A-580-809
Administrative Review
POR: 11/1/17-10/31/2018
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November 2, 2020

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

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the 2017-2018 Administrative Review of the Antidumping Duty Order on Circular Welded Non-Alloy Steel Pipe from the Republic of Korea

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I. SUMMARY

The Department of Commerce (Commerce) has analyzed the comments submitted by the interested parties in the administrative review of the antidumping duty (AD) order on circular welded non-alloy steel pipe (CWP) from the Republic of Korea (Korea) covering the period of review (POR), November 1, 2017 through October 31, 2018.

Based upon our analysis of the comments received, we made certain changes to the margins found in the *Preliminary Results*.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

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

General Issues

Comment 1-A: Cost-Based Particular Market Situation Allegation
Comment 1-B: Evidence of a Particular Market Situation Allegation
Comment 1-C: Particular Market Situation Adjustment
Comment 2: Differential Pricing

[1] *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018*, 85 FR 2719 (January 16, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

II. BACKGROUND

On January 16, 2020, Commerce published the *Preliminary Results* of this administrative review.[2] We invited interested parties to comment on the *Preliminary Results*.[3] On February 28, 2020, the following parties submitted case briefs: (1) Wheatland Tube (the petitioner);[4] (2) Husteel;[5] (3) Hyundai Steel Company (Hyundai);[6] (4) NEXTEEL;[7] and (5) SeAH Steel Corporation (SeAH).[8] On March 12, 2020, the following parties submitted rebuttal briefs: (1) the petitioner;[9] (2) Husteel;[10] (3) Hyundai Steel;[11] and (4) NEXTEEL.[12]

April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.[13] On May 26, 2020, Commerce extended the deadline for issuing these final results until September 2, 2020.[14] On July 21, 2020, Commerce again tolled all deadlines in administrative reviews by 60 days, thereby extending these final results until November 2, 2020.[15]

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

III. SCOPE OF THE ORDER

The merchandise subject to the order is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and

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[2] *See Preliminary Results*.
[3] *Id.*
[4] *See* Petitioner's Letter, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Case Brief of Wheatland Tube.," dated February 28, 2020 (Petitioner's Case Brief).
[5] *See* Husteel's Letter, "Circular Welded Non-Alloy Steel Pipe from South Korea, Case No. A-580-809: Husteel Case Brief," dated February 28, 2020 (Husteel's Case Brief).
[6] *See* Hyundai Steel's Letter, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Case Brief," dated February 28, 2020 (Hyundai Steel's Case Brief).
[7] *See* NEXTEEL's Letter, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: NEXTEEL's Case Brief," dated February 28, 2020 (NEXTEEL's Case Brief).
[8] *See* SeAH's Letter, "Administrative Review of the Antidumping Order on Circular Welded Non-Alloy Steel Pipe from Korea — Case Brief of SeAH Steel Corporation," dated February 28, 2020.
[9] *See* Petitioner's Letter, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea – Rebuttal Brief Of Wheatland Tube And Nucor Tubular Products Inc.," dated March 12, 2020 (Petitioner's Rebuttal Brief).
[10] *See* Husteel's Letter, "Circular Welded Non-Alloy Steel Pine from Korea. Case No. A-580-809: Husteel Rebuttal Brief," dated March 12, 2020 (Husteel's Rebuttal Brief).
[11] *See* Hyundai Steel's Letter, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Rebuttal Brief," dated March 12, 2020 (Hyundai Steel's Rebuttal Brief).
[12] *See* NEXTEEL's Letter, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: NEXTEEL's Rebuttal Brief," dated March 12, 2020 (NEXTEEL's Rebuttal Brief).
[13] *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.
[14] *See* Memorandum, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Extension of Deadline for Final Results of 2017-2018 Antidumping Administrative Review," dated May 26, 2020.
[15] *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in the order.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of the order except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit.[16]

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) numbers: 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. Although the HTSUS numbers are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

IV. CHANGES SINCE THE *PRELIMINARY RESULTS*

For the final results of review, Commerce based the margin calculations for each mandatory respondent on constructed export price (CEP), export price (EP), and constructed value (CV), where appropriate, for Husteel and NEXTEEL. We used the same methodology as stated in the *Preliminary Results*, with the exception of modifying the PMS adjustment rate to only adjust costs related to hot-rolled coil. In the *Preliminary Results*, we incorrectly adjusted costs for all direct material costs based on the PMS adjustment rate.

V. RATE FOR NON-EXAMINED COMPANIES

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

[16] *See Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the Republic of Korea, Mexico, and Venezuela*, 61 FR 11608 (March 21, 1996). In accordance with this determination, pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A-53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines, is outside of the scope of the AD order.

For these final results, we calculated weighted-average dumping margins that are not zero, *de minimis*, or determined entirely on the basis of facts available for Husteel and NEXTEEL. We cannot apply our normal methodology of calculating a weighted-average margin using the actual net U.S. sales values and dumping margins for Husteel and NEXTEEL because doing so could indirectly disclose business-proprietary information to both of these companies. In order to strike a balance between our duty to safeguard parties' business proprietary information and our attempt to adhere to the guidance set forth in section 735(c)(5)(A) of the Act, we calculated a weighted-average margin for non-selected respondents using the publicly available, ranged total U.S. sales values of the selected respondents, compared the resulting public, weighted-average margin to the simple average of the antidumping duty margins, and used the amount which is closer to the actual weighted-average margin of the selected respondents as the margin for the non-selected respondents.[17] Accordingly, for the final results of this review, we are assigning the weighted-average of the antidumping duty margins calculated using the public ranged sales data of Husteel and NEXTEEL for the non-examined companies.[18]

VI. DISCUSSION OF THE ISSUES

Comment 1-A: Cost-Based Particular Market Situation Allegation

***Husteel's Comments*:**

- Section 504 of the Trade Preferences Extension Act of 2015 (TPEA) permits Commerce to adjust the respondents' cost of production (COP) based on a PMS allegation for the purpose of calculating CV, but not for the purposes of analyzing sales below cost.[19]
- Even if the TPEA allowed Commerce to make an adjustment for the purposes of analyzing sales below cost, Commerce failed to demonstrate that the respondents' input costs were outside of the ordinary course of trade, as required by the statute.[20]
- The Court of International Trade (CIT) has overturned the PMS finding in similar proceedings, citing to recent decisions of oil country tubular goods (OCTG) from Korea, CWP from Korea and welded line pipe (WLP) from Korea. Husteel argues that the evidentiary record in this case is not qualitatively different from those cases and that Commerce has relied on the same evidence as prior proceedings that the CIT overturned in finding a PMS.[21]

Hyundai Steel's Comments:

- Section 504(a) of the TPEA permits an adjustment to a producer's actual costs of production based on a PMS allegation only for purposes of calculating CV. There is

[17] *See Ball Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53662 (September 1, 2010), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.
[18] *See* Memorandum, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Calculation of the Margin for Respondents Not Selected for Individual Examination," dated concurrently with this memorandum.
[19] *See* Husteel's Case Brief at 3-6.
[20] *Id.* at 4-16.
[21] *Id.* at 7-14.

otherwise no statutory authority that permits Commerce to use an alleged PMS to adjust a producer's production costs for the purposes of analyzing sales below cost.[22]

- The CIT's holding in other proceedings support a finding of no PMS.[23]
- Commerce's preliminary PMS finding is incomplete, unsubstantiated, and otherwise contradicts the CIT's clear and reasoned holding on similar facts in other proceedings.[24]
- Based on relevant CIT precedent and substantial evidence on this record, Commerce should review anew the petitioner's legal arguments and factual evidence concerning its PMS allegation and should find in the final results that no PMS existed during the POR and that no adjustments to the mandatory respondents' reported hot-rolled coil (HRC) costs are warranted.[25]
- Commerce has not found that the PMS in Korea is not "ordinary."[26]
- Because Commerce has concluded that the conditions and practices of a PMS in Korea have existed for at least four years, *i.e.*, "for a reasonable time prior to the exportation of the subject merchandise" then such conditions can no longer represent a "particular" situation, and instead now represent the normal commercial state of affairs in Korea. Consequently, as a matter of law, Commerce no longer may consider the prevailing market conditions in Korea to be outside the ordinary course of trade.[27]
- To the degree that Commerce continues to believe that it may apply the PMS provision to the mandatory respondents' reported costs, Commerce nonetheless should recognize that because there is nothing particularly abnormal, unusual, or distorted about the companies' production of CWP during the POR, there is no PMS with respect to their reported manufacturing costs for CWP sold during the POR.[28]
- There is no factual or legal basis for Commerce to find that a PMS exists in this case. However, if Commerce nonetheless concludes in these final results that a PMS existed in Korea affecting CWP costs of production, Commerce must base its determination on an empirical analysis and calculate any PMS cost adjustment accordingly. Hyundai argues that a PMS adjustment to costs of production is not permitted under the statute.[29]

NEXTEEL's Comments:

- The statute only authorizes PMS adjustments in a CV context, not in a sales-below-cost context.[30]
- There is no legal basis for Commerce to adjust NEXTEEL's reported COP for purposes of the sales-below-cost test. The TPEA modified the definition of "ordinary course of trade" in section 771(15) of the Act, to add a new sub-paragraph (C) addressing circumstances in which a PMS in a comparison market is distorted and therefore prevents

[22] *See* Hyundai Steel's Case Brief at 3.
[23] *Id.* at 12-14 (citing *NEXTEEL Co. v. United States* 355 F. Supp 3d 1336 (CIT 2019) (*NEXTEEL I*) at 1364; *NEXTEEL Co. v. United States*, 392 F. Supp. 3d 1276, 1297 (CIT) (*NEXTEEL II*); and *Hyundai Steel v. United States*, Slip Op. 19-148 (CIT November 25, 2019).
[24] *Id.* at 14.
[25] *Id.* at 14-15.
[26] *Id.* at 15.
[27] *Id*.
[28] *Id*.
[29] *Id.* at 19-22.
[30] *See* NEXTEEL's Case Brief at 2.

a proper comparison with the EP or CEP. Section 504(b) of the TPEA also modified the provisions concerning the calculation of "constructed value" in section 773(e) of the Act, to permit Commerce to adjust constructed value "if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade." Section 504 of the TPEA did not make any other changes to the existing statutory language. Commerce's application of PMS adjustments to calculations under section 773(b) of the Act in this review is contrary to law and should be reversed in the final results.[31]

- It is Commerce's normal practice is to use the remaining home market sales as the basis of normal value, but, here, where Commerce has inserted extraneous elements into the cost calculations yielding absurd and unrepresentative results following the cost test, strict adherence to Commerce's standard cost test and use of limited and unrepresentative home market sales is unreasonable. The only solution to correct this absurdity is for Commerce to decline to make any PMS adjustments when evaluating whether NEXTEEL's home market prices are above or below the COP.[32]

Petitioner's Rebuttal Comments:

- The respondents claim that the statute does not permit Commerce to adjust their COP for the purposes of the sales below cost test to account for the PMS Commerce found to exist. Commerce should reject these arguments and continue to find it has the authority to adjust the COP to account for the PMS that distorted respondents' costs during the POR.[33]
- Through the TPEA amendment, Commerce was given the authority to address cost-based PMS concerns in situations where the market for a producer's input costs is distorted. The TPEA expanded Commerce's PMS authority with the intention of granting Commerce "flexibility in calculating a duty that is not based on distorted pricing or costs."[34]
- The respondents argue that the PMS provisions of the statute only permit Commerce to adjust a respondent's costs for the purpose of calculating CV and not for the purpose of calculating the COP for the sales below cost test. In support of their arguments, the respondents cite three recent decisions from the CIT. Those rulings, however, are not final and are still subject to appeal. Commerce is therefore not bound by these court decisions and should continue to exercise its statutory authority to adjust COP to account for the PMS found to exist.[35]
- The statute unambiguously permits Commerce to make a PMS adjustment to respondents' COP. The TPEA amended section 773(e) of the Act to authorize Commerce to use another calculation methodology under the statute "or any other calculation methodology" in the event that "a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade." Thus, once a PMS was

[31] *Id.* at 2-6.
[32] *Id.* at 9-11.
[33] *See* Petitioner's Rebuttal Brief at 2.
[34] *Id*.
[35] *Id.* at 3.

found to render costs unreflective of costs in the ordinary course of trade, the statute unambiguously provides Commerce with the authority to use "any other" calculation methodology.[36]

- If the law is ambiguous, Commerce reasonably resolved the ambiguity by making a PMS adjustment to COP. The respondents' claims revolve around the fact that TPEA amended section 773(e) of the Act regarding CV but did not also directly amend section 773(b) of the Act, the subsection that addresses the sales-below-cost test. This argument ignores the fact that the TPEA also added a new paragraph (C) to section 771(15) of the Act, the subsection of the statute that defines the term "ordinary course of trade." Thus, at the same time Congress added a provision permitting Commerce to use any other methodology if a cost-based PMS exists, it also amended the definition of "sales and transactions" outside the "ordinary course of trade" to include "situations" in which a "particular market situation prevents a proper comparison with export price or constructed export price." If the two amendments do not clearly authorize an adjustment to COP to account for a PMS, they at a minimum create ambiguity as to whether such an adjustment is permitted. Commerce reasonably resolved that ambiguity by determining it could adjust costs for the purposes of the sales-below-cost test to account for a PMS.[37]
- It is therefore reasonable, and consistent with the statutory scheme, statutory purpose, and Congressional intent, for Commerce to interpret its authority so as to permit it to adjust the respondents' COP to account for the PMS that has been found to exist. Commerce should maintain this interpretation in its final results.[38]
- NEXTEEL's claims that the cost recovery and difference in merchandise provisions of the statute, as well as allegedly "absurd" results, prevent an adjustment to COP to account for a PMS ignore the fact that the overarching purpose of the sales-below-cost test is to eliminate home market sales that are outside the ordinary course of trade. As explained above, the only way to satisfy that obligation consistent with the expanded definition of the "ordinary course of trade" is for Commerce to adjust COP to account for that PMS before performing its sales-below-cost test. Commerce should therefore continue to adjust COP for the PMS found to exist in its final results.[39]

Commerce Position: We have not changed our interpretation of the statute. For the final results of review, we continue to find that a PMS exists in Korea that distorts the COP of CWP and thus, we have made an adjustment to the costs of HRC inputs. Section 504 of the TPEA added the concept of PMS in the definition of the term "ordinary course of trade," for purposes of CV under section 773(e), and through these provisions for purposes of the COP under section 773(b)(3). Section 773(e) of the TPEA states that "if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under the subtitle or any other calculation methodology." Thus, under section 504 of the TPEA, Congress has given Commerce the authority to determine whether a PMS exists within the foreign market from which the subject merchandise is sourced

[36] *Id.* at 4.
[37] *Id.* at 5-10.
[38] *Id.* at 10.
[39] *Id.* at 11.

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.[40]

In this review, the petitioner alleged that a PMS exists in Korea which distorts CWP costs of production based on the following four factors as discussed below: (1) Korean subsidies on the HRC inputs; (2) Korean imports of HRC from the People's Republic of China (China); (3) strategic alliances between Korean HRC and CWP producers; and (4) distortions in the Korean electricity market. Section 504 of the TPEA does not specify whether to consider these allegations individually or collectively. In *CWP from Korea AR 15/16*, and again in *CWP from Korea AR 16/17,* the petitioner alleged that a PMS existed in Korea based on the same four factors and, upon analyzing the four allegations as a whole, Commerce found that a PMS existed in Korea during that POR.[41] The CIT concluded, in *NEXTEEL I*, that this approach of considering a totality of the circumstances in the market (including these four factors) is reasonable.[42]

In this review, as in the previous administrative review, Commerce considered, as a whole, the four factors of the PMS allegation based on their cumulative effect on the Korean CWP market through the COP for CWP and its inputs.[43] Based on the totality of the circumstances in the Korean market, Commerce continues to find that the allegations represent facets of a single PMS, as explained in further detail in Comment 1-B.

With respect to the respondents' arguments concerning the legal standard for finding a cost-based PMS, all parties agree that section 504 of the TPEA enables Commerce to address a PMS where the cost of materials, fabrication, or processing fail to accurately reflect the COP in the ordinary course of trade. The respondents contend that section 504(b) of the TPEA modified provisions concerning only the calculation of CV, and that there is no additional statutory authority for Commerce to use an alleged cost-based PMS to adjust a producer's production costs to determine whether there were comparison market sales priced below their COP.

As Commerce has previously explained in *Large Diameter Welded Pipe from Korea*, we disagree with the respondent's interpretation of the Act.[44] The term "ordinary course of trade," defined in section 771(15) of the Act, includes situations in which "the administering authority determines that the {PMS} prevents a proper comparison {of normal value} with the export price or constructed export price." Thus, where a PMS affects the COP of the foreign like

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

[41] *See 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) (*CWP from Korea AR 15/16*), and accompanying IDM at Comment 1; *see also See 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 from Korea AR 16/17*), and accompanying IDM at Comment 1.

[42] *See NEXTEEL Co. v. United States*, 355 F. Supp. 3d 1336, 1349 (CIT 2019) (*NEXTEEL I*) (discussing legislative history and finding that Commerce's approach was reasonable).

[43] *See* Petitioner's Letter, "Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Particular Market Situation Allegation and Supporting Factual Information – Qualitative Submission," dated July 15, 2019 (PMS Allegation).

[44] *See Large Diameter Welded Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 84 FR 6374 (February 27, 2019) (*Large Diameter Welded Pipe from Korea*), and accompanying IDM at Comment 1.

product because it distorts the cost of inputs, it is reasonable to conclude that such a situation may prevent a proper comparison of the EP with normal value based on home market prices just as it would when normal value is based on CV. The claim that an examination of a PMS for purposes of the sales-below-cost test goes beyond the plain language of the Act fails to consider that the provision at issue, section 773(e) of the Act, specifically includes the term "ordinary course of trade." Thus, the definition of that term, again, found in section 771(15) of the Act, is integral to that PMS provision. Accordingly, we disagree with the argument that Commerce cannot analyze a PMS claim in determining whether a company's comparison-market sale prices were below cost, and therefore, are outside the "ordinary course of trade." Indeed, we find that this interpretation would defeat the very purpose of an "ordinary course of trade" analysis under the PMS provision, which is to ensure that the distortions caused by a PMS do not prevent fair comparisons of normal value with U.S. price.

Additionally, as Commerce explained in *OCTG from Korea AR16/17*, and again in *OCTG from Korea AR17/18*, the legislative history of TPEA indicates that, through the PMS provision, Congress intended to provide Commerce with the ability to address price and cost distortions resulting from subsidization.[45] The legislative history of the TPEA states that Commerce can disregard prices or costs of inputs that foreign producers purchase if Commerce has reason to believe or suspect that the inputs in question have been subsidized or dumped.[46] Further, during the Senate debate on this bipartisan legislation, Senator Brown called the proposed legislation "one of the most important bills to come in front of the Senate" which would "guarantee that Americans can find a more level playing field as we compete in the world economy."[47] He also identified the Korean steel industry as an example of an industry that does not play by the rules, specifically referencing unfair subsidization of Korean OCTG (which similar to CWP, is a downstream product of Korean HRC) by the Korean government:

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

[45] *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 from Korea AR16/17*), and accompanying IDM at Comment 1-A; *see also See Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 41949 (July 13, 2020) (*OCTG from Korea AR17/18*), and accompanying IDM at Comment 1-A.
[46] *See* TPEA, S. Doc. No. 114-45 (2015) at 38.
[47] *See* 114 Cong. Rec. S2900 (daily ed. May 14, 2015) (statement of Sen. Brown).

> this body. It hurts our workers, our communities, and our country. It is time to stop it.[48]

Accordingly, we find that the respondents' arguments are inconsistent with the intent of Congress in adding this provision to the Act, and we agree with the petitioner's argument that Commerce is granted the discretion to use "any other calculation methodology"[49] if costs are distorted by a PMS, including for the purposes of COP under section 773(b)(3) of the Act.

Consistent with previous determinations,[50] Commerce disagrees that input prices (*i.e.*, production costs) must be found to be outside the ordinary course of trade in order to find the existence of a PMS. To the contrary, a finding that a PMS exists results in a determination that the relevant input prices are outside of the ordinary course of trade. Moreover, we are not persuaded by Hyundai Steel's argument that the passage of time normalized the PMS in Korea and made the distorted costs accurately reflect the costs of production within an ordinary course of trade. Section 771(15) of the Act defines "ordinary course of trade" as "the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal … with respect to merchandise of the same class or kind." As a matter of grammar and logic, when interpreting this provision, it is clear that conditions must have been "normal" for a reasonable time prior to the exportation. Normalcy and passage of time are two separate requirements and the passage of time alone does not transform a market with significant distortions into a normal market. For example, if the government controls the prices of certain inputs to such an extent that they cannot be considered to be competitively set (such as mandating that all inputs be sold at a particular price), the passage of time alone does not render such pricing practices consistent with normal market conditions and practices.

While Hyundai Steel points to *Steel Rebar from Taiwan*[51] in which Commerce made a negative PMS determination using a "benchmarking analysis," we disagree with Hyundai Steel's contention that a benchmarking analysis is required in each case. Each case has its own facts and arguments and the particular market determinations are inherently case specific. Depending on the facts and arguments raised, the benchmarking analysis could be appropriate for one case, but not necessary or required for other cases. First, the benchmarking analysis is not mentioned, l*et al*one mandated, in the particular market provisions of the statute or their legislative history, nor does Commerce have a practice of employing benchmarking in every case, where the PMS analysis is employed. In *NEXTEEL I* and *NEXTEEL II*[52] the CIT upheld Commerce's methodology of considering the totality of circumstances. We continue to rely upon this same methodology for the PMS determination in this segment, which is fully supported by a plethora of record information.

Comment 1-B: Evidence of a Particular Market Situation Allegation

[48] *Id*.
[49] *See* section 773(e) of the Act.
[50] *See Large Diameter Welded Pipe from Korea* and accompanying IDM at Comment 1.
[51] *See Steel Concrete Reinforcing Bar from Taiwan: Final Determination of Sales at Less Than Fair Value*, 82 FR 34925 (July 27, 2017) (*Steel Rebar from Taiwan*).
[52] *See NEXTEEL Co. v. United States*, 392 F. Supp. 3d 1276, 1297 (CIT) (*NEXTEEL II*).

***Husteel's Comments*:**

- Commerce's reasoning in this case is identical to the reasoning applied in the prior cases rejected by the CIT as not being based on substantial evidence.[53]
- Under any reasonable analysis, these minimal countervailing duty rates (of 0.54 percent for POSCO, 0.58 percent for Hyundai Steel, and 0.56 percent for non-examined companies) cannot support a finding that the Korean CWP industry is distorted due to subsidization by the Korean government.[54]
- On the second aspect of the PMS allegation, the distortive impact of Chinese hot-rolled steel overcapacity, the record contains no evidence that Chinese and/or global overcapacity has had an impact on the direct material costs of CWP production in the POR.[55]
- Husteel argues that there is no record evidence that Chinese overcapacity in steel production has ceased, and Commerce's preliminary analysis has illegally shifted the burden to substantiate an allegation from the party making an allegation to the respondents.[56] The record demonstrates that its purchases are in line with world market prices.[57]
- Regarding the third factor, the record does not support Commerce's conclusion that there are strategic alliances between Korean HRC suppliers and CWP producers, nor has Commerce conducted any kind of analysis demonstrating that such alliances exist.[58]
- As for the fourth factor, Commerce has consistently determined that electricity in Korea is not provided for less than adequate remuneration and there is no record evidence that electricity prices during the POR were aberrant or that any Korean government involvement in the domestic electricity market differs from any sovereign country's regulation of its own energy markets.[59]

Hyundai Steel's Comments:

- In *NEXTEEL I*, the CIT recently rejected similar arguments that Commerce preliminarily accepted in this review that: (a) Chinese overcapacity of steel production resulting in a flood of cheap imports of Chinese steel; and (b) government subsidies to domestic steel producers support of an alleged PMS in the context of Korean steel market.[60]
- Hyundai notes that in *Large Diameter Welded Pipe from Korea*, the CIT found that Commerce failed to substantiate the allegedly distorting effects of Korean imports of HRC from China, strategic alliances between Korean HRC and WLP producers, and distortions in the Korean electricity market.[61]

[53] *See* Husteel's Case Brief at 15.
[54] *Id.* at 17.
[55] *Id.* at 18-21.
[56] *Id.*
[57] *Id.*
[58] *Id.* at 21-22.
[59] *Id.* at 22-23.
[60] *See* Hyundai Steel's Case Brief at 13-14.
[61] *Id.* at 9-11.

***NEXTEEL's Comments*:**

- There is no evidence showing that Korean producers' costs to manufacture subject merchandise in this administrative review were distorted by alleged steel overcapacity in China, Korea, or globally.[62]
- The petitioner undertook no objective, empirical analysis to show that the prices that NEXTEEL paid for its inputs, either from Korean or foreign suppliers, to manufacture subject merchandise were inconsistent with market prices or were below the suppliers' production costs.[63]
- Even when there was global steel overcapacity, the consequence was a generalized set of conditions impacting all markets around the world, rather than triggering a PMS in Korea. The evidence the petitioner submitted relating to Chinese overcapacity does not establish that market conditions in Korea were any different than they were in any other market around the world. To the extent these factors impact the steel market, they impact the global market – these are not considerations unique to Korea and are not indicative of any market situation "particular" to Korea.[64]
- The conclusions that there is government involvement and interference in the market are speculative and not supported by the record, as Commerce points to no steps the Korean government actually took or allegedly took to interfere in the market. None of the materials on which Commerce relies to conclude that "government intervention" existed during the POR shows any evidence of any PMS.[65]
- NEXTEEL recognizes that Commerce has relied on alleged "strategic alliances" in prior cases concerning the steel pipe market in Korea. However, even these alleged strategic alliances did not support Commerce's prior findings on this issue and Commerce should not extend the finding here, where the facts differ significantly, and the claimed input distortions are even more tenuous.[66]
- Nothing on this record suggests that electricity prices during the POR were aberrant or that any Korean government involvement in the domestic electricity market is different than any sovereign country's regulation of its own energy markets.[67]

Petitioner's Rebuttal Comments:

- Commerce's PMS determination is amply supported by record evidence, and non-final court decisions regarding determinations in separate proceedings do not invalidate Commerce's determination here. Commerce should therefore continue to find that a PMS exists in the final results.[68]
- The respondents argue that decisions by the CIT regarding other reviews on steel products from Korea preclude an affirmative PMS finding based on this record. None of the cited decisions are final and they do not control the outcome in this review.

[62] *See* NEXTEEL's Case Brief at 23.
[63] *Id.* at 25.
[64] *Id.* at 40-41.
[65] *Id.* at 42-43.
[66] *Id.* at 44-45.
[67] *Id.* at 46.
[68] *See* Petitioner's Rebuttal Brief at 11-12.

Moreover, those cases were based on different records than the record in this review. The respondents' arguments are therefore, without merit and should be rejected.[69]

- In attacking the individual factual elements of Commerce's particular market situation determination, the respondents cite to the fact that much of the same evidence was before the agency in the 2014 – 2015 administrative review on OCTG, which the CIT remanded in *NEXTEEL I* based on Commerce's negative preliminary determination in that case. In effect, the respondents seek to handcuff Commerce to that preliminary negative PMS determination on OCTG from Korea from February 2017 more than three years later and in all future proceedings involving steel products from Korea. Commerce should reject these arguments.[70]
- In this proceeding, unlike in the proceedings on Korean pipe products that have been reviewed by the CIT to date, the record contains a detailed and robust regression analysis that demonstrates and quantifies the impact that global overcapacity in the steel industry has had on the Korean market for HRC.[71]
- With regard to subsidies to HRC producers in Korea, the respondents point to the fact that the subsidy rates for Korean producers were found to be lower in the first administrative review than in the original investigation. Yet the fact remains that Commerce continues to find these Korean producers to be subsidized, regardless of the rates found in any particular proceeding. Moreover, the rates at which they are subsidized played no role in Commerce's quantification of the PMS adjustment in this case. The fact that Korean producers are still subsidized is sufficient to support Commerce's finding that these subsidies contribute to the existence of a PMS in Korea that distorts the costs of HRC.[72]
- With regard to strategic alliances, the respondents have pointed to no evidence that detracts from Commerce's finding that they contribute to a PMS. The respondents also claim such alliances may affect U.S. prices as well as home market prices. The concepts of PMS and ordinary course of trade do not apply to EP (or CEP), and thus the question of whether distortive factors that create a cost-based PMS may also affect export prices is irrelevant.[73]
- Because electricity prices distorted by government intervention may not be found to confer subsidies providing specific benefits to particular users within Korea compared to other users in Korea in the countervailing duty context does not mean *ipso facto* that the same intervention does not contribute to distorted production costs in the antidumping context. Commerce should therefore reject the respondents' arguments.[74]
- Any recovery in HRC prices in the recent period does not in and of itself demonstrate that the long-standing global overcapacity crisis is over or that its effects are no longer being felt. Moreover, claims that Korea's HRC prices are at or above world levels are unavailing, as the global overcapacity crisis necessarily affects global prices as well, though the impacts are felt differently in each country depending on various factors

[69] *Id.* at 13-14.
[70] *Id.* at 18.
[71] *Id.* at 19.
[72] *Id*.
[73] *Id.* at 20.
[74] *Id.* at 21.

including the country's import dependence, levels of government support for its domestic steel industry, and other policies and possible distortions.[75]

- While the overcapacity crisis is global in nature, its impacts on national steel markets are "country-specific" and create incentives that play out differently from country to country. The regression analysis submitted by the petitioner shows how the global overcapacity crisis impacts each country's steel market differently. The analysis shows a strong relationship between global uneconomic steel capacity and prices for HRC, but the model also finds that there are different coefficients for uneconomic capacity for different countries, and, as a result, different PMS adjustments for different countries. The regression analysis thus further supports Commerce's finding that global excess capacity can create different particular market situations in each country.[76]

Commerce Position: The respondents argue that Commerce has made no new factual findings with regard to a PMS in the instant review, relying instead on previous determinations in prior reviews or in other cases. We disagree. We determined in the *Preliminary Results* that the record evidence in this review supports a finding that the circumstances present in the previous review (and in other reviews of Korean AD orders) have remained largely unchanged and, thus, made a preliminary finding that, due to the cumulative impact of those factors, a particular market situation exists in Korea which distorts the COP of CWP.[77]

We disagree with the respondents' arguments that the record evidence in this POR does not support a finding that a PMS exists. As detailed in the PDM,[78] record evidence shows that the Korean government provides subsidies for the production of hot-rolled steel, which includes the HRC used to produce CWP.[79] Record evidence also shows that HRC, as an input of CWP, constitutes a substantial proportion of the cost of CWP production.[80] Thus, distortions in the HRC market have a significant impact on production costs for CWP. Further, as a result of significant overcapacity in Chinese steel production, which stems in part from the distortions and interventions prevalent in the Chinese economy, the Korean steel market has been flooded with imports of cheaper Chinese steel products, placing downward pressure on Korean domestic steel prices.[81] This, along with heavy subsidization by the Korean government of domestic steel production, distorts the Korean market prices of HRC, the main input in Korean CWP production.

Husteel argues that Commerce's finding in the *Preliminary Results,* that there was no "evidence on the record that Chinese {over}capacity in steel production … has ceased", has illegally

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[75] *Id.* at 21-22.
[76] *Id.* at 24-25.
[77] *See Preliminary Results* PDM at 12.
[78] *Id.* at 12-14.
[79] *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 *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) (collectively, *HRS from Korea*).
[80] *See* NEXTEEL's Letter, "Circular Welded Non-Allow Steel Pipe from Korea: NEXTEEL's Sections B-D Questionnaire Response," dated June 6, 2019 at Exhibit D-3; *see also* Husteel's Letter, "Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, Case No. A-580-809: Section D Questionnaire Response," dated June 11, 2019 at D-9.
[81] *See* PMS Allegation at Exhibit 15.

shifted the burden to substantiate an allegation from the party making the allegation to the respondents.[82] We disagree that Commerce has illegally shifted the burden to the respondents. Record information demonstrates that, as a result of Korean companies importing large volumes of steel from China[83] the Korean steel market has been adversely impacted by the cheaper Chinese steel products, placing downward pressure on Korean domestic steel prices.[84] Record evidence shows that a significant volume of Chinese steel products continued to be imported into Korea during the POR.[85] Because the prices of those Chinese steel products unquestionably have an effect on the domestic price of HRC in Korea, we continue to find that Chinese exports to Korea, along with the distortions caused by the other factors comprising the PMS allegation, distort the Korean market prices of HRC, and in turn distort the costs of Korean CWP production.

With respect to the allegation that certain Korean HRC suppliers and Korean CWP producers attempt to compete by engaging in strategic alliances, Commerce agrees that the record evidence supports that such strategic alliances exist in Korea and that these strategic alliances may have affected prices in the period covered by *HRS from Korea*.[86] Further, information on the record of this review points to collusion and price-fixing schemes engaged in by the Korean steel industry, including both mandatory respondents.[87] Although the record does not contain specific evidence showing that strategic alliances directly created a distortion in HRC pricing in the current POR, Commerce nonetheless finds that these strategic alliances and price fixing schemes between certain Korean HRC suppliers and Korean CWP producers are relevant as an element of Commerce's analysis in that they may have created distortions in the prices of HRC in the past, and may continue to impact HRC pricing in a distortive manner during this POR and in the future.

Regarding Husteel's argument that because calculated subsidy rates are lower than previous reviews, it cannot support a finding that the Korean CWP industry is distorted due to subsidization by the Korean government, we disagree. As stated in the preliminary PMS determination, Commerce found that the Government of Korea (GOK) subsidized the biggest HRC producers in Korea.[88] Although the level of subsidization has decreased in recent years, the GOK continued to subsidize its steel industry at above *de minimis* levels. The GOK's subsidization of Korean steel producers exerted downward pressure on HRC prices in Korea, in connection with transactions involving consumers of HRC (*e.g.*, producers of CWP). To remain afloat, the Korean HRC producers must adjust their pricing in response to the price suppression of HRC import prices caused by the continued effects of the global steel overcapacity crisis, and the GOK's assistance to Korean HRC producers. These resultant distortions of HRC input costs flow directly to the COP of CWP.

Finally, regarding the allegation of distortion present in the electricity market, consistent with our previous determinations, we continue to find that the price of electricity is set by the GOK

[82] *See* Husteel's Case Brief at 18-21.
[83] *See* PMS Allegation at Exhibit 15, containing Steel Market Developments-Q4 2018, OECD (2019).
[84] *See* PMS Allegation at Exhibits 2, 3, and 5.
[85] *Id*.
[86] *See* PMS Allegation at Exhibits 7, 8, and 9.
[87] *Id*.
[88] *See Preliminary Results* PDM at 12.

and that electricity in Korea functions as a tool of the government's industrial policy.[89] The GOK has tight control over the electricity market, including supply and pricing.[90] Furthermore, the largest electricity supplier, KEPCO, is a government-controlled entity.[91] As a government-controlled entity, KEPCO is responsible for the transmission, distribution, and sale of electricity to customers.[92] 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.[93] Because of the distortion in this Korean utility, and the fact that such distortion places downward pressure on the pricing of electricity, we find this element contributes to the PMS. While the respondents argue that Commerce has determined that Korean electricity prices do not confer a subsidy benefit, even in the absence of a Commerce finding that the provision of electricity to industrial users in Korea constituted a countervailable subsidy, there can be market distortion in Korean electricity costs.

Regarding parties' arguments concerning the decision by the CIT in *NEXTEEL I* and *NEXTEEL II*, the CIT upheld our "totality of the circumstances" approach, finding only that our decision was not supported by substantial evidence. Although the factors are the same, additional evidence (*e.g.*, HRC prices) relevant to this POR (17-18) did not exist during the PORs of *NEXTEEL I* and *NEXTEEL II*. Here, we have performed analysis of the evidence on the record of this administrative review, including the evidence that was not on the record of prior administrative reviews. Accordingly, the CIT's decisions in *NEXTEEL I* and *NEXTEEL II*, that evaluated evidence on the record of prior reviews, do not reflect on the totality of evidence on the record of this review. Moreover, the litigation in both *NEXTEEL I* and *NEXTEEL II* is still ongoing and the decisions are not final and conclusive, the impact of that litigation is not yet known, and in any event, it is not binding on the agency in this segment of the administrative proceeding.

Regarding parties' arguments that it is Commerce's practice that a PMS finding must be based on evidence that shows a direct cause and effect relationship between the PMS and the respondent's pricing, and that there is no evidence that respondent's specific purchases of HRC were outside the ordinary course of trade, we believe that no such analysis is necessary. As we explained in *Large Diameter Welded Pipe from Korea*[94] and *OCTG from Korea AR17/18*,[95] the purpose of a PMS analysis is to identify whether there are distortions in the market as a whole. We disagree with the notion that a company-specific analysis is appropriate in a situation where there is sufficient evidence demonstrating that the market as a whole is distorted, and a PMS exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the COP in the ordinary course of trade. If a particular market is distorted as a whole, it would be illogical to conclude that one company operating in that particular market is insulated from the market distortions with respect to cost.

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[89] *See OCTG from Korea AR17/18 at Comment 1-C.*
[90] *See* PMS Allegation at Exhibits 10 – 14.
[91] *Id*.
[92] *Id*.
[93] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, vol. 1 (1994) at 822.
[94] *See Large Diameter Welded Pipe from Korea* IDM at Comment 1.
[95] *See OCTG from Korea AR17/18* IDM at Comment 1-A.

We also disagree with the respondents' arguments that Commerce's recent practice requires that a determination of the existence of a PMS must be based on an evaluation of a quantitative analysis using relevant references prices to determine where there are actual cost distortions. In *Biodiesel from Argentina Final*, Commerce stated that, "in certain contexts, an ordinary course of trade analysis may involve a comparison of specific sales and transactions to the general market," but also concluded that "a PMS analysis is, by definition, concerned with distortions in the overall market, rather than distortions in particular sales or transactions in relation to the general market."[96] *Biodiesel from Argentina* also specifically acknowledged that Commerce's approach and conclusions in *OCTG AR 16/17* were consistent with the final determination in *Biodiesel from Argentina*.[97] Consistent with the previous review[98] where the respondents made the same argument, we continue to find that the lack of appropriate data on the record with which to quantify an adjustment does not constitute evidence that the underlying condition does not exist. Rather, we continue to find that the record demonstrates distortions within the market, but that it does not contain reliable external benchmarks with which to quantify the adjustment.

These intertwined market conditions signify that the production costs of CWP, especially the acquisition prices of HRC in Korea, are distorted and, thus, demonstrate that the costs of HRC to Korean CWP producers are not established in the ordinary course of trade. Thus, Commerce continues to find that various market forces result in distortions which impact the COPs for CWP from Korea. Considered collectively, Commerce continues to find that the record supports finding that a PMS exists during the POR for the instant administrative review.

Comment 1-C: Particular Market Situation Adjustment

***Husteel's Comments*:**

- Commerce should incorporate 2018 data concerning uneconomic capacity in its PMS calculation.[99]
- If Commerce refuses to use the most appropriate 2018 data, at the minimum it must correct the 2017 data using the revised and updated World Steel Association and Organization for Economic Cooperation and Development (OECD) production and capacity data for 2017.[100]
- Commerce should fix an error in the margin calculation program by ensuring the PMS adjustment only applies to HRC costs instead of the total cost of materials.[101]

***NEXTEEL's Comments*:**

- Commerce should use the correct and latest production and capacity data for 2017 and use production and capacity data for 2018.[102]

[96] *See Biodiesel from Argentina: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018) (*Biodiesel from Argentina Final*), and accompanying IDM at Comment 3.
[97] *Id.*
[98] *See CWP from Korea AR16/17*, and accompanying IDM at Comment 1-B.
[99] *See* Husteel's Case Brief at 24-25.
[100] *Id*.
[101] *Id.* at 26-27.
[102] *See* NEXTEEL's Case Brief at 55-56.

- Commerce should fix two errors in the margin calculation program to accurately capture the PMS adjustment by ensuring the adjustment only applies to HRC costs and does not double count items in the total cost of manufacturing and COP lines in the programming.[103]

Hyundai's Comments:

- Commerce must use 2018 production and capacity data to calculate the PMS adjustment.[104]
- Commerce must use updated and corrected 2017 data to calculate the PMS adjustment.[105]
- Commerce should confirm that a single weighted-average antidumping rate applies to Hyundai.[106]

Petitioner's Comments:

- The petitioner argues that while global capacity utilization was not higher than 85 percent during the years considered in the regression model (2008 to 2017), this does not imply that Wheatland's counterfactual capacity utilization of 85 percent is unrealistic. Rather, it demonstrates how long the overcapacity crisis has plagued the steel industry and prevented it from reaching healthy levels of capacity utilization.[107]
- The petitioner notes that even if 80 percent were the bare minimum for a sustainable domestic industry, the global steel industry must operate at substantially higher capacity utilization rates to achieve sustainability given its much higher reliance on furnaces that must be run continuously. The fact that the global industry did not reach 85 percent capacity utilization in the preceding ten years does not undermine use of this figure as a benchmark, because all such capacity utilization rates were plagued by the global overcapacity crisis that China precipitated in 2008.[108]
- The petitioner notes that in the *Preliminary Results*, Commerce derived the PMS adjustment by multiplying the regression coefficient for uneconomic capacity (*i.e.*, the elasticity) by the percent change required to bring the actual 2017 uneconomic capacity to the counterfactual uneconomic capacity. Using the elasticity in such a manner is not theoretically sound when the elasticity was calculated based on variables in logarithmic form. In such cases, the elasticity relates a logarithmic difference in the independent variable to a logarithmic difference in the dependent variable. Commerce should not simply multiply the required percent reduction in uneconomic capacity by the regression coefficient for uneconomic capacity.[109]

[103] *Id.* at 57-58.
[104] *See* Hyundai Steel's Case Brief at 25-26.
[105] *Id.* at 26-27.
[106] *Id.* at 30.
[107] *See* Petitioner's Case Brief at 3.
[108] *Id.* at 10.
[109] *Id.* at 12.

Husteel's Rebuttal Comments:

- The petitioner's contention that Commerce should use an 85 percent capacity utilization to calculate the regression-based PMS adjustment is without merit.[110]
- The petitioner's argument that the 80 percent capacity utilization rate discussed by Commerce is only applicable to U.S. steel mills and not global steel production because of differences in production processes is speculative and contrary to record evidence.[111]
- Commerce's PMS adjustment factor calculation formula is reasonable, and Commerce thus need not make any changes to the structure of the calculation for the final results.[112]

Hyundai's Rebuttal Comments:

- Given the petitioner's inability to support its 85 percent target, its failure to rationalize the 80 percent rate in the United States as an outlier, and consistent with the agency's rationale in the *Preliminary Results*, Hyundai argues that it is unrealistic to presume that long-term sustainability and profitability in the global steel industry requires a minimum capacity utilization rate of 85 percent. Therefore, a regression analysis based on a minimum 85 percent global capacity utilization rate is not reasonable, and Commerce must not rely on any PMS adjustment methodology that itself is based on an unreasonable and unnecessary level of capacity utilization.[113]
- In the final results, even if the actual values used in Commerce's PMS adjustment factor calculation are incorrect, Commerce's PMS adjustment factor calculation formula is reasonable. Commerce thus need not make any changes to the structure of the calculation.[114]

NEXTEEL's Rebuttal Comments:

- Based on Commerce's own findings and supported by production data and recent sustained profitability of the U.S. steel industry, it is unrealistic to presume that long-term sustainability and profitability in the steel industry requires a minimum capacity utilization rate of 85 percent. A regression analysis based on a minimum 85 percent global capacity utilization rate simply is not reasonable.[115]
- By setting a level of 80 percent, Commerce has identified a level at which the market is operating at reasonable levels, even if some higher level might be "optimal" or achievable. Commerce's conclusion in this regard is reasonable and should not be disturbed in the final results.[116]
- The petitioner argues that Commerce erred by simply multiplying the "beta" for uneconomic capacity by the percent change required to bring the actual 2017 uneconomic capacity to the counterfactual uneconomic capacity. Because the beta is subject to

[110] *See* Husteel's Rebuttal Brief at 2.
[111] *Id.* at 4.
[112] *Id.* at 5-6.
[113] *See* Hyundai's Rebuttal Brief at 7.
[114] *Id.* at 8.
[115] *See* NEXTEEL's Rebuttal Brief at 7.
[116] *Id.* at 8.

elasticity, the petitioner offers its own equation where it introduces the beta as the multiplier, which it claims is theoretically correct and mathematically accurate. While NEXTEEL disagrees that any PMS adjustment is warranted, Commerce should disregard the petitioner's proposed calculation in the final results.[117]

Petitioner's Rebuttal Comments:

- Each of the time-variant variables in the regression analysis must reflect the same period. Given the lag in availability from various sources and Commerce's deadlines for submitting PMS allegations, it will not always be possible, as was the case here, to match each of the underlying data points used in the model with the POR.[118]
- The respondents' claims that Commerce can simply update the model by adding new capacity and production data for 2018 is incorrect. This is not an update but an extrapolation to 2018 of a model based on underlying data that are only current through 2017. The respondents have not, and cannot, update the entire underlying dataset through 2018 based on the record of this review.[119]
- There is no basis for Commerce to "update" the 2017 data based on the data supplied by the respondents. The petitioner's model relied on the most recent annual figures for crude steel production and capacity for 2017. The respondents' 2017 production data, by contrast, are not based on the World Steel Association's World Steel Statistical Yearbook, like all of the other annual production figures, but a 2019 "World Steel in Figures" publication that explicitly states its production figures for several countries are estimates.[120]

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

In the *Preliminary Results*, we quantified the impact of the PMS in Korea by making an upward adjustment to the respondents' reported HRC costs, basing that adjustment on the petitioner's regression analysis.[121] We continue to find that the regression analysis submitted by the petitioner, with certain adjustments discussed in the *Preliminary Results*, is a reasonable method to quantify the relationship between global uneconomic capacity and the price of HRC inputs. For these final results, we continue to find that the adjustment factor resulting from the

[117] *Id.* at 8-9.
[118] *See* Petitioner's Rebuttal Brief at 33.
[119] *Id.*
[120] *Id.* at 33-34.
[121] *See Preliminary Results* PDM at 11-14; *see also* PMS Allegation.

regression analysis, appropriately quantifies the impact of the PMS concerning the distortion in cost of HRC that we find to have existed in Korea during the POR.[122]

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

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

Concerning using updated 2017 data for global production and capacity, the updated production figures for 2017 were published in the 2019 World Steel in Figures Report in June 2019, before the PMS allegation by the petitioners was filed in July 2019. However, as the petitioner notes, the 2019 World Steel in Figures Report is a publication that explicitly states its production figures for several countries are estimates.[123] The updated global steel capacity figures for 2017 were published by the OECD in its "Capacity Developments in the World Steel Industry" reported in July 2019 (without a specific publishing date), the same month the allegation was filed. Therefore, while production totals from another source were available to the petitioner at the time the allegation was filed, it seems capacity totals were not yet available,[124] and Commerce therefore agrees that the petitioner's regression analysis is based on the most recent annual data available for submission during the POR and is based on consistent time periods and data sources for each time-variant variable.

As explained in the *Preliminary Results*, Commerce has lowered the target capacity utilization rate to a more realistic level, 80 percent, which more accurately reflects a historic capacity

[122] *See* Memorandum, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Analysis Memorandum for Husteel Co., Ltd.," dated November 2, 2020 (Husteel's Steel Final Calculation Memo); *see also* Memorandum, "Administrative Review of the Antidumping Duty Order on Circular Welded Non-Alloy Steel Pipe from the Republic of Korea 2017 2018: Final Analysis Memorandum for Nexteel Co., Ltd.," dated November 2, 2020 (NEXTEEL's Final Calculation Memo).
[123] *See* Petitioner's Rebuttal Brief at 34.
[124] *See* Hyundai Steel's Case Brief at Attachment X which includes a snapshot of 2017 OECD data being extracted July 30, 2019, weeks after the petitioner's PMS allegation was filed.

utilization rate for the preceding ten years.[125] We concluded in *CORE from Korea* that an 80 percent target capacity utilization rate is reasonable in the steel context.[126] Commerce recognizes that global capacity utilization rates have been no greater than 80 percent since 2007,[127] and that all the steel production and capacity data included in the model are from a period where the prevailing capacity utilization rate was substantially lower than the level assumed by the petitioners as being "healthy." Commerce has in the past also endorsed an 80 percent capacity utilization rate as being sufficient for profitable operations of the steel industry and has used the 80 percent target in its Section 232 Investigations.[128] As a result, we have determined for these final results to continue to rely on a target capacity utilization rate of 80 percent.

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

Finally, we agree with Husteel and NEXTEEL that the PMS adjustment should only be applied to HRC costs in the margin calculation program and have explained these changes in the final calculation memoranda for each respective company.[129]

Comment 2: Differential Pricing

***Husteel's Comments*:**

- The Appellate Body of the World Trade Organization (WTO) has ruled that Commerce's differential pricing model violates Article 2.4.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping Agreement).[130]
- The Appellate Body has also held that zeroing of negative dumping margins is not permitted even when the A-to-T methodology is justified.[131]

[125] *See Preliminary Results* PDM at 13-14.
[126] *See Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 15114 (March 17, 2020) (*CORE from Korea*), and accompanying IDM at 31-33.
[127] *See* PMS Allegation at Exhibit 15, containing Steel Market Developments-Q4 2018, OECD (2019).
[128] *Id.* at Exhibit 2, containing "The Effect of Imports of Steel on the National Security – An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, As Amended," U.S. Department of Commerce, Bureau of Industry and Security Office of Technology Evaluation (January 11, 2018).
[129] *See* Husteel's Final Calculation Memo; *see also* NEXTEEL's Final Calculation Memo.
[130] *See* Husteel's Case Brief at 27-28.
[131] *Id*.

- Commerce must discontinue the present application of its differential pricing methodology and bring its margin calculation into conformance with the findings of the Appellate Body.[132]

NEXTEEL's Comments:

- NEXTEEL wholly disagrees with Commerce's differential pricing analysis, as it is both unlawful and has been rejected by the WTO.[133]

Petitioner's Rebuttal Comments:

- Commerce is not bound by WTO decisions that have not been implemented by the United States. There are therefore no grounds for Commerce to abandon its differential pricing methodology, which has been repeatedly upheld by the courts, due to an un-implemented WTO decision.[134]

Commerce Position: As an initial matter, we note that there is nothing in section 777A(d) of the Act that mandates how Commerce measures whether there is a pattern of prices that differs significantly or explains why the average-to-average (A-to-A) method or the transaction-to-transaction (T-to-T) method cannot account for such differences. On the contrary, carrying out the purpose of the statute[135] here is a gap filling exercise properly conducted by Commerce.[136] As explained in the *Preliminary Results*, as well as in various other proceedings,[137] Commerce's differential pricing analysis is reasonable, including the use of the Cohen's *d* test as a component in this analysis, and it is in no way contrary to the law.

We disagree with the respondents that the differential pricing analysis, including the Cohen's *d* test, is unlawful. To the contrary, we note that the U.S. Court of Appeals for the Federal Circuit

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[132] *Id*.
[133] *See* NEXTEEL's Case Brief at 58.
[134] *See* Petitioner's Rebuttal Brief at 36.
[135] *See Koyo Seiko Co., Ltd. v. United States*, 20 F.3d 1156, 1159 (Fed. Cir. 1994) ("The purpose of the antidumping statute is to protect domestic manufacturing against foreign manufacturers who sell at less than fair market value. Averaging U.S. prices defeats this purpose by allowing foreign manufacturers to offset sales made at less-than-fair value with higher priced sales. Commerce refers to this practice as 'masked dumping.' By using individual U.S. prices in calculating dumping margins, Commerce is able to identify a merchant who dumps the product intermittently—sometimes selling below the foreign market value and sometimes selling above it. We cannot say that this is an unfair or unreasonable result." (internal citations omitted)).
[136] *See Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984) (*Chevron*) (recognizing deference where a statute is ambiguous and an agency's interpretation is reasonable); *see also Apex Frozen Foods Private Limited v. United States*, 37 F. Supp. 3d 1286, 1302 (*Apex I*) (applying *Chevron* deference in the context of Commerce's interpretation of section 777A(d)(1) of the Act).
[137] *See, e.g.*, *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015), and accompanying IDM at Comment 1; *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2012-2013, 80 FR 32937 (June 10, 2015), and accompanying IDM at Comments 1 and 2; *Welded ASTM A–312 Stainless Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2013–2014, 81 FR 46647 (July 18, 2016) at Comment 4; and *Certain Hot-Rolled Steel Flat Products from Japan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 53409 (August 12, 2016), and accompanying IDM at Comment 8.

(CAFC) has upheld key aspects of Commerce's differential pricing analysis, including the application of the "meaningful difference" standard, which compares the rate calculated using the A-to-A method not using zeroing and the rate calculated using an alternative comparison method based on the A-to-T method using zeroing; the reasonableness of Commerce's comparison method in fulfilling the relevant statute's aim; Commerce's use of a "benchmark" to illustrate a meaningful difference between the A-A and A-T rates; Commerce's justification for applying the A-to-T methodology to all sales instead of just those that pass the Cohen's *d* test; Commerce's use of zeroing in applying the A-to-T methodology to all transactions; that the statute does not directly apply to reviews; Congress did not dictate how Commerce should determine if the A-to-A method accounts for targeted or masked dumping; Commerce may consider all sales in its "meaningful difference" analysis and consider all sales when calculating a final rate using the A-to-T method; and it is acceptable to apply zeroing when using the A-to-T method.[138] In *NEXTEEL II*, the CIT rejected SeAH's challenge to our differential pricing analysis and held that "the steps underlying the differential pricing analysis as applied by Commerce {are} reasonable."[139] As explained in the *Preliminary Results*, Commerce continues to develop its approach pursuant to its authority to address masked dumping.[140] In carrying out this statutory objective, Commerce determines whether "there is a *pattern of export prices* (or constructed export prices) for comparable merchandise *that differs significantly* among purchasers, regions, or periods of time, and … why such differences cannot be taken into account using {the A-to-A or T-to-T comparison method}."[141] With the statutory language in mind, Commerce relied on the differential pricing analysis to determine whether these criteria are satisfied such that application of an alternative methodology may be appropriate.[142]

Because the statute does not explicitly discuss how Commerce should conduct its determination of less than normal value in reviews,[143] carrying out the purpose of the statute, here, is a gap filling exercise properly conducted by Commerce.[144] Commerce finds that the purpose of section 777A(d)(1)(B) is to evaluate whether the A-to-A method is the appropriate measure to determine whether, and if so to what extent, a given respondent is dumping the merchandise at issue in the U.S. market.[145] While "targeting" and "targeted dumping" may be used as a general expression to denote this provision of the statute, these terms impose no additional requirements beyond those specified in the statute for Commerce to otherwise determine that the A-to-A method is not appropriate based upon a finding that the two statutory requirements have been

[138] *See Apex II*; *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1322 (Fed. Cir. 2017) (*Apex III*); *Apex IV*; *Mid Continent Steel & Wire, Inc. v. United States*, 940 F.3d 662 (Fed. Cir. 2017) (*Mid Continent*).
[139] *See NEXTEEL II.*
[140] *See Preliminary Results* PDM.
[141] *See* section 777A(d)(1)(B) of the Act (emphasis added); *see also Tri Union*, 163 F. Supp. 3d 1255, 1302 ("{h}ad Congress intended to impose upon Commerce a requirement to ensure statistical significance, Congress presumably would have used language more precise than 'differ significantly.'").
[142] *See* 19 CFR 351.414(c)(1).
[143] *See Timken Co. v. United States*, 968 F. Supp. 2d 1279, 1286 & n. 7 (CIT 2014).
[144] *See Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843-44 (1984).
[145] *See* 19 CFR 351.414(c)(1).

satisfied.[146] The CIT and the CAFC have upheld Commerce's application of its differential pricing analysis to evaluate the statutory requirements.[147]

The respondents present several arguments regarding Commerce's differential pricing analysis in the *Preliminary Results*, the first of which is that Commerce should follow the Administrative Procedure Act (APA) to justify the numerical thresholds used in the differential pricing analysis, *i.e.*, the 0.8 cut-off used for the Cohen's *d* test and the 33 – and 66-percent cut-offs used for the ratio test. As explained in past determinations, the notice and comment requirements of the APA do not apply "to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice."[148] Further, Commerce normally makes these types of changes in practice (*e.g.*, the change from the targeted dumping analysis to the current differential pricing analysis) in the context of our proceedings, on a case-by-case basis.[149] As the CAFC has recognized, Commerce is entitled to make changes and adopt a new approach in the context of its proceedings, provided it explains the basis for the change, and the change is a reasonable interpretation of the statute.[150] The CAFC has also held that Commerce's meaningful difference analysis was reasonable.[151] Moreover, the CIT in *Apex II* held that Commerce's change in practice (from targeted dumping to its differential pricing analysis) was exempt from the APA's rule making requirements, stating:

> Commerce explained that it continues to develop its approach with respect to the use of {A-to-T} "as it gains greater experience with addressing potentially hidden or masked dumping that can occur when {Commerce} determines weighted-average dumping margins using the {A-to-A} comparison method. Commerce additionally explained that the new approach is "a more precise characterization of the purpose and application of {section 777A(d)(1)(B) of the Act}" and is the product of Commerce's "experience over the last several years … further research, analysis and consideration of the numerous comments and suggestions on what guidelines, thresholds, and tests should be used in determining whether to apply an alternative comparison method based on the {A-to-T} method." Commerce developed its approach over time, while gaining experience and obtaining input. Under the standard described above, Commerce's explanation is sufficient. Therefore, Commerce's adoption of the differential pricing analysis was not arbitrary.[152]

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[146] *See*, *e.g.*, *Samsung v. United States*, 72 F. Supp. 3d 1359, 1364 (CIT 2015) ("Commerce may apply the A-to-T methodology 'if (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and (ii) the administering authority explains why such differences cannot be taken into account using the A-to-A or T-to-T methodologies. *Id.* 1677f-1(d)(1)(B). Pricing that meets both conditions is known as 'targeted dumping.'").

[147] *See*, *e.g.*, *JBF RAK LLC v. United States*, 991 F. Supp. 2d 1343 (CIT 2014); *JBF RAK LLC v. United States*, 790 F.3d 1358 (Fed. Cir. 2015).

[148] *See*, *e.g.*, *OCTG Korea AR 17/18 Final* IDM at Comment 8 (citing 5 U.S.C. 553(b)(3)(A)).

[149] *See Differential Pricing Analysis; Request for Comments*, 79 FR 26720, 26722 (May 9, 2014) (*Differential Pricing Comment Request*).

[150] *See Saha Thai Steel Pipe Company v. United States*, 635 F. 3d 1335, 1341 (CAFC 2011); and *Washington Raspberries*, 859 F. 2d at 902-03; *Carlisle Tire*, 634 F. Supp. at 423 (discussing exceptions to the notice and comment requirements of the APA).

[151] *See Apex IV*, 862 F.3d at 1347-1351.

[152] *See Apex II.*

Moreover, the CIT acknowledged in *Apex III* that as Commerce "gains greater experience with addressing potentially hidden or masked dumping that can occur when {Commerce} determines weighted-average dumping margins using the {A-to-A} comparison method, {Commerce} expects to continue to develop its approach with respect to the use of an alternative comparison method."[153] Further developments and changes, along with further refinements, are expected in the context of our proceedings based upon an examination of the facts and the parties' comments in each case.

Regarding our reliance on the Cohen's *d* test and on the 0.8 cut-off for determining whether an effect size is large, we note that the CAFC upheld Commerce's threshold in *Mid-Continent*.[154] As stated in the *Preliminary Results*, the purpose of the Cohen's *d* test is to evaluate "the extent to which the prices to a particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise."[155] The Cohen's *d* coefficient is a recognized measure which gauges the extent (or "effect size") of the difference between the means of two groups. Commerce has previously noted that the Cohen's *d* coefficient provides "a simple way of quantifying the difference between two groups and has many advantages over the use of tests of statistical significance alone."[156] Commerce has also previously noted that Robert Coe, in *Effect Size*, has stated that "{e}ffect size quantifies the size of the difference between two groups, and may therefore be said to be a true measure of the significance of the difference."[157] Commerce has noted that *Effect Size* points out that the precise purpose for which Commerce relies on the Cohen's *d* test to satisfy the statutory language, to measure whether a difference is significant.[158] Moreover, the CAFC has affirmed this 0.8 threshold as reasonable.[159]

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

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

[153] *See Differential Pricing Comment Request*, 79 FR at 26722.
[154] *See Mid-Continent Steel and Wire, Inc. v. United States*, CAFC 18-1229 (October 3, 2019) (*Mid-Continent*).
[155] *See Preliminary Results* PDM.
[156] *See OCTG from Korea AR 17/18* IDM at Comment 3 (citing Robert Coe, *It's the Effect Size, Stupid: What "Effect Size" Is and Why It Is Important*, 2002 Annual Conference of the British Educational Research Association, University of Exeter, Exeter, Devon, England, September 12–14, 2002 (*Effect Size*)).
[157] *Id.*
[158] *Id*.
[159] *See Mid Continent*.

> In order to evaluate whether such a practically significant result is meaningful, Dr. Ellis states that this "implies an estimation of one or more effect sizes."
>
> > An effect size refers to the magnitude of the result as it occurs, or would be found, in the population. Although effects can be observed in the artificial setting of a laboratory or sample, effect sizes exist in the real world.[160]

Commerce further stated in *Shrimp from Vietnam*:

> As recognized by Dr. Ellis in the quotation above, the results of an analysis may have statistical and/or practical significance, and that these two distinct measures of significance are independent of one another. In its case brief, VASEP {Vietnam Association of Seafood Exporters} accedes to the distinction and meaning of "effect size" when it states "{w}hile application of the t-test {a measure of statistical significance} in addition to Cohen's *d* might at least provide the cover of statistical significance, it still would not ensure practical significance." {Commerce} agrees with this statement - – statistical significance is not relevant to {Commerce's} examination of an exporter's U.S. prices when examining whether such prices differ significantly. {Commerce's} differential pricing analysis, including the Cohen's *d* test, includes all U.S. sales which are used to calculate a respondent's weighted-average dumping margin; therefore, statistical significance, as discussed above, is inapposite. The question is whether there is a practical significance in the differences found to exist in the exporter's U.S. prices among purchasers, regions or time periods. Such practical significance is quantified by the measure of "effect size."[161]

Lastly, in *Shrimp from Vietnam*, Commerce again pointed to where Dr. Ellis addressed populations of data, stating that, "Dr. Ellis also states in his publication that the 'best way to measure an effect is to conduct a census of an entire population but this is seldom feasible in practice.'"[162]

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

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[160] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2014-2015*, 81 FR 62717 (September 12, 2016) (*Shrimp from Vietnam 2014-15*), and accompanying IDM at 16-17 (citations omitted) (citing P. Ellis, *The Essential Guide to Effect Sizes* (*Guide to Effect Sizes*) at 3-5).
[161] *Id.*
[162] *See Shrimp from Vietnam 2014-15* IDM at 17 (citing *Guide to Effect Sizes*).

the null hypothesis is false), then these results rise above the sampling error and are statistically significant.

The second measurement is whether there is a practical significance of the difference between the means of the two sets of data, as measured by an "effect size" such as the Cohen's *d* coefficient. As noted above, this measures the real-world relevance of this difference "and may therefore be said to be a true measure of the significance of the difference."[163] This is the basis for Commerce's determination of whether prices in a test group differ significantly from prices in a comparison group.

As an initial matter, discussions of sampling, sample size, and statistical inferences are irrelevant to the Cohen's *d* test as there is no sampling involved in it. There are no estimates of the means and variances of the test and comparison groups. As described above, this concerns the statistical significance of the difference in the means for two sampled sets of data and is not relevant when considering whether this difference has a practical difference. This is not to say that sample size and sample distribution have no impact on the description of "effect size" for sampled data,[164] but that is not the basis for Commerce's analysis of respondents' U.S. sales price data.

Further, Commerce has noted that the subject of *Statistical Power* and the discussion therein is "statistical power analysis."[165] Power analysis involves the interrelationship between statistical and practical significance to attain a specified confidence or "power" in the results of one's analysis.

Again, Commerce is not conducting a "power analysis" which guides researchers in their construction of a project in order to obtain a prescribed "power" (*i.e.*, confidence level, certainty) in the researchers' results and conclusions. This incorporates a balance between the sampling technique, including sample size and potential sampling error, with the stipulated effect size. The Cohen's *d* test and Dr. Cohen's thresholds in these final results only measure the significance of the observed differences in the mean prices for the test and comparison groups with no need to draw statistical inferences regarding sampled price date or the "power" of Commerce's results and conclusions.

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

> Deosen's claim that the Cohen's *d* test's thresholds of "small," "medium," and "large" are arbitrary is misplaced. In "Difference Between Two Means," the author states that "there is no objective answer" to the question of what

[163] *See OCTG Korea Final* IDM at Comment 3 (citing *Effect Size*).
[164] *Id.* (citing *Statistical Power* at 21-23, section 2.2.1, where Dr. Cohen quantifies the "nonoverlap" of sampled sets of data. The calculation of the overlap must rely on certain assumptions, such as normal distributions and equal variances in order to determine the common or non-common overlap of the two datasets).
[165] *Id.*

> constitutes a large effect. Although Deosen focuses on this excerpt for the proposition that the "guidelines are somewhat arbitrary," the author also notes that the guidelines suggested by Cohen as to what constitutes a small effect size, medium effect size, and large effect size "have been widely adopted." The author further explains that Cohen's *d* is a "commonly used measure" to "consider the difference between means in standardized units." At best, the article may indicate that although the Cohen's *d* test is not perfect, it has been widely adopted. And certainly, the article does not support a finding, as Deosen contends, that the Cohen's *d* test is not a reasonable tool for use as part of an analysis to determine whether a pattern of prices differ significantly.[166]

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

> … can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.[167]

Commerce has relied on the most conservative of these three thresholds to determine whether the difference in prices is significant. Dr. Cohen further provided examples which demonstrate the "real world" understanding of the small, medium and large thresholds, where a "large" difference "is represented by the mean IQ difference estimated between holders of the Ph.D. degree and typical college freshmen, or between college graduates and persons with only a 50-50 chance of passing an academic high school curriculum. These seem like grossly perceptible and therefore large differences, as does the mean difference in height between 13 – and 18-year-old girls …"[168] In other words, Dr. Cohen was stating that it is obvious on its face that there are differences in intelligence between highly educated individuals and struggling high school students, and between the height of younger and older teenage girls. Likewise, the "large" threshold is a reasonable yardstick to determine whether prices differ significantly.

Therefore, Commerce disagrees with the respondents' arguments that its application of the DPM in this review is improper. As a general matter, Commerce finds that the U.S. sales data which

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

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

[168] *See OCTG from Korea AR 17/18* IDM at Comment 3 (citing *Statistical Power* at 27).

respondents have reported to Commerce constitutes a population. As such, sample size, sample distribution, and the statistical significance of the sample are not relevant to Commerce's analysis. Furthermore, Commerce finds that Dr. Cohen's thresholds are reasonable, and the use of the "large" threshold is reasonable and consistent with the requirements of section 777A(d)(1)(B) of the Act.

Finally, we note that, in the *Preliminary Results*, we requested that interested parties "present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding."[169] The respondents submitted no factual evidence or argument that these thresholds should be modified or that any other aspects of the differential pricing analysis should be changed in this review. Accordingly, the respondents' arguments at this late stage of the review are unsupported by the record and appear to only convey the respondents' disagreement with the results of Commerce's application of a differential pricing analysis in this review, rather than to truly identify some aspect of this approach which is unreasonable or inconsistent with the statute.

Additionally, in *OCTG from India*, we addressed the establishment of the 33 – and 66-percent thresholds as follows:

> In the differential pricing analysis, {Commerce} reasonably established a 33 percent threshold to establish whether there exists a pattern of prices that differ significantly. {Commerce} finds that when a third or less of a respondent's U.S. sales are not at prices that differ significantly, then these significantly different prices are not extensive enough to satisfy the first requirement of the statute …
>
> Likewise, {Commerce} finds reasonable, given its growing experience of applying section 777A(d)(1)(B) of the Act and the application of the A-to-T method as an alternative to the A-to-A method, that when two thirds or more of a respondent's sales are at prices that differ significantly, then the extent of these sales is so pervasive that it would not permit {Commerce} to separate the effect of the sales where prices differ significantly from those where prices do not differ significantly. Accordingly, {Commerce} considered whether, as an appropriate alternative comparison method, the A-to-T method should be applied to all U.S. sales. Finally, when {Commerce} finds that between one third and two thirds of U.S. sales are at prices that differ significantly, then there exists a pattern of prices that differ significantly, and that the effect of this pattern can reasonably be separated from the sales whose prices do not differ significantly. Accordingly, in this situation, {Commerce} finds that it is appropriate to address the concern of masked dumping by considering the application of the A-to-T method as an alternative to the A-to-A method for only those sales which constitute the pattern of prices that differ significantly.[170]

[169] *See Preliminary Results* PDM.

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

Although the selection of these thresholds is subjective, Commerce's stated reasons behind the 33 – and 66-percent thresholds does not render them arbitrary. During the course of this review, the respondents have submitted no factual evidence or argument that these thresholds should be modified. Accordingly, the respondents' arguments at this late stage of the review are unsupported by the record and appear only to convey their disagreement with the results of Commerce's application of a differential pricing analysis in this review, rather than to truly identify some aspect of this approach which is unreasonable or inconsistent with the statute.

When using the A-to-A method, this offsetting occurs implicitly within the average U.S. prices which is compared with normal value, and this offsetting occurs explicitly when offsets are granted for non-dumped, negative comparison results. The A-to-T method, with zeroing, eliminates the masking of dumping by each type of offsetting. When the A-to-T method in not used in conjunction with zeroing, it will always yield identical results to the results under the A-to-A method.

The difference in the calculated results specifically reveals the extent of the masked, or "targeted," dumping which is being concealed when applying the A-to-A method.[171] The difference in these two results is caused by higher U.S. prices offsetting lower U.S. prices where the dumping, which may be found on lower priced U.S. sales, is hidden or masked by higher U.S. prices[172] such that the A-to-A method would be unable to account for such differences.[173] Such masking or offsetting of lower prices with higher prices may occur implicitly within the averaging groups or explicitly when aggregating the A-to-A comparison results. Therefore, in order to understand the impact of the unmasked "targeted dumping," Commerce finds that the comparison of each of the calculated weighted-average dumping margins using the standard and alternative comparison methodologies exactly quantifies the extent of the unmasked "targeted dumping."

The simple comparison of the two calculated results belies the complexities in calculating and aggregating individual dumping margins (*i.e.*, individual results from comparing EP, or CEP, with normal value (NV)). It is the interaction of these many comparisons of EP or CEP with NV, and the aggregation of these comparison results, which determine whether there is a meaningful difference in these two calculated weighted-average dumping margins. When using the A-to-A method, lower-priced U.S. sales (*i.e.*, sales which may be dumped) are offset by higher-priced U.S. sales. Congress was concerned about offsetting and that concern is reflected in the SAA, which states that "targeted dumping" is a situation where "an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers

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

[172] *See* SAA at 842.

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

or regions."[174] The comparison of a weighted-average dumping margin based on comparisons of weighted-average U.S. prices that also reflects offsets for non-dumped sales, with a weighted-average dumping margin based on comparisons of individual U.S. prices without such offsets (*i.e.*, with zeroing) precisely examines the impact on the amount of dumping which is hidden or masked by the A-to-A method. Both the weighted-average U.S. price and the individual U.S. prices are compared to an NV that is independent from the type of U.S. price used for comparison, and the basis for NV will be constant because the characteristics of the individual U.S. sales[175] remain constant, whether weighted-average U.S. prices or individual U.S. prices are used in the analysis.

Consider the simple situation where there is a single, weighted-average U.S. price, and this average is made up of a number of individual U.S. sales which exhibit different prices, and the two comparison methods under consideration are the A-to-A method with offsets (*i.e.*, without zeroing) and the A-to-T method with zeroing.[176] The NV used to calculate a weighted-average dumping margin for these sales will fall into one of five scenarios with respect to the range of these different, individual U.S. sale prices:

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

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

3) the NV is nominally greater than the lowest U.S. prices such that there is a minimal amount of dumping and a significant amount of offsets from non-dumped sales;[177]

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

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

Under scenarios (1) and (2), either there is no dumping, or all U.S. sales are dumped such that there is no difference between the weighted-average dumping margins calculated using offsets or zeroing and there is no meaningful difference in the calculated results and the A-to-A method will be used. Under scenario (3), there is a minimal (*i.e.*, *de minimis*) amount of dumping, such

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[174] *See* SAA at 842.

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

[176] The calculated results using the A-to-A method with offsets (*i.e.*, no zeroing) and the calculated results using the A-to-T method with offsets (*i.e.*, no zeroing) will be identical. The sum of the "Positive Comparison Results" and the "Negative Comparison Results" for each of the three comparison methods are identical, *i.e.*, with offsets for all non-dumped sales (*i.e.*, negative comparison results); the amount of dumping is identical. As such, the difference between the calculated results of these comparison methods is whether negative comparison results are used as offsets or set to zero (*i.e.*, zeroing) when using the A-to-T method.

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

that the application of offsets will result in a zero or *de minimis* amount of dumping (*i.e.*, the A-to-A method with offsets and the A-to-T method with zeroing both result in a weighted-average dumping margin which is either zero or *de minimis*) and which also does not constitute a meaningful difference and the A-to-A method will be used. Under scenario (4), there is a significant (*i.e.*, non-*de minimis*) amount of dumping with only a minimal amount of non-dumped sales, such that the application of the offsets for non-dumped sales does not change the calculated results by more than 25 percent or cause the weighted-average dumping margin to be *de minimis*, and again there is not a meaningful difference in the weighted-average dumping margins calculated using offsets or zeroing and the A-to-A method will be used. Lastly, under scenario (5), there is a significant, non-*de minimis* amount of dumping and a significant amount of offsets generated from non-dumped sales, such that there is a meaningful difference in the weighted-average dumping margins calculated using offsets or zeroing. Only under the fifth scenario can Commerce consider the use of an alternative comparison method.

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

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

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

aggregation of these intermediate A-to-A comparison results where there is no "meaningful" difference will, thus, dilute the significance of other A-to-A comparison results where there is a "meaningful" difference, which the A-to-T method avoids.

Therefore, we find that the meaningful difference test reasonably fills the gap in the statute to consider why, or why not, the A-to-A method (or T-to-T method) cannot account for the significant price differences in the respondents' pricing behavior in the U.S. market. Congress's intent of addressing "targeted dumping," when the requirements of section 777A(d)(1)(B) of the Act are satisfied,[178] would be thwarted if the A-to-T method without zeroing were applied since this will always produce the identical results when the standard A-to-A method without zeroing is applied. Under that scenario, both methods would inherently mask dumping. It is for this reason that we find that the A-to-A method cannot take into account the pattern of prices that differ significantly for respondents, *i.e.*, Commerce identified conditions where "targeted" or masked dumping "may be occurring" in satisfying the pattern requirement, and Commerce demonstrated that the A-to-A method could not account for the significant price differences, as exemplified by the pattern of prices that differ significantly. Thus, we continue to find that application of the A-to-T method, with zeroing, is an appropriate tool to address masked "targeted dumping."[179]

As set forth in the *Preliminary Results*[180] and as further discussed in these final results, Commerce's differential pricing analysis for the respondents in this administrative review is both lawful, reasonable, and completely within Commerce's discretion in executing the trade statute.

VII. RECOMMENDATION

Based on the 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

11/2/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[178] *See* SAA at 842-843.
[179] *See Apex I*, 37 F. Supp. 3d at 1296.
[180] *See Preliminary Results* PDM.