that Hyundai adequately explained the distinctions, based on the specific API designations at issue. Hyundai explained that its OCTG products are manufactured with distinct chemical and mechanical properties, including a higher percentage of carbon for improved hardening ability, and these products sometimes undergo additional manufacturing treatments to increase strength.<sup>161</sup> Hyundai provided detailed ASTM International (ASTM) industry specifications documenting the differences in composition, characteristics, *etc.*, between API 5L line pipe and API 5CT.<sup>162</sup> Hyundai additionally submitted on the record of this review information supporting its assertion that Commerce’s practice is to distinguish between line pipe, OCTG, and other products.<sup>163</sup> Hyundai also explained that the steel it reported under quality code 50, that the petitioners cited as comparable to the OCTG steel at issue, actually pertain to steel used to manufacture standard pipe.<sup>164</sup> These products are used to convey liquids or gases under low-pressure conditions and, therefore, do not possess similar characteristics to, nor are comparable to, the items reported under quality code 43.<sup>165</sup> Accordingly, we find that the record supports Hyundai’s reporting of certain products under quality code 50 because they were structural tubing products that were not designated for line pipe or OCTG uses, and to report other products under quality code 43, because they were designated for OCTG uses.

We disagree with the petitioners’ contention that, because there is a catch-all category for “structural steel that is not classifiable in another Quality listed subcategory (*e.g.*, ASTM A1018 designation SS grade 30 (205), ASTM A506, *etc.*),” Hyundai should have reported this quality code rather than designating an additional code. We find that Hyundai has sufficiently explained its use of quality code 43, according to our instructions, and we are continuing to accept Hyundai’s additional quality code for these final results.

#### **Comment 5: HCUSA’s ISE Ratio**

The petitioners argued in their pre-preliminary comments that Commerce should include in HCUSA’s ISE two interest accounts (“Account A” and “Account B”)<sup>166</sup> categorized as selling, general, and administrative (SG&A) expenses and cost of goods sold accounts (COGS Accounts).<sup>167</sup> In calculating HCUSA’s ISE ratio for the *Preliminary Results*, we accepted Hyundai’s calculation that excluded these account balances from the ISE ratio calculation.<sup>168</sup>

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<sup>161</sup> *Id.*; and Hyundai’s April 5, 2019 Sections B-D IQR at Exhibit B-3, providing specifications for the relevant ASTM standards, including API 5L and API 5CT.

<sup>162</sup> See Hyundai’s April 5, 2019 Sections B-D IQR at Exhibit B-3.

<sup>163</sup> See Hyundai’s July 1, 2019 Section B SQR at Exhibit B-38 (in which Hyundai provided examples of Commerce’s scopes for the antidumping orders on Korean welded line pipe and Korean OCTG), and Exhibit B-39 (in which Hyundai provided a comparison of properties and the respective quality codes reported for OCTG *versus* line pipe).

<sup>164</sup> See Hyundai Rebuttal Brief at 31-32.

<sup>165</sup> *Id.*

<sup>166</sup> The details of this discussion involve the business proprietary information (BPI) of Hyundai. Proprietary details pertinent to Commerce’s analysis of Account A and Account B can be found in the accompanying BPI analysis memorandum. See Memorandum, “Antidumping Duty Administrative Review of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results Analysis Memorandum for Hyundai Steel Company” (Hyundai Analysis Memorandum), dated concurrently with these final results at 2-3.

<sup>167</sup> See Petitioners’ Pre-Preliminary Comments at 21-24.

<sup>168</sup> See *Preliminary Results* PDM at footnote 57.



### *Petitioners' Argument*

- Commerce should recalculate HCUSA's ISE ratio to include all COGS Accounts, because the record does not provide sufficient evidence to establish which of the COGS Accounts should be counted as ISE.<sup>169</sup>
- Hyundai cannot rely on a verification report from a prior review in the instant case, both because this case must stand on its own record, and because Commerce's report did not individually address every one of the COGS Accounts that was excluded.<sup>170</sup>
- Commerce should apply an adverse inference in analyzing the COGS Accounts, because Hyundai did not provide an explanation why each of the COGS Accounts was excluded from the CEP ISE ratio when requested.<sup>171</sup>
- Hyundai should not have excluded one of the interest accounts (Account A) from the ISE calculation because it pertains to expenses that Commerce should consider a business expense and not the direct and inevitable result of an antidumping order.<sup>172</sup>
- Hyundai should not have excluded the other interest account at issue (Account B), which pertains to interest related to import loans.<sup>173</sup> In order to exclude such expenses from the ISE ratio, Hyundai should have demonstrated that all expenses in this account were tied directly to the imputed credit expenses reported in field CREDITU.<sup>174</sup> Hyundai failed to establish this, and so this account should be included in the ISE ratio.<sup>175</sup> Commerce properly denied POSCO's request to exclude such an account for its U.S. affiliate, POSAM, in *Korea HRS 2016*, and Commerce should continue to exclude such accounts here.<sup>176</sup>
- Commerce should include all COGS Accounts, Account A, and Account B in the ISE ratio because Hyundai calculated its ISE ratio using a company-wide denominator while excluding certain accounts from the numerator which pertain to expenses associated with non-subject merchandise.<sup>177</sup>

### *Hyundai's Argument*

- Applying AFA is not appropriate because Hyundai did not withhold requested information. Rather, Hyundai provided the requested information regarding the expense accounts included in the COGS, and deconstructed them to the account level.<sup>178</sup>
- All of the COGS Accounts are properly excluded from the ISE ratio because the ones that pertain to subject merchandise are already reported as movement charges, and the

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<sup>169</sup> See Petitioners Case Brief at 48-50.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.* at 50-51.

<sup>172</sup> *Id.* at 53-54 (citing *NTN v. U.S.*, 104 F. Supp. 2d 110, 138 (CIT 2000)).

<sup>173</sup> *Id.* at 55-58.

<sup>174</sup> *Id.* at 55-57.

<sup>175</sup> *Id.* at 57-58.

<sup>176</sup> *Id.* at 55-56.

<sup>177</sup> *Id.* at 54-55.

<sup>178</sup> See Hyundai Rebuttal Brief at 33-34.

accounts that do not pertain to subject merchandise are properly excluded because they consist of direct selling expenses of other products.<sup>179</sup>

- Hyundai previously addressed this issue and explained why expenses included in Account A are properly considered part of HCUSA's general expenses.<sup>180</sup>
- Commerce examined the COGS Accounts during its HCUSA verification in the first administrative review and confirmed that they did not include any administrative or other indirect expenses.<sup>181</sup> Hyundai followed the same methodology in this instant review.<sup>182</sup>

## Commerce's Position

As an initial matter, we disagree with the petitioners that Hyundai failed to provide requested information regarding the expense accounts at issue, or in deconstructing these accounts. Commerce requested that Hyundai provide HCUSA's quarterly financial statements, reconcile the indirect selling expense ratio calculation to the statements, deconstruct the POR balances for all line items on HCUSA's financial statements by account, and indicate whether each line item was included in the ISE ratio, or, if not, why not.<sup>183</sup> In response, Hyundai explained that HCUSA does not have quarterly financial statements.<sup>184</sup> As an alternative, Hyundai provided a detailed worksheet that reconciled HCUSA's and its affiliates' SG&A expenses to the audited consolidated financial statements, and supported this information with profit and loss statements and other records that Hyundai Steel used to generate its consolidated financial statement in the ordinary course of business for fiscal years 2017 and 2018.<sup>185</sup> Hyundai identified all SG&A accounts that were included or excluded from its ISE ratio calculation and indicated why they were included or excluded.<sup>186</sup> Hyundai followed Commerce's instructions to provide details on these accounts and demonstrate how they reconciled to its financial statements.<sup>187</sup> We accepted Hyundai's explanations and found its documentation comprehensive. Therefore, we decline to apply AFA and include the COGS Accounts, Account A, and Account B in the calculation of Hyundai's ISE ratio for these final results.

## COGS Accounts

In this review, Commerce requested and Hyundai provided additional information regarding the COGS Accounts.<sup>188</sup> Hyundai explained that the expenses booked to the COGS Accounts were either accounted for as movement expenses or properly excluded because they are not associated with subject merchandise.<sup>189</sup> No information on the record of this review contradicts Hyundai's

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<sup>179</sup> *Id.* at 34.

<sup>180</sup> *Id.* at 35.

<sup>181</sup> *Id.* at 34, quoting Commerce's verification report.

<sup>182</sup> *Id.*

<sup>183</sup> See Commerce's Letter, "Antidumping Duty Administrative Review of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Supplemental Questionnaire," dated June 28, 2019 at 8.

<sup>184</sup> See Hyundai's Letter, "Certain Hot-Rolled Steel Flat Products from Korea, 10/01/2017-9/30/2018 Administrative Review; Case No. A-580-883: Supplemental Section C Questionnaire Response," dated July 15, 2019 (Hyundai's July 15, 2019 Section C SQR) at C-19.

<sup>185</sup> *Id.* at pages C-18 – C-20, and Exhibit C-42.

<sup>186</sup> *Id.*

<sup>187</sup> *Id.* at Exhibit C-42.

<sup>188</sup> *Id.* at Exhibit C-43

<sup>189</sup> *Id.* at C-17 – C-20 and Exhibits C-42 and C-43.

accounting of these expenses, and Hyundai provided additional details about these accounts when requested.<sup>190</sup> The record information provided by Hyundai indicates that these accounts appear to be selling expenses reported elsewhere or properly excluded from the ISE calculation.

Accordingly, we agree with Hyundai that, based on the information provided by Hyundai about the COGS Accounts and their categorization as COGS expenses, record evidence indicates they are direct selling expenses and not indirect selling expenses that should be included in the ISE ratio. We, therefore, continue to accept Hyundai's calculation that excludes these expenses from the ISE ratio for these final results.

#### *Account A and Account B*

In calculating CEP, section 772(d)(1)(D) of the Act directs Commerce to further reduce the CEP by any selling expenses not previously deducted under subparagraphs (A) through (C). The Act does not enumerate specific selling expenses, and the courts have recognized Commerce's discretion in this area.<sup>191</sup>

#### *Account A*

Commerce's general practice is that "antidumping duties, and cash deposits of antidumping duties, are not expenses that we should deduct from U.S. price ... We have also declined to deduct legal fees associated with participation in an antidumping case, reasoning that such expenses are incurred solely as a result of the existence of the antidumping duty order."<sup>192</sup> Conversely, we have declined to permit offsets for the financing expenses associated with cash deposits, or for financing legal fees associated with participation in a dumping case.<sup>193</sup>

The expenses included in Account A are not selling expenses related (directly or indirectly) to the sale of subject merchandise, and they are not expenses related to financing deposits or to financing legal fees associated with Hyundai's participation in an administrative review.<sup>194</sup> Further, the expenses in Account A would not exist without the existence of an antidumping duty order. Commerce, therefore, concludes that they were properly excluded from the ISE ratio. The petitioners' argument that the ISE denominator should be restricted to subject merchandise

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<sup>190</sup> *Id.*

<sup>191</sup> See *United States Steel Corp. v. United States*, 712 F. Supp. 2d 1330, 1337 (CIT 2010) (stating, "Chevron accords Commerce great discretion as to the methodology used in the calculation of indirect selling expenses. Indeed, this court has previously underscored – in the context of calculating indirect selling expenses – that {b}oth {section 772(d) of the Act}, the relevant statute, and the regulation, 19 C.F.R. § 351.401(g), give little direction on allocation methodology, and thus Commerce enjoys discretion." (citations and quotations omitted)).

<sup>192</sup> See, e.g., *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom*, 62 FR 54043 (October 17, 1997), and accompanying IDM, in which Commerce declined to make an adjustment to indirect selling expenses related to the financing of cash deposits on an antidumping duty order.

<sup>193</sup> See *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review*, 74 FR 40167 (August 11, 2009), and accompanying IDM (*Orange Juice from Brazil*) at Comment 4; see also *Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review and Rescission in Part of Administrative Review*, 71 FR 30656 (May 30, 2006), and accompanying IDM at Comment 5.

<sup>194</sup> See Hyundai's July 15, 2019 Section C SQR at C-18.

is unpersuasive, because Commerce’s practice is to exclude expenses of the type held in Account A regardless of whether they are associated with subject merchandise.

#### *Account B*

Commerce generally includes a portion of U.S. interest expenses in calculating the ISE ratio because these expenses have not been deducted elsewhere.<sup>195</sup> The exception to this general practice occurs when “the aggregate U.S. imputed interest expenses on U.S. sales of subject merchandise” exceed the actual U.S. interest expenses.<sup>196</sup> Hyundai provided documentation indicating that the amount of imputed credit expenses reported in field CREDITU in the U.S. sales database far exceeded the expenses included in Account B.<sup>197</sup> If Commerce were to include Account B in the ISE ratio calculation, it would have the effect of double counting these expenses. Therefore, excluding Account B from HCUSA’s ISE ratio is consistent with Commerce’s practice. Further, we note that Hyundai reported other interest expenses in its ISE ratio calculation at Commerce’s request, because those interest expenses were properly included in the ISE ratio calculation.<sup>198</sup>

The petitioners cite to our treatment of POSCO’s U.S. affiliate, POSAM, in the 2016 – 2017 administrative review to argue that this account should be included, and that Hyundai must have demonstrated the nature of “all expenses” in Account B.<sup>199</sup> However, in that case we identified information in POSCO’s financial statements that directly contradicted POSCO’s explanation of the expenses.<sup>200</sup> No such evidence or apparent contradiction exists on the record of this review. Hyundai indicated that expenses booked to Account B are dedicated to such expenses, and provided documentation to reconcile these expenses to its financial statements.<sup>201</sup> Accordingly, we find that Hyundai provided sufficient information to establish that the amounts included in Account B have been included in Commerce’s calculations, and that to also add this account to the ISE ratio would have the effect of double counting.

#### **Comment 6: Rate Assigned for POSCO**

In the *Preliminary Results* we preliminarily determined that POSCO had “no shipments” during the POR<sup>202</sup> but also assigned the weighted-average dumping margin calculated for Hyundai to POSCO as a weighted-average dumping margin for this review.<sup>203</sup>

#### *Petitioners’ Argument*

- Commerce erred in assigning POSCO a weighted-average dumping margin in the *Preliminary Results* because it had “no shipments” during the POR. Therefore,

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<sup>195</sup> See, e.g., *Orange Juice from Brazil* IDM at Comment 4.

<sup>196</sup> *Id.*

<sup>197</sup> See Hyundai’s April 5, 2019 Sections B-D IQR at Exhibit C-43.

<sup>198</sup> *Id.* at C-19.

<sup>199</sup> See Petitioners Case Brief at 57-58.

<sup>200</sup> See *Korea HRS 2016* IDM at Comment 8.

<sup>201</sup> See Hyundai’s July 15, 2019 Section C SQR at Exhibit C-43.

<sup>202</sup> See *Preliminary Results* PDM at 6.

<sup>203</sup> See *Preliminary Results*, 84 FR at 68408.

Commerce had no basis to assign POSCO a weighted-average dumping margin for the instant POR.<sup>204</sup>

### **Commerce's Position**

Commerce agrees that POSCO was incorrectly assigned a weighted-average dumping margin in the *Preliminary Results*, and has addressed this *supra*, in Section V, Rescission of Review as to POSCO. As a result, we are not assigning POSCO a weighted-average dumping margin in these final results, and instead are rescinding the administrative review with respect to POSCO.

### **Comment 7: Double Deduction of U.S. Packing and Inventory Carrying Costs**

In the *Preliminary Results*, we inadvertently included U.S. packing (*i.e.*, the PACK2U variable) and foreign inventory carrying costs (*i.e.*, the DINVCARU variable) in two parts of the margin calculation program.<sup>205</sup>

#### *Hyundai's Argument*

- The programming used for the *Preliminary Results* erroneously double counted the PACK2U field and the DINVCARU fields, once as packing expenses/imputed inventory carrying costs and again as U.S. movement expenses.<sup>206</sup> These expenses should be counted only once.

*The petitioners did not comment on this issue*

### **Commerce's Position**

We agree that the expenses were inadvertently double counted. We modified our final calculations for Hyundai to properly account for these expenses only once.<sup>207</sup>

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<sup>204</sup> See Petitioners Case Brief at 58.

<sup>205</sup> See Memorandum, "Antidumping Duty Administrative Review of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results Analysis Memorandum for Hyundai Steel Company," dated December 10, 2019 at Attachment II.

<sup>206</sup> See Hyundai Case Brief at 3.

<sup>207</sup> See Hyundai Analysis Memorandum at 2.

## VII. RECOMMENDATION

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



\_\_\_\_\_  
Agree



\_\_\_\_\_  
Disagree

9/30/2020

X



\_\_\_\_\_  
Signed by: JEFFREY KESSLER

\_\_\_\_\_  
Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance