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Administrative Review
POR: 9/1/2018 – 8/31/2019
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June 25, 2021

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

FROM: Jill E. Pollack
Director, Office II
Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
2018-2019 Administrative Review of the Antidumping Duty Order
on Heavy Walled Rectangular Welded Carbon Steel Pipes and
Tubes from the Republic of Korea

I. SUMMARY

We analyzed the comments of interested parties in the 2018-2019 administrative review of the antidumping duty (AD) order covering heavy walled rectangular welded carbon steel pipes and tubes (HWR) from the Republic of Korea (Korea). As a result of our analysis, we made changes to the margin calculations from the *Preliminary Results*¹ for the two mandatory respondents in this review, Dong-A Steel Co., Ltd. (DOSCO) and HiSteel Co., Ltd (HiSteel), as well as the non-selected company in this review.² We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of issues in this administrative review for which we received comments from the interested parties.

General Issues

Comment 1: Existence of a Particular Market Situation (PMS)
Comment 2: PMS Adjustment
Comment 3: Differential Pricing

DOSCO-Specific Issues

Comment 4: DOSCO’s Scrap Offset
Comment 5: SeAH Steel Corporation (SeAH Steel)’s Scrap Offset

¹ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2018– 2019*, 86 FR 7071 (January 26, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² This company is Kukje Steel Co., Ltd. (Kukje Steel).



Comment 6: Common Expenses – DOSCO’s General and Administrative (G&A) Expense Ratio
Comment 7: Affiliated Services – DOSCO’s and SeAH Steel’s G&A Expense Ratios
Comment 8: Inventory Valuation Losses – DOSCO’s G&A Expense Ratio
Comment 9: Unassigned Material Costs Variance – SeAH Steel’s G&A Expense Ratio
Comment 10: Packing Costs – DOSCO’s G&A Expense Ratio
Comment 11: Collapsed G&A Expense Ratio
Comment 12: Short Term Interest Income – Financial Expense Ratio
Comment 13: Investment Related Gains and Losses – Financial Expense Ratio
Comment 14: Packing Costs – Financial Expense Ratio

HiSteel-Specific Issues

Comment 15: HiSteel Transactions-Disregarded Rule
Comment 16: Allocation of Common Expenses for HiSteel
Comment 17: HiSteel’s Miscellaneous Income Items

II. BACKGROUND

On January 26, 2021, the Department of Commerce (Commerce) published the *Preliminary Results* of this administrative review. This review covers three producers and exporters. The period of review (POR) is September 1, 2018, through August 31, 2019.

Commerce was unable to conduct on-site verification in this administrative review for reasons beyond its control. However, Commerce took additional steps in lieu of on-site verification, and, on February 16 and March 4, 2021, respectively, we issued post-preliminary-results questionnaires to HiSteel and DOSCO to verify the information relied upon in for the final results of this review, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).³ On February 25 and March 11, 2021, respectively, we received responses from HiSteel and DOSCO to our inquiries.⁴

We invited parties to comment on the *Preliminary Results*.⁵ On March 19, 2021, we received case briefs from the petitioner,⁶ DOSCO, and HiSteel.⁷ On March 29, 2021, we received rebuttal

³ See Commerce’s Letters, In Lieu of Verification Questionnaires for HiSteel and DOSCO, dated February 16, 2021 and March 4, 2021, respectively.

⁴ See HiSteel’s Letter, “Administrative Review of the Antidumping Duty Order on Heavy Walled Rectangular Carbon Steel Pipes and Tubes from Korea – Response to the Department’s February 16 In-Lieu of Verification Questionnaire,” dated February 25, 2021; and DOSCO’s Letter, “Heavy Walled Rectangular Carbon Steel Pipes and Tubes from Korea – Response to the Department’s March 4 Questionnaire In-Lieu of Verification,” dated March 11, 2021.

⁵ See *Preliminary Results*, 86 FR at 7072-3.

⁶ The petitioner is Nucor Tubular Products Inc.

⁷ See Petitioner’s Case Brief, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Case Brief,” dated March 19, 2021 (Petitioner’s Case Brief); DOSCO and HiSteel’s Joint Case Brief, “Case Brief of Dong-A-Steel Co., Ltd and HiSteel Co. Ltd.,” dated March 19, 2021 (DOSCO and HiSteel’s Joint Case Brief); and DOSCO’s Case Brief, “Case Brief of DOSCO,” dated March 19 2021 (DOSCO’s Case Brief).

briefs from the same parties and a letter in-lieu-of a rebuttal brief from Kukje Steel.⁸ On May 14, 2021, Commerce extended the deadline for the final results of this administrative review until June 25, 2021.⁹

III. SCOPE OF THE ORDER

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

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

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

⁸ See DOSCO's Rebuttal Case Brief, "Heavy Walled Rectangular Carbon Steel Pipe and Tube from Korea – Rebuttal Brief of DOSCO," dated March 29, 2021 (DOSCO's Rebuttal Brief); HiSteel's Rebuttal Case Brief, "Administrative Review of the Antidumping Order Heavy Walled Rectangular Carbon Steel Pipe and Tube from Korea – Rebuttal Brief of HiSteel Co. Ltd.," dated March 29, 2021 (HiSteel's Rebuttal Brief); and Petitioner's Rebuttal Case Brief, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Rebuttal Brief," dated March 29, 2021 (Petitioner's Rebuttal Brief); *see also* Kukje Steel's Letter, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea – Letter in Support of Mandatory Respondents' Briefs," dated March 29, 2021.

⁹ See Memorandum, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Extension of Deadline for Final Results of the 2018-2019 Antidumping Duty Administrative Review," dated May 14, 2021.

IV. MARGIN CALCULATIONS

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

*DOSCO*¹⁰

- We are no longer applying a PMS adjustment to DOSCO and SeAH Steel's reported costs for hot-rolled coil (HRC).
- We have reversed our preliminary adjustment to DOSCO's reported costs for the prior period scrap offset.
- We have adjusted the value of SeAH Steel's POR scrap offset to reflect the actual average sales price of scrap during the POR.
- We have revised DOSCO's G&A expense ratio to reflect arms-length prices for services provided by an affiliated supplier; include the inventory valuation gains; reclassify certain expense items from indirect selling expense; and, use the updated packing cost rate.
- We have revised SeAH Steel's G&A expense ratio to reflect arms-length prices for services provided by affiliated suppliers and use the updated packing cost rate.
- We have revised the financial expense ratio to exclude investment-related items and use the updated packing cost rate.

HiSteel

- We used HiSteel's March 5, 2021 updated home market and U.S. sales data, which was requested by Commerce.¹¹
- We are no longer applying a PMS adjustment to HiSteel's reported costs for HRC.¹²
- We have applied a transactions-disregarded rule to HiSteel's reported costs to reflect the higher of the transfer price or market price of slitting services obtained from an affiliated supplier.¹³
- We adjusted HiSteel's reported G&A expense rate to reflect our denial of certain income offsets.¹⁴

¹⁰ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Results – Dong-A Steel Co. Ltd.," dated concurrently with this memorandum (DOSCO Final Cost Calculation Memo).

¹¹ See Memorandum, "Calculations for HiSteel Co., Ltd. for the Final Results," dated concurrently with this memorandum (HiSteel Final Calculation Memo) at 1.

¹² See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Results – HiSteel Co., Ltd.," dated June 25, 2021 (HiSteel Final Cost Calculation Memo).

¹³ *Id.*

¹⁴ *Id.*

V. DISCUSSION OF ISSUES

General Issues

Comment 1: Existence of a Particular Market Situation (PMS)

In the *Preliminary Results*, Commerce preliminarily determined a PMS existed in Korea that distorted the cost of production (COP) of HWR. We preliminarily found that the PMS resulted from the cumulative effects of: (1) subsidization of Korean hot-rolled steel (HRS) products by the Korean government; (2) the distortive pricing of unfairly traded HRC from China; (3) strategic alliances between Korean HRC suppliers and Korean HWR producers; and (4) distortive government control over electricity prices in Korea.¹⁵

DOSCO and HiSteel's Joint Case Brief

- Commerce based its preliminary finding of a PMS in Korea on prior administrative reviews of this order and *OCTG from Korea 2014-2015 Final Results*.¹⁶ However, the U.S. Court of International Trade (CIT) found that Commerce's PMS determination in the prior review of this order was unsupported by substantial evidence and not in accordance with law.¹⁷ Moreover, the CIT found that Commerce's determination regarding the existence of a PMS in *OCTG from Korea 2014-2015 Final Results* was also erroneous.¹⁸ In accordance with these CIT decisions, Commerce should recalculate DOSCO and HiSteel's dumping margins for the final results with no adjustment for the alleged PMS.
- The petitioner bases much of its PMS allegation on newspaper articles or other secondary sources. Commerce cannot rely on such secondary information in the absence of corroboration.¹⁹ For example, the petitioner cites various press articles that state POSCO's profitability was adversely affected by imports of steel products from China; however, POSCO's actual financial results show that POSCO's operating profit and net income in 2018 were higher than in any previous year from 2013.²⁰

¹⁵ See *Preliminary Results* PDM at 10-15.

¹⁶ See DOSCO and HiSteel's Joint Case Brief at 6-7 (citing *Preliminary Results* PDM at 13-14; *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 24471 (May 28, 2019) (*HWR from Korea 2016-2017 Final Results*), and accompanying IDM at Comment 1; and *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 18105 (April 17, 2017) (*OCTG from Korea 2014-2015 Final Results*)).

¹⁷ *Id.* at 7 (citing *Dong-A Steel Co. v. United States*, 475 F. Supp. 3d 1317, 1334 (2020)).

¹⁸ *Id.* at 6-7 (citing *Nexteel Co. v. United States*, 355 F. Supp. 3d 1336, 1364 (CIT 2019) (*Nexteel I*), reconsideration denied, 389 F. Supp. 3d 1343 (CIT 2019); *Nexteel Co. v. United States*, 392 F. Supp. 3d 1276, 1297 (CIT 2019) (*Nexteel II*); *Husteel Co. v. United States*, 426 F. Supp. 3d 1376, 1383-89 (CIT 2020) (*Husteel I*); *Husteel Co. v. United States*, 471 F. Supp. 3d 1349, 1357 (CIT 2020) (*Husteel II*); and *Hyundai Steel Co. v. United States*, 483 F. Supp. 3d 1273, 1281 (CIT 2020)).

¹⁹ *Id.* at 9-10 (citing section 776(c)(1) and the World Trade Organization (WTO)'s Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994) at Annex II).

²⁰ *Id.* at 9 n.20 (citing DOSCO and HiSteel's Letter, "Third Administrative Review of the Antidumping Duty Order on Heavy Walled Rectangular Carbon Steel Pipes and Tubes from Korea – Submission of Factual Information

- The petitioner alleges that Korean HRC producers received subsidies at a rate of 58.68 percent; however, that subsidy rate was based on the application of total adverse facts available in *Hot-Rolled Steel—Korea (CVD)*, and Commerce cannot apply an AFA rate to cooperative respondents like DOSCO and HiSteel.²¹ Additionally, the subsidy rates for HRS from Korea in 2016 range from 0.54 to 0.58 percent, which are far too small to contribute any meaningful distortion in Korean HRC prices.²²
- Regarding strategic alliances, there is no record evidence that DOSCO or HiSteel has strategic alliances with any Korean HRS producers.²³ The only alliance the petitioner alleges to exist between a respondent to this proceeding and a producer of HRS is between POSCO and SeAH. However, Commerce has consistently found that there is no affiliation between SeAH and POSCO.²⁴
- The petitioner also alleges that Korean pipe producers participated in price-fixing schemes among themselves; however, this allegation is based on information that predates the POR, and such information does not support an alleged alliance between HRC suppliers and the respondents during the current POR.²⁵
- Regarding electricity, the petitioner alleges that Korea Electric Power Corporation (KEPCO)’s operating losses in 2018 and projected loss in 2019 demonstrate that electricity prices in Korea were distorted during the POR; however, the petitioner fails to provide evidence that the electricity prices in Korea were distorted during the POR or effected HRC

Rebutting, Clarifying, or Correcting Petitioner’s Allegation of a Particular Market Situation,” dated April 20, 2020 (DOSCO and HiSteel PMS Allegation Rebuttal) at Appendix 16 (containing information from POSCO’s website and copies of POSCO’s financial statements for each year from 2013 to 2018).

²¹ *Id.* at 10-11 (citing *SKF USA v. United States*, 675 F. Supp. 2d 1264, 1276 (CIT 2009); and *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016) (*Hot-Rolled Steel—Korea (CVD)*)). HiSteel notes that the subsidy rate for POSCO from *Hot-Rolled Steel—Korea (CVD)* was based on total adverse facts available (AFA), whereas DOSCO and HiSteel have cooperated to the best of their abilities in this administrative review. DOSCO and HiSteel argue that the CIT has consistently held that Commerce may not penalize a cooperative party for non-cooperation by an unaffiliated party (citing *SKF USA 2009*, 675 F. Supp. 2d at 1276).

²² *Id.* at 11 (citing *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 2016*, 84 FR 28461 (June 19, 2019) (*HRS from Korea CVD AR 2016*); and *Countervailing Duty Order on Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Amended Final Results of the First Administrative Review*, 84 FR 35604, 35605 (July 24, 2019) (*HRS from Korea CVD Amended Final*)). DOSCO and HiSteel further note that the current rate for POSCO from *HRS from Korea CVD Amended Final*, i.e., 0.54 percent, continues to be POSCO’s rate in the subsequent reviews. *Id.* (citing *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 2017*, 85 FR 64122 (October 9, 2020); and *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, 2018*, 86 FR 10535 (February 22, 2021)).

²³ *Id.* at 12-13.

²⁴ *Id.* (citing *Welded Line Pipe from the Republic of Korea Preliminary Determination*, 80 FR 29620 (May 22, 2015), and accompanying PDM at 18, unchanged in *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) (*WLP from Korea*); and *Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2013– 2014*, 81 FR 742 (January 7, 2016), and accompanying PDM).

²⁵ *Id.* at 12-13.

production costs or prices.²⁶ Further, the evidence confirms that there has been no consistent Korean-government program to supply electricity to Korean consumers at below-cost prices.²⁷

- Commerce has consistently found that Korean electricity prices do not confer any subsidy benefit.²⁸
- There is no record evidence that the prices for steel coils in Korea (either on a market-wide or company-specific basis) fail to reflect the COP of those inputs in the ordinary course of trade.²⁹
- In this case, there is no record evidence that imports from China depressed Korean market prices for HRC during the POR. The petitioner bases its PMS allegation on second-hand accounts, while the data shows that prices of HRC sold by POSCO (*i.e.*, one of the two main Korean HRC suppliers) rose during the POR.³⁰ In addition, POSCO's financial results show that its gross and operating profits increased every year from 2014 to 2018, despite fluctuations in Chinese and global capacity utilization over that period.³¹ Thus, the evidence demonstrates that the prices DOSCO and HiSteel paid for HRC accurately reflect the COP of those inputs in the ordinary course of trade.

Petitioner's Rebuttal Brief

- In the *Preliminary Results*, Commerce correctly found that a PMS existed in Korea during the POR based on the collective impact of the four factors alleged in the petitioner's PMS allegation.³²
- Commerce should reject the respondents' arguments that recent CIT decisions indicate it should find a PMS did not exist in Korea during this POR. Commerce has broad discretion to address PMS distortions, and court decisions that substitute their own judgment for that of

²⁶ *Id.* at 13-14.

²⁷ *Id.* at 14-15 (citing DOSCO and HiSteel PMS Allegation Rebuttal at Appendices 31-A to 31-E containing KEPCO's consolidated financial statements from 2014 -2018; and Appendices 29-32).

²⁸ *Id.* at 14 (citing *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49946 (July 29, 2016), and accompanying Issues and Decision Memorandum (IDM) at Comment 2.

²⁹ *Id.* at 19-20.

³⁰ *Id.* at 15-16 (citing Petitioner's Letter, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Particular Market Situation Allegation and Supporting Information," dated March 5, 2020 (PMS Allegation) at Exhibits 5, 7, 68, 77-79, and 86-88); and DOSCO and HiSteel PMS Allegation Rebuttal at Appendices 26-E to 26-H).

³¹ *Id.* at 16 (citing DOSCO and HiSteel PMS Allegation Rebuttal at Appendices 24-26).

³² See Petitioner's Rebuttal Brief at 15-20 (citing *Preliminary Results* PDM at 14-15; *Nexteel II*, 392 F. Supp. 3d at 1287; *HWR from Korea 2016-2017 Final Results* IDM at 12-13; *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 24085 (May 24, 2019) (*OCTG from Korea 2016-2017 Final Results*), and accompanying IDM at 9-10, 23-24; *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 27762 (June 14, 2019) (*WLP from Korea 2016-2017 Final Results*), and accompanying IDM at 7-8, 17; and PMS Allegation at 4-5, 16-18, and 19).

Commerce in such a situation are contrary to law. In *NEXSTEEL I*, the CIT erred by replacing its judgment for that of Commerce and analyzing each factor individually instead of examining the totality of the circumstances.³³

- Commerce should reject the respondents' argument that Commerce is not permitted to rely on newspaper articles or other secondary sources without further corroboration. First it is not clear whether section 776 of the Act applies to information supporting a PMS.³⁴ Further, the SAA provides that for Commerce to "corroborate" the information, it simply must examine, to the extent possible, the reliability and relevance of the information, which Commerce has done in this review.³⁵
- The record shows subsidization of HRS products by the Korean government during the POR, consistent with Commerce's findings of Korean subsidization of HRC in other proceedings.³⁶
- Commerce should reject the respondents' claim that the decrease in the subsidy rate for one company in *Hot-Rolled Steel—Korea (CVD)* demonstrates that there was no distortion of HRC in Korea during the POR. On the contrary, *Hot-Rolled Steel—Korea (CVD)* shows that the Korean government continues to subsidize its domestic HRS producers. The magnitude of the subsidy does not negate the fact the Korean government continues to provide subsidies.³⁷
- Commerce should reject the respondents' claim that the PMS allegation did not provide evidence demonstrating a strategic alliance between certain Korean HRC suppliers and Korean HWR producers. The respondents cannot point to any record evidence that refutes Commerce's preliminary finding of a strategic alliance. Commerce evaluates the existence of a PMS based on the totality of circumstances in the market, and whether or not DOSCO and/or HiSteel were part of such an alliance is not relevant to the consideration of the presence of such alliances in the market.³⁸ Consistent with this and other proceedings,

³³ *Id.* at 13-14 (citing *Nexteel I*, 355 F. Supp. 3d 1336, 1351; *District of Columbia v. Wesby*, 138 S. Ct. 577, 588 (2018); *Garth K. Trinkl v. Merit Sys. Prot. Bd.*, 727 F. App'x 1007, 1010 (Fed. Cir. 2018); *Adenta GmbH v. OrthoArm, Inc.*, 501 F.3d 1364, 1372 (Fed. Cir. 2007); and *In re Am. Fertility Soc.*, 188 F.3d 1341, 1348 (Fed. Cir. 1999)).

³⁴ *Id.* at 15 (citing Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, vol. 1 at 870 (1994), reprinted in 1994 U.S.C.A.N. 4040, 4199 (SAA)).

³⁵ *Id.* (citing *Certain Corrosion-Resistant Steel Products from India: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017–2018*, 84 FR 26819 (June 10, 2019), and accompanying IDM at 6).

³⁶ *Id.* at 15-16 (citing PMS Allegation at 19, Exhibits 73, 75, 95, 103, 129, 130, and 131; *HWR from Korea 2016-2017 Final Results* IDM at 13; *OCTG from Korea 2016-2017 Final Results* IDM at 23-24; and *WLP from Korea 2016-2017 Final Results* IDM at 17).

³⁷ *Id.* at 16-17.

³⁸ *Id.* at 17 (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 17146 (April 18, 2018) (*OCTG from Korea 2015-2016 Final Results*), and accompanying IDM at 22; *WLP from Korea 2015-2016 Final Results* IDM at 17-18; and *HWR from Korea 2016-2017 Final Results* IDM at 18).

Commerce should continue to find that strategic alliances have led to distortions in the price of HRC and that those alliances are a contributing factor to the PMS in Korea.³⁹

- The record shows that the Korean government distorts electricity prices.⁴⁰ The existence of an affirmative subsidy finding on electricity is not a prerequisite to a PMS finding nor does it affect the substantial evidence of market distortion in Korean electricity prices.⁴¹ Thus, consistent with Commerce’s determination in other cases, Commerce should continue to find that the Korean government’s involvement in the Korean electricity market is a contributing factor to the PMS in Korea impacting the COP of HWR.⁴²
- The respondents’ arguments that there is no evidence that Chinese imports and the global steel overcapacity crisis impacted HRC purchase prices in Korea during the POR are unavailing.⁴³ The record contains substantial evidence that Chinese HRC imports have contributed to the PMS in Korea; those Chinese HRC imports have driven down HRC prices in Korea; and that Chinese HRC imports have negatively affected Korean pipe producers.⁴⁴
- Commerce correctly determined in the *Preliminary Results* that, “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 steel products, placing downward pressure on Korean domestic steel prices” and this “situation distorts the Korean market prices of HRC.”⁴⁵
- Commerce should reject the respondents’ arguments and continue to find that the combination of the four alleged factors collectively cause a distortion in the price and cost of steel production in Korea, preventing an accurate comparison, as Commerce has recognized in prior proceedings.⁴⁶

Commerce’s Position:

We are revising our preliminary PMS determination and find that there is insufficient evidence on the record of the existence of a PMS that distorts the COP of HWR during this POR.

Section 504 of the TPEA⁴⁷ added the concept of a “particular market situation” in the definition of the term “ordinary course of trade” for purposes of constructed value (CV) under section 773(e) of the Act, and through these provisions for purposes of the COP under section 773(b)(3)

³⁹ *Id.* at 18 (citing *OCTG from Korea 2016-2017 Final Results* IDM at 24-25; *WLP from Korea 2016-2017 Final Results* IDM at 18-19; *HWR from Korea 2016-2017 Final Results* IDM at 14).

⁴⁰ *Id.* at 18 (citing PMS Allegation at Exhibits 121-127 and 129-131).

⁴¹ *Id.* at 18-19.

⁴² *Id.* (citing SAA at 822; PMS Allegation at 4-5; *Preliminary Results* PDM at 15; *OCTG from Korea 2016-2017 Final Results* IDM at 25; *WLP from Korea 2016-2017 Final Results* IDM at 19; and *HWR from Korea 2016-2017 Final Results* IDM at 14).

⁴³ *Id.* at 19-20.

⁴⁴ *Id.* at 19-20 (citing PMS Allegation at 16-18 and Exhibit 68).

⁴⁵ *Id.* (citing *Preliminary Results* PDM at 14).

⁴⁶ *Id.* at 20-21.

⁴⁷ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).

of the Act, added the concept of the term “particular market situation” to the definition of “ordinary course of trade,” under section 771(15) of the Act. Section 773(e) of the Act states that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the COP in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.”

In the instant review, the petitioner alleged that a PMS exists in Korea which distorts the COP for HWR based on the following four factors: (1) subsidization of Korean HRS products by the Korean government; (2) the distortive pricing of unfairly traded HRC from China; (3) strategic alliances between Korean HRC suppliers and Korean HWR producers; and (4) distortive government control over electricity prices in Korea.⁴⁸ Section 504 of the TPEA does not specify whether to consider these allegations individually or based on a totality of the circumstances. In the preliminary results of this administrative review, we found that a PMS exists in Korea that distorts the COP of HWR resulting from the collective impact of the four factors described above.

After reviewing the information on our record for the final results and considering the parties’ comments, we find that the petitioner has not supported its claims that these four elements have distorted HRC prices in the Korean market such that a PMS exists with respect to the COP of HWR during the POR. We disagree with HiSteel and DOSCO that Commerce may not rely on newspaper articles or other secondary sources to support our PMS analysis; however, we find that the information provided by the petitioner on the record of this review is insufficient to support a finding that a PMS existed in Korea during the POR with respect to the price of HRC.

First, the petitioner argues that the Korean government’s subsidization of HRS products distorts the HRC market and impacts the production costs of HWR within Korea.⁴⁹ The petitioner cites the countervailing duty (CVD) rates from *Hot-Rolled Steel—Korea (CVD)*, which covered the 2014 calendar year, and *HRS from Korea CVD AR 2016*, as amended, as evidence of subsidization of HRS in Korea.⁵⁰ We note, however, that these CVD rates were not applicable during this POR. The CVD rate for the 2017 calendar year, the most recently completed administrative review of that order, calculated a rate of 0.51 percent, which remains barely above *de minimis*.⁵¹ Although we acknowledge that there is subsidization of HRC in Korea, we consider the totality of the circumstances, and we find that this low level of subsidization, combined with other contemporaneous evidence or lack thereof on the record, is not sufficient to support the existence of a PMS during the POR.

The petitioner also asserts that the Korean government subsidizes the Korean shipbuilding industry, which in turn distorts Korean steel market prices. However, the majority of the petitioner’s evidence in support of this allegation pre-dates the current POR, and the petitioner

⁴⁸ See PMS Allegation.

⁴⁹ See PMS Allegation at 4 and 29.

⁵⁰ *Id.* at 29 and Exhibits 17 and 13.

⁵¹ See *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 2017*, 85 FR 64122 (October 9, 2020).

does not provide evidence of how such assistance affected the HRC market during the POR.⁵² Accordingly, we find that the petitioner has not substantiated this allegation on the record of this review.

The petitioner further argues that the record contains substantial evidence that Chinese HRS imports have contributed to the PMS in Korea by driving down Korean prices for HRC and negatively affecting Korean pipe producers. However, once again, much of the evidence provided by the petitioner is not contemporaneous with the POR,⁵³ and the contemporaneous data do not support the assertion that imports of Chinese HRC in Korea have depressed the Korean price of HRC during the POR. To be clear, as we stated in *Wind Towers from Korea*,⁵⁴ “while economic indicators of an increasing global capacity crisis may have leveled off in the period prior to the POI, this does not demonstrate that the effects of two decades of price suppression have been ameliorated.” However, the petitioner has provided insufficient evidence to demonstrate that prices for HRC in Korea have been negatively impacted during this POR. Regarding the quantity of Chinese HRC in the Korean market, the evidence provided by the petitioner shows a decline of Korean imports of HRC from China and Chinese exports to Korea of HRC during the POR.⁵⁵ In particular, the record data indicate that the volume of HRC imports from China into Korea was trending downward in 2018, with only a slight increase from 2018 to 2019 that is still far below the volume of imports prior to the POR.⁵⁶ Regarding pricing, both Korean import data and Chinese export data show that, during the POR, the average unit values (AUVs) of Korean imports of Chinese HRC generally increased, albeit with a slight drop in 2019 at the end of the POR, which also contradicts the petitioner’s claims.⁵⁷ Specifically, the data provided by the petitioner indicate that the AUVs of Korean imports of Chinese HRC increased by about 14 percent in 2018 (the start of the POR).⁵⁸ Thus, rather than showing penetration of the Korean market by a flood of Chinese HRC imports and/or a downward effect on prices, the record demonstrates a decrease in imports of Chinese HRC and an increase in prices during the POR, which does not support a finding of a PMS. We also note that the petitioner provided no contemporaneous data or explanation to show how overcapacity in China distorted prices of HRC in Korea during the POR.

With respect to the petitioner’s allegation that Korean HRC suppliers and HWR producers engaged in strategic alliances, we agree that not every company in the market need be a member of a strategic alliance for such alliances to have a distortive effect on the market as a whole; however, we reviewed the evidence in support of this allegation for our final results and find that the evidence on the record is again not contemporaneous with the current POR.⁵⁹ While we

⁵² See PMS Allegation at Exhibits 68, 76, 80, 84, and 89.

⁵³ See PMS Allegation at Exhibit 68 (containing data from 2017 and prior).

⁵⁴ See *Utility Scale Wind Towers from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances*, 85 FR 8560 (February 14, 2020), and accompanying PDM at 15, unchanged in *Utility Scale Wind Towers from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 85 FR 40243 (July 6, 2020) (*Wind Towers from Korea*).

⁵⁵ *Id.* at Exhibits 147, 148, 149, 150, and 151. We note that HRS includes HRC.

⁵⁶ *Id.* at Exhibits 148, 150, and 151.

⁵⁷ *Id.* at Exhibits 148, 150, and 151.

⁵⁸ See PMS Allegation at Exhibit 148.

⁵⁹ *Id.* at Exhibits 2.1, 13, 19, and 69 through 71.

recognize that alliances between suppliers and producers that predate the POR can be relevant to our PMS analysis because such previous alliances could create distortions in the market that continue through the POR, this factor was analyzed under the totality of the circumstances and, because of the lack of more contemporaneous evidence in support of all the factors generally, we do not find this factor sufficient to demonstrate the existence of a PMS during the POR.

With respect to the allegation of distortions in the electricity market, we agree that Commerce may find a PMS to exist where there is government control over prices to such an extent that home market prices cannot be considered to be competitively set.⁶⁰ Commerce has previously found that electricity in Korea functions as a tool of the government's industrial policy,⁶¹ and we acknowledge that largest electricity supplier in Korea, KEPCO, is a government-controlled entity.⁶² However, again, most of the evidence provided on this record to support the petitioner's allegation that the Korean electricity market was distorted during the POR is not contemporaneous with this review period.⁶³ While the record does indicate that KEPCO had an operating loss in 2019, the petitioner failed to provide any evidence of how those losses affected electricity rates during the POR because, unlike previous reviews, the petitioner has not provided contemporaneous information regarding the electricity rates.⁶⁴ Thus, while we have included KEPCO's involvement in the electricity sector as one factor among others that created a PMS in prior reviews, the petitioner has not supported its claim that KEPCO's involvement distorted electricity prices such that the government's involvement created a PMS with respect to the COP of HWR during this POR.

In sum, we re-examined the record of this review for the final results and we find insufficient evidence of a PMS distorting the COP of HWR in Korea during the POR. Unlike the prior reviews of this order where we found the existence of a PMS based on the combined effect of the factors mentioned above,⁶⁵ the majority of the evidence submitted in this administrative review is outdated and not contemporaneous with the POR. Although non-contemporaneous evidence may be relevant, the contemporaneity of PMS-related data and other evidence is fundamental to ensure that the documentation supporting the allegation accurately reflects the state of the market during the period in question. An allegation of a PMS based primarily on outdated, non-contemporaneous information fails to demonstrate that a particular market situation existed during the POR. While, as noted above, we find that the petitioner supported its allegation that HRC was subsidized by the Korean government during the POR, we do not find the low level of subsidization that existed during the POR, alone, to be sufficient to support a finding of a PMS in this review. Thus, we find that the petitioner did not provide sufficient evidence to support its allegation that a PMS existed in Korea that distorted the COP of HWR during the POR. Accordingly, we are not making a PMS adjustment to the respondents' COP for our final results.

⁶⁰ See H.R. Doc. 103-316, vol 1 (1994) at 822.

⁶¹ See, e.g., *HWR from Korea 2016-2017 Final Results* IDM at Comment 1; and *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2017-2018*, 85 FR 41538 (July 10, 2020) (*HWR from Korea 2017-2018 Final Results*), and accompanying IDM at Comment 1.

⁶² 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) (*LDWP from Korea*), and accompanying IDM at Comment 1.

⁶³ See PMS Allegation at Exhibits 121, 122, 123, 124, 126, 127, 129, 130, and 131.

⁶⁴ *Id.* at Exhibits 118 and 119.

⁶⁵ See *HWR from Korea 2016-2017 Final Results* IDM at Comment 1; and *HWR from Korea 2017-2018 Final Results* IDM at Comment 1.

Comment 2: PMS Adjustment

In the *Preliminary Results*, we quantified the impact of the PMS that we found to exist in Korea by making an upward adjustment to the respondents' reported HRC costs, basing that adjustment on the petitioner's regression analysis.⁶⁶

DOSCO and HiSteel's Joint Case Brief

- The Act does not permit an adjustment to the COP used to test whether DOSCO and HiSteel's home market sales were made at below COP based on an alleged PMS in Korea. The TPEA only allows Commerce to make adjustments when the PMS affects the comparability of U.S. sales to the sales in the comparison market, not to adjust the COP for the below-COP analysis.⁶⁷
- The TPEA made two changes to the existing antidumping statute to modify: (1) the definition of "ordinary course of trade" in section 771(15) of the Act to permit Commerce to consider whether a PMS prevents a proper comparison with EP and CEP; and (2) the calculation of constructed value (CV) in section 773(e) of the Act.⁶⁸ Because the TPEA did not change the calculation of COP for purposes of the sales-below-COP test under section 773(b)(3) of the Act, Commerce had no statutory authority to make such an adjustment in the *Preliminary Results*.⁶⁹
- In *Saha Thai*, the CIT held that "Commerce's position that 'Section 504 authorized Commerce's comparison of U.S. prices to home market sales instead of constructed value is an interpretation that is unsupported in the law.'" ⁷⁰ Accordingly, Commerce must apply the sales-below-COP test to DOSCO and HiSteel's home market sales without any adjustment for an alleged PMS.
- In past reviews, Commerce based its adjustment for an alleged PMS impacting HRC prices in Korea on the subsidy rates from *Hot-Rolled Steel – Korea CVD Order*.⁷¹ In this review,

⁶⁶ See *Preliminary Results* PDM at 15; PMS Allegation; and Petitioner's Letter, "Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Response to the Department's PMS Allegation Deficiency Questionnaire," dated January 7, 2021 (PMS SQR).

⁶⁷ See DOSCO and HiSteel Joint Case Brief at 2-6 and 16-17 (citing Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA); *Saha Thai Steel Pipe Pub. Co. v. United States*, 422 F. Supp. 3d 1363, 1371 (CIT 2019) (*Saha Thai*); *Husteel I*; *Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States*, 426 F. Supp. 3d 1395, 1411 (CIT 2020); and *Dong-A Steel Co. v. United States*, 475 F. Supp. 3d 1317, 1340-41 (CIT 2020)).

⁶⁸ *Id.* at 3-5 and 17-18. Further, DOSCO and HiSteel maintain that, before making a PMS adjustment to CV, the Act requires Commerce to analyze whether whatever PMS it has found resulted in an input cost that "does not accurately reflect the COP in the ordinary course of trade." *Id.* at 18 (citing *United States v. Menasche*, 348 U.S. 528, 538-39 (1955); and *Rubin v. Islamic Republic of Iran*, 138 S. Ct. 816, 824 (2018)).

⁶⁹ *Id.* at 3-5 and 17-20.

⁷⁰ *Id.* at 5 (citing *Saha Thai*).

⁷¹ See DOSCO and HiSteel's Joint Case Brief at 20 (citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and*

the petitioner instead has requested that Commerce base the PMS adjustment on a regression analysis. The regression analysis allows for price estimation based on a false assumption that the global steel industry operated at an 85 percent capacity utilization rate.

- The petitioner's regression analysis fails to satisfy the requirements for a time-series analysis, is invalidated by statistical tests, and generates results that fluctuate over time and with different assumptions. These results indicate that: (1) the relationships among the variables used in the analysis are not stable overtime; and (2) the results are highly sensitive to minor modelling changes which renders predictions of future outcomes futile and impermissibly speculative. If the regression analysis is used, Commerce should use the coefficients generated using the regression model that provide the best fit for the data. The coefficients generated based on the most recent data provide a better fit than coefficients generated using the 10-year period used in the *Preliminary Determination*.⁷²
- Given that the actual 2018 Korean AUV for HRC falls within the confidence interval of the petitioner's estimate for the AUV for imports of HRC, the petitioner's regression model does not provide a basis for rejecting the actual 2018 AUVs or adjusting the cost of HRC, even when using the petitioner's preferred excess capacity figure.⁷³
- Expert testimony demonstrates that the petitioner's regression model as presented in the PMS Allegation and PMS SQR is invalid and cannot reasonably be used to predict steel prices. The model used by the petitioner does not prove to a reasonable level of statistical significance that a PMS exists in Korea and it would be inappropriate to use the model to estimate the AUV for imports of HRS into Korea if a PMS is otherwise found to exist. The petitioner has not provided any expert opinion to the contrary and Commerce should follow the expert opinion and reject the petitioner's model entirely.⁷⁴
- If Commerce does adopt the basic approach proposed by the petitioner, it should adjust its preliminary calculations to use the coefficients generated by an analysis of the more recent sub-periods within the 10-year period analyzed by the petitioner, rather than the coefficients generated by a single regression for the 10-year period. The evidence demonstrates that the relationship between uneconomic capacity and steel coil prices has fluctuated wildly over time. Thus, there is no reason to believe the relationship between capacity and steel coil prices during the POR was similar to the average over the 10-year period considered in the petitioner's model. Models based on more recent data, such as the 2012-16, 2013-17 or 2014-18, provide a better estimate of the relationship between capacity and steel coil prices during the POR and provide a better fit with the data.⁷⁵

Preliminary Determination of No Shipments; 2016-2017, 83 FR 50892 (October 10, 2018), and accompanying PDM at 24).

⁷² *Id.* at 21.

⁷³ *Id.* at 22-23 (citing PMS Allegation at Exhibit 3.1; and DOSCO and HiSteel April 20, 2020 PMS Rebuttal at Appendix 33 (Michael Northeim, "Investigating the Validity of OLS for Predicting AUV: 2008-2018 Korea Import AUV," at 16) (Northeim April 20, 2020 Report)).

⁷⁴ *Id.* at 23-24 (citing Northeim April 20, 2020 Report; and DOSCO and HiSteel Letter, January 19, 2021 at Attachment 1 (Michael Northeim, "Calculation of PMS Adjustment by Domestic Interested Parties Response to Jan 7, 2021 Supplement," at 3)).

⁷⁵ *Id.* at 24-25.

- The petitioner's regression model does not take into account the separate impact that each of the explanatory variables (*i.e.*, by multiplying uneconomic capacity by the iron ore price, then that result by the scrap price, then that result by the average exchange rate, and then that result by the gross fixed capital formation figure) has on the AUV, and, therefore, it has no meaning. In fact, by multiplying the explanatory variables in this fashion, the petitioner's model predicts the geometric mean rather than the arithmetic mean, which would entail adding each variable. The absurdity of the petitioner's proposed model is reinforced by the fact that the petitioner changes the variables from one review to the next. For example, in this review the petitioner has removed the aluminum variable from its analysis; however, if scrap had been replaced by aluminum in this review, the predicted AUV would be under the 85 percent utilization rate while having little to no effect on the model's overall explanatory power.⁷⁶
- The petitioner's proposed regression model fails to address the unique requirements of a time-series data analysis and, therefore, produces unreliable predictions and estimations. Due to the exogeneity requirement in a proper time-series analysis, if the dependent variable in the petitioner's model (*i.e.*, AUVs) affects any past, present, or future values of the explanatory variables (*i.e.*, uneconomic capacity, iron ore, scrap, exchange rates, gross fixed capital formation, and aluminum), then the regression output is not valid.⁷⁷ The petitioner's model includes a number of explanatory variables that are affected by past, present, and future values of HRC prices, such as iron ore, scrap, and uneconomic capacity, which violates the requirement of strict exogeneity.
- The variance inflation factor test, when applied to the petitioner's proposed regression model, revealed collinearity issues with respect to the following explanatory variables: global fixed capital formation, iron ore prices, scrap prices, and aluminum prices. Therefore, because the petitioner has not addressed the multicollinearity in its regression model, it is invalid.⁷⁸
- While autocorrelation in the petitioner's explanatory variables is not problematic in a time-series analysis, autocorrelation in the petitioner's dependent variable (*i.e.*, the AUVs) violates the underlying assumptions in ordinary least squares (OLS) and two-stage least squares analyses and could cause bias in coefficient estimates and predictions.⁷⁹
- In addition to experiential knowledge, the Durbin-Watson test (*i.e.*, a measure of autocorrelation) indicates that there is less than a one in 10,000 chance that the AUV data are not autocorrelated. Since the petitioner did not address the correlation, the results of its regression model are biased with an artificially high statistical significance.⁸⁰

⁷⁶ *Id.* at 25-26 (citing PMS Allegation at Exhibits 1.1 at 571 and 3.1 at 6; and Northeim April 20, 2020 Report at 19).

⁷⁷ *Id.* at 26-29 (citing DOSCO and HiSteel PMS Allegation Rebuttal at Appendix 34-A (J.M. Wooldridge, *Introductory Econometrics: A Modern Approach* (5th ed. 2013) (Introductory Econometrics) at 351-52)).

⁷⁸ *Id.* at 29 (citing DOSCO and HiSteel PMS Allegation Rebuttal at Appendix 34-E (J. Gareth, D. Witten, T. Hastie and R. Tibshirani, *An Introduction to Statistical Learning: With Applications in R* (2017) at 101-02)).

⁷⁹ *Id.* at 30 (citing DOSCO and HiSteel PMS Allegation Rebuttal at Appendix 34-A at 353 and 34-E at 356).

⁸⁰ *Id.* at 30-31 and Attachment 2.

- Application of the Durbin-Watson test in the manner the petitioner has proposed is distorted. The petitioner's model fails the exogeneity and non-collinearity requirements because, inter alia, the iron ore and steel scrap prices used as explanatory variables in the model are dependent on the AUVs they purport to model. In this instance, the autocorrelation in the error term petitioner's regression model is masked due to the endogeneity and collinearity of the AUV, iron ore, and steel scrap trends. If the model had utilized only non-collinear, exogeneous explanatory variables, then the autocorrelation in the error term would be obvious.⁸¹
- In previous determinations, Commerce has admitted that heteroskedasticity (unequal variances) in the data will undermine the reliability of an OLS regression model. The studentized Breusch-Pagan test, which is a standard test measuring heteroskedasticity, revealed that there is heteroskedasticity in the petitioner's regression model data, rendering it invalid.⁸²
- The petitioner's regression model fails to measure the independent effects of each explanatory variable on the dependent variable (*i.e.*, AUVs) because it effectively multiplies the explanatory variables. The petitioner also fails to explain why this model is appropriate, even though it departs from accepted practice.⁸³
- The regression coefficients relied upon in the *Preliminary Determination* are not consistent with the data to which they are applied. The petitioner calculated estimated AUVs by applying regression coefficients to an uneconomic capacity figure that was calculated using a five year average of global production rather than a single year, in spite of the fact that the uneconomic capacity variable for each year used to train the petitioner's model was calculated using the current annual capacity and the highest previous global production quantity for a single year. Coefficients calculated using a model that defines variables in one manner cannot properly be applied to variables calculated in a different manner.⁸⁴
- The petitioner's model should be rejected because it fails validation tests that are used to determine whether the coefficients generated by the regression analysis are stable. The results of such tests indicate that variables, including uneconomic capacity and iron ore, vary in magnitude and, in the case of iron ore, by sign when run over different sub-periods within the overall period.⁸⁵ As a result, the petitioner's conclusion that AUVs can be predicted by variables such as uneconomic capacity is invalid.

⁸¹ *Id.* at 31-32 and Attachment 3.

⁸² *Id.* at 32 (citing Northeim April 20, 2020 Report at 37).

⁸³ *Id.* at 32-33.

⁸⁴ *Id.* at 33-34 (citing PMS Allegation at 3; PMS Memorandum at 3; Northeim January 19, 2021 Report at 4; and Introductory Econometrics at 209-210).

⁸⁵ *Id.* at 35 (citing Northeim April 20, 2020 Report at 16; and DOSCO and HiSteel PMS Allegation Rebuttal at Attachment 34-G (T. Mills, *Analyzing Economic Data: A Concise Introduction* (2013) at 244)).

Petitioner's Rebuttal Brief

- Commerce correctly applied a PMS adjustment to the COP for the purposes of the sales-below-cost test. Respondents' interpretation of the Act is misplaced and contradicted by Commerce's established practice, which Commerce has defended in court and must continue to defend.
- Commerce has the authority under the TPEA to address a PMS that prevents proper comparisons between U.S. prices and NV. The TPEA expanded Commerce's authority with the intent of granting Commerce "flexibility in calculating a duty that is not based on distorted pricing or costs."⁸⁶
- The rationale underlying the PMS provisions in the TPEA is that Commerce must make fair comparisons, and, where a PMS exists, sales and transactions are outside the ordinary course of trade. The language of the TPEA recognizes that Commerce makes adjustments to costs in a variety of situations (*e.g.*, NV using a third-country market and NV using CV). The Act does not limit Commerce's ability to make adjustments to cost, and, therefore, Commerce is permitted to use the same approach to calculate COP for the sales-below-COP test as it does to calculate CV.⁸⁷
- The TPEA provides that, where a PMS exists such that "the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade," Commerce may use any alternative methodology to account for the distorted process and costs as reported.⁸⁸
- While Congress left the PMS methodology to agency discretion, the CIT has failed to defer to Commerce's reasonable interpretation and application of the TPEA and erroneously supplanted its judgment regarding the substantial evidence demonstrating a PMS affecting HRC in Korea.⁸⁹ In a series of cases beginning with *Saha Thai*, the CIT rejected Commerce's application of a PMS adjustment in any context other than CV.⁹⁰
- The CIT has rested on the mistaken assumption that the TPEA does not empower Commerce to adjust distorted costs because the TPEA did not amend the sales below cost provision of the antidumping statute. The Court's reading conflicts with well-established principles of administrative law.⁹¹

⁸⁶ See Petitioner's Rebuttal Brief at 4-6 (citing TPEA; 161 Cong. Rec. S2897, S2900 (May 14, 2015) (statement of Sen. Brown); S. Rep. No. 114-45 at 37 (2015); and 161 Cong. Rec. H4655, H4690 (June 25, 2015) (statement of Rep. Meehan).

⁸⁷ *Id.* at 5-6 (citing sections 771(15) and 773(a)(1)(C)(iii) of the Act).

⁸⁸ *Id.* at 6 (citing section 773(e)(3) of the Act).

⁸⁹ *Id.* at 7 (citing, *NEXTEEL Co. v. United States*, 450 F. Supp. 3d 1333, 1336-43 (CIT 2020); and *Hyundai Steel Co. v. United States*, 415 F. Supp. 3d 1293, 1300 (CIT 2019)).

⁹⁰ *Id.* at 7 (citing *Saha Thai*, 422 F. Supp. 3d at 1367-1369).

⁹¹ *Id.* at 8. The petitioner argues that courts have consistently recognized that a congressional mandate in one section and silence in another often suggests not a prohibition but simply a decision not to mandate any solution in the second context (citing *Van Hollen, Jr. v. Fed. Election Comm'n*, 811 F.3d 486, 493-94 (D.C. Cir. 2016) (*Van*

- In the administrative context, the courts have “consistently recognized that a congressional mandate in one section and silence in another often suggests not a prohibition but simply a decision not to mandate any solution in the second context, *i.e.*, to leave the question to agency discretion.”⁹² Moreover, the Supreme Court has cautioned that statutory language may not be read so strictly as to undermine the purposes of the statute.⁹³
- Commerce has considered and consistently rejected respondents’ arguments and it should do so again here and continue to apply a PMS adjustment to the respondents’ COP for purposes of the sales-below-cost test.⁹⁴ In a previous review of this proceeding, Commerce “disagree[d] 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,’ “ finding that, “this interpretation would defeat the very purpose of an ‘ordinary course of trade’ analysis under the PMS provision.”⁹⁵
- The TPEA amended section 773(e) of the Act to authorize Commerce to use “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.” After a PMS is found to render costs unreflective of costs in the ordinary course of trade, Commerce has the statutory authority to use “any other” calculation methodology.⁹⁶

Hollen, Jr.). The petitioner further asserts that the Supreme Court has cautioned that statutory language may not be read so strictly as to undermine the purposes of the statute (citing *Personalized User Model, LLP v. Google Inc.*, 797 F.3d 1341, 1348 (Fed. Cir. 2015) (*Personalized User Model*); and *United States v. Am. Trucking Ass’n*, 310 U.S. 534, 543 (1940) (*Am. Trucking Ass’n*)). The petitioner maintains that, “where ‘Congress includes particular language in one section of a statute but omits it in another... it is generally presumed that Congress acts intentionally.’” (citing *Dong-A Steel Co. v. United States*, 475 F. Supp. 3d 1317, 1339 (CIT 2020)).

⁹² *Id.* at 8 (citing *Van Hollen, Jr.*, 811 F.3d at 493–94); *Catawba Cnty. v. EPA*, 571 F.3d 20, 36 (D.C. Cir. 2009)).

⁹³ *Id.* at 8 (citing *Personalized User Model*, 797 F.3d at 1348; and *Am. Trucking Ass’n*, 310 U.S. at 543).

⁹⁴ *Id.* at 9. The petitioner notes that Commerce recently articulated its statutory interpretation in a remand determination where the CIT directed Commerce to articulate the “statutory authority to conduct a cost-based PMS analysis when NV is based on home market sales and to adjust the COP for purposes of the sales-below-cost test of section 773(b) of the Act. Finally, the petitioner maintains that this approach has become Commerce’s established practice. *Id.* at 12–13 (citing *Circular Welded Carbon Steel Standard Pipe and Tubes Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017–2018*, 85 FR 3616 (January 22, 2020), and accompanying IDM at Comment 1).

⁹⁵ *Id.* at 10 (citing *HWR from Korea 2017–2018 Final Results* IDM at 18). The petitioner further notes that Commerce rejected similar arguments by respondents made in the 2017–2018 administrative review of Welded Line Pipe from Korea (citing *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017–2018*, 85 FR 76517 (November 30, 2020) (*Welded Line Pipe 2017–2018 Final Results*), and accompanying IDM at Comment 1). *Id.* at 10–11.

⁹⁶ *Id.* at 11–12 (citing section 773(e) of the Act; and *Welded Line Pipe 2017–2018 Final Results* IDM at Comment 1). Further, the petitioner maintains that Commerce specifically commented that “Congress’ expansion of the definition of the term ‘ordinary course of trade’ and the continued inclusion of that term under section 773(b) of the Act indicate that Commerce is within its discretion to interpret section 773(b) of the Act in line with the TPEA amendment.” *Id.* at 12 (citing *Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review; 2018–2019*, 86 FR 14872 (March 19, 2021), and accompanying IDM at Comment 1).

- The petitioner’s proposed analysis regresses country-specific HRC AUVs against a variety of predictor variables to calculate a reasonable PMS adjustment. The PMS adjustment can be applied to the respondents’ COP to eliminate the distortive impact of steel overcapacity on the Korean HRC market.⁹⁷ In *CWP from India 2017-2018 Final Results*, Commerce recognized the inverse relationship between steel overcapacity and HRC prices as an empirical fact.⁹⁸ The respondents fail to undercut the relationship between steel overcapacity and HRC prices or otherwise invalidate the petitioner’s methods and conclusions.⁹⁹
- The petitioner’s regression modeling and analysis constitutes agency-approved, established methodology. Commerce previously recognized that the petitioner’s regression analysis identifies and quantifies the effects of the global steel overcapacity crisis at the national level and calculates a corresponding adjustment that accounts for distortions inherent to an overcapacity-driven PMS.¹⁰⁰
- Commerce has previously considered and rejected the identical allegations raised by the respondents and determined that the petitioner’s regression analysis is both appropriate and accurate.¹⁰¹ Neither the respondents arguments nor the January 19, 2021 Northeim Report provide any new evidence or analysis confirming the existence of any of the alleged statistical distortions or mathematical absurdities.¹⁰²
- The respondents’ claim that the actual 2018 Korean import AUV falls within the 96 percent confidence interval of the counterfactual AUV is based on a misunderstanding of the mechanics of the PMS adjustment and fails to recognize Commerce’s use of the beta rate when deriving the PMs adjustment.¹⁰³ Commerce determined that the PMS adjustment was best calculated based solely on the estimated regression coefficient (*i.e.*, the estimated “beta”) for the uneconomic capacity explanatory variable derived from the OLS regression

⁹⁷ *Id.* at 21-22 (citing PMS Allegation at 42-78 and Exhibits 2.1 and 3.2; and PMS SQR at Exhibits 1 and 3.2.2).

⁹⁸ *Id.* at 22 (citing *Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2715 (January 16, 2020) (*CWP from India 2017-2018 Final Results*), and accompanying IDM at Comment 7).

⁹⁹ *Id.* at 22.

¹⁰⁰ *Id.* at 23 (citing *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 76517 (November 30, 2020) (*WLP from Korea 2017-2018 Final Results*), and accompanying IDM at Comment 3; *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 71055 (November 6, 2020), and accompanying IDM at Comment 1-C; *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), and accompanying IDM at Comment 1-C; *HWR from Korea 2017-2018 Final Results* IDM at Comment 2; *Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 15114 (March 17, 2020), and accompanying IDM at Comment 3; *CWP from India 2017-2018 Final Results* IDM at Comment 1; and *Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 3616 (January 22, 2020) (*CWP from Turkey 2017-2018 Final Results*), and accompanying IDM at Comment 1).

¹⁰¹ *Id.* (citing *HWR from Korea 2017-2018 Final Results* IDM at 37-38; and *Preliminary Results* PDM at 16).

¹⁰² *Id.* at 23-24.

¹⁰³ *Id.* at 24-25 (citing DOSCO and HiSteel’s Joint Case Brief at 22-23).

analysis, just as in this proceeding.¹⁰⁴ Commerce computes the PMS adjustment by multiplying the “beta” rate by the percent reduction in uneconomic capacity that is required to reduce capacity to the “implied capacity” level.¹⁰⁵ Given that the “beta” rate is statistically significant at the 95 percent confidence level, the adjustment to AUV is by definition statistically significant, and the actual AUV therefore falls outside the 95 percent confidence interval of the counterfactual AUV.¹⁰⁶

- The respondents’ assertion that the petitioner’s model multiplies the explanatory variables by each other rather than considering their separate impact on AUVs is wrong, and the formula at page 26 that the respondents provide is incorrect.¹⁰⁷ Commerce has confirmed that the OLS model is recognized in econometrics as the best unbiased estimator for determining a linear relationship between variables, and the relationships captured in the petitioner’s OLS modeling are based on a linear equation that adds the independent variables.¹⁰⁸
- The respondents’ claim that the petitioner changes the explanatory variables from one review to the next is untrue.¹⁰⁹ The petitioner did not exclude aluminum from the regression analysis. While aluminum is a substitute for steel in certain applications, it is unclear how powerful that substitution effect would be for a product as central to the global economy as steel, given the limited application in which steel can be substituted for aluminum. The data demonstrate that the margin of substitution for aluminum and HRC is limited in this context.¹¹⁰ The petitioner has demonstrated that the effect of the aluminum price is negative, statistically insignificant, and has virtually no effect on the model’s explanatory power as measured by the Adjusted R-Squared.¹¹¹ Thus, the addition of aluminum to the regression does not improve the regression’s explanatory power.
- Norheim’s analysis in the April 20, 2020 Norheim Report, which purports to demonstrate that the inclusion of aluminum improves the regression’s explanatory power, misleadingly removes scrap from the model and replaces it with aluminum.¹¹² The record does not demonstrate that aluminum prices are more closely correlated with the Korean AUV of scrap prices but rather that iron and scrap prices are much more closely correlated with the Korean AUV than aluminum prices.¹¹³ Norheim’s exclusion of the steel scrap price from a model designed to explain HRC abandons econometric best practices in its failure to account for fundamental aspects of the HRC manufacturing process.¹¹⁴

¹⁰⁴ *Id.* at 25 (citing *CWP from India 2017-2018 Final Results* IDM at Comment 7; and PMS SQR at Exhibit 1, command lines 32-48 and 51-70).

¹⁰⁵ *Id.* (citing *CWP from India 2017-2018 Final Results* IDM at Comment 7).

¹⁰⁶ *Id.* (citing PMS SQR at Exhibit 1, command lines 32-48 and 51-70).

¹⁰⁷ *Id.* at 26 (citing DOSCO and HiSteel’s Joint Case Brief at 25-26).

¹⁰⁸ *Id.* (citing *CWP from India 2017-2018 Final Results* IDM at Comment 7; Memorandum, “2018-2019 Antidumping Duty Administrative Review of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Preliminary Results Regression Analysis for Particular Market Situation Adjustment,” dated January 15, 2021 at 20).

¹⁰⁹ *Id.* at 26 (citing DOSCO and HiSteel’s Joint Case Brief at 25-26).

¹¹⁰ *Id.* at 26-27 (citing PMS Allegation at Exhibit 3.1, p. 16).

¹¹¹ *Id.* at 27 (citing Petitioner’s Regression Analysis at Exhibit 3.7.4).

¹¹² *Id.* at 27 (citing DOSCO and HiSteel’s Joint Case Brief at 26, n.55).

¹¹³ *Id.* at 27-28 (citing DOSCO and HiSteel’s Joint Case Brief at 26, n.55; and Petitioner Rebuttal Brief at Exhibit 1).

¹¹⁴ *Id.* at 28.

- The respondents argue that the petitioner’s regression model fails to adhere to the hierarchical principle and to account for intemporal endogeneity, autocorrelation, multicollinearity, and heteroskedasticity.¹¹⁵ These assertions are incorrect and Commerce rejected the identical allegations in the previous review of this *Order*.¹¹⁶
- First, the respondents argue that the petitioner’s model fails to apply the hierarchical principle because it multiplies the explanatory variables rather than considering their separate impact on the AUVs. However, this is incorrect since the relationships in the petitioner’s OLS modeling are based on a linear equation that adds the independent variables.¹¹⁷ The respondents incorrectly assume that the petitioner’s model includes interaction terms and are mistaken in their understanding that the petitioner’s use of logs indicates that the explanatory variables are being multiplied.¹¹⁸ Therefore, because the hierarchical principle applies to regression frameworks relying on interaction terms, the respondents’ claims are irrelevant.¹¹⁹
- Second, the respondents claim that the petitioner’s model fails to account for endogeneity bias.¹²⁰ However, the petitioner’s model avoids endogeneity bias, reverse causation, and circularity.¹²¹ The petitioner’s definition of excess capacity (*i.e.*, uneconomic capacity) does not rely on current steel production, thus avoiding any reverse causality. The petitioner’s additional analysis revealed that the degree of endogeneity bias is statistically insignificant.¹²²
- Third, the respondents claim that the petitioner’s model suffers from multicollinearity and, therefore, cannot be estimated by an OLS regression. This claim is flawed because virtually all econometric models contain a degree of multicollinearity.¹²³ While multicollinearity can be a legitimate concern, it is not relevant for determining the effect of uneconomic capacity or the statistical significance of that effect. Multicollinearity also does not bias or invalidate estimated coefficients; instead, it impacts the variance of the estimators.¹²⁴ Multicollinearity becomes an issue when it involves the explanatory variable of interest (*i.e.*, uneconomic capacity) and has no relevance when it exists between control variables (*i.e.*, global fixed capital formation, iron ore prices, scrap prices, and aluminum prices). Therefore, the respondents’ argument is invalid because it applied the variance inflation factor test to the petitioner’s control variables and failed to demonstrate that the explanatory variable is affected by multicollinearity.¹²⁵

¹¹⁵ *Id.* (citing DOSCO and HiSteel’s Joint Case Brief at 27-33).

¹¹⁶ *Id.* at 28-29 (citing *HWR Korea 2017-2018 Final Results* IDM at 37-38).

¹¹⁷ *Id.* at 29.

¹¹⁸ *Id.* at 29-30 (citing DOSCO and HiSteel’s Joint Case Brief at 32-33).

¹¹⁹ *Id.* at 30.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.* (citing PMS Allegation at 73-74 and Exhibit 3.1 at 17-20).

¹²³ *Id.* at 30-31 (citing DOSCO and HiSteel’s Joint Case Brief at 29; and PMS Allegation at Exhibit 3.1 at 13-16).

¹²⁴ *Id.* at 31 (citing PMS Allegation at Exhibit 3.1).

¹²⁵ *Id.* (citing DOSCO and HiSteel’s Joint Case Brief at 29).

- Fourth, the respondents' claims with respect to autocorrelation and serial correlation in the petitioner's model are merely conjecture.¹²⁶ Autocorrelation and temporal issues have no impact on the estimated effect of uneconomic capacity.¹²⁷ The petitioner applied the Prais-Winsten regression, which accounts for serial correlation. When applied, the results were nearly identical to the petitioner's model, which indicates that serial correlation is not an issue.¹²⁸
- Lastly, the respondents use the Breusch-Pagan test to claim that the petitioner's model does not satisfy homoskedasticity requirements.¹²⁹ This claim is misplaced because similar to multicollinearity and autocorrelation, heteroskedasticity is an issue that relates to statistical significance. The petitioner demonstrates that heteroskedasticity does not undermine the reliability of its model by generating three versions: (1) the original model; (2) a version of the model with heteroskedasticity-robust standard errors; and (3) a version of the model with year-clustered standard errors.¹³⁰ The result of each version is that the effect of uneconomic capacity is highly significant, indicating that heteroskedasticity is not an issue.
- The respondents object to the use of a five-year average of global production in the calculation of the PMS adjustment when the underlying model relies on annual data.¹³¹ Commerce initially adopted an 85 percent capacity utilization as indicative of a healthy steel industry but it then applied an 80 percent counterfactual capacity utilization assumption.¹³² Commerce recognized that a single year's increase in global production to achieve an 80 percent target does not mean that more than a decade of price suppression in the steel industry has been ameliorated and modified its approach. Commerce's current practice continues to assume an 80 percent counterfactual capacity utilization rate, but, rather than considering the contemporaneous year alone as the basis for counterfactual global production capacity, it relies on the average of global production during a five-year period that includes the contemporaneous year, as Commerce did in the *Preliminary Results*.¹³³
- The respondents' contention that the PMS adjustment must be based on data in the same form as was used in the regression analysis is logically flawed.¹³⁴ Commerce's PMS methodology addresses two distinct issues: (1) the quantification of the relationship between uneconomic capacity and HRC prices, as addressed by a regression analysis that relies on annual data; and (2) the level of global capacity that is consistent with a healthy global steel industry, as addressed by applying a five-year average of production.¹³⁵ As a logical matter, there is no reason these two issues must be defined by the same periodicity.

¹²⁶ *Id.* at 31-32 (citing DOSCO and HiSteel's Joint Case Brief at 30).

¹²⁷ *Id.* at 32 (citing DOSCO and HiSteel's Joint Case Brief at 31).

¹²⁸ *Id.* at 32 and Exhibit 1.

¹²⁹ *Id.* at 32 (citing DOSCO and HiSteel's Joint Case Brief at 32).

¹³⁰ *Id.* at 32-33 and Exhibit 1 (citing PMS Allegation at Exhibit 3.74, iterations 6 and 7).

¹³¹ *Id.* at 33 (citing DOSCO and HiSteel's Joint Case Brief at 33-34).

¹³² *Id.* (citing *CWP from Turkey 2017-2018 Final Results* IDM at Comment 2).

¹³³ *Id.* at 33-34 (citing *WLP from Korea 2017-2018 Final Results* IDM at Comment 3).

¹³⁴ *Id.* at 34-35 (citing DOSCO and HiSteel's Joint Case Brief at 33-34).

¹³⁵ *Id.* at 35 (citing PMS Allegation at 3).

- The respondents’ attempt to invalidate the model in regard to a sub-period analysis by which they misleadingly conclude fluctuations in the model’s coefficients using differing time periods demonstrates instability.¹³⁶ The respondents argue that Commerce should abandon the 10-year period underlying the regression analysis applied in the *Preliminary Results* for allegedly more accurate five-year periods.¹³⁷ It is not surprising that the OLS model yields different results when earlier years are excluded and/or the underlying period is limited to varying five-year blocks.¹³⁸ The record contains numerous alternative specifications, robustness checks, and validation analyses that demonstrate the robustness of the petitioner’s results.¹³⁹
- Commerce should reject the respondents’ contention that dropping data is an appropriate methodology for assessing the model. It is never appropriate to ignore data that directly addresses the empirical question before Commerce: What would Korea’s steel prices be if global overcapacity were at a lower level? The respondents’ five-year iterations exclude critical 2008 and 2009 data. Commerce has specifically determined that the inclusion of data for 2008 and 2009 in the regression analysis is essential to “fully capture the nature of the relationship” between global uneconomic capacity and the price of HRC.¹⁴⁰
- The relationship between the gap in global capacity and global production fundamentally changed in the second half of the last decade.¹⁴¹ It is critical to include 2008 and 2009 because these data provide observed information on HRC prices when steel overcapacity was at relatively modest levels. The fundamental purpose of the PMS analysis is the empirical identification of what the price of HRC inputs would be if global capacity utilization rates were at a given level such as Commerce’s preferred 80 percent.¹⁴² Robust results require the inclusion of years where capacity utilization was at, above, and below the target rate to reveal the true relationship between uneconomic capacity and prices across the full range of relevant capacity utilization rates.¹⁴³
- The respondents removal of years of data severely constricts the sample size of the available data and introduces critical methodological complications to the modeling.¹⁴⁴ The data underlying the petitioner’s modeling are limited by the fact that the Organisation for Economic Co-operation and Development publishes crude steelmaking capacity only on an annual basis and that there is only one global economy.¹⁴⁵ In limiting the underlying dataset to five year blocks, the respondents significantly reduce the sample size of the data for analysis by 50 percent.¹⁴⁶ As an empirical matter, this has considerable implications for a

¹³⁶ *Id.* (citing DOSCO and HiSteel’s Joint Case Brief at 35-37).

¹³⁷ *Id.* (citing DOSCO and HiSteel’s Joint Case Brief at 37-40).

¹³⁸ *Id.* at 36 (citing DOSCO and HiSteel’s Joint Case Brief at 36-37).

¹³⁹ *Id.* (citing PMS Allegation at Exhibits 3.1, 3.2, 3.4 and 3.7).

¹⁴⁰ *Id.* at 36-37 (citing PMS Allegation at 54-56; and *CWP from India 2017-2018 Final Results* at Comment 7).

¹⁴¹ *Id.* at 37 (citing *CWP from India 2017-2018 Final Results* at Comment 7).

¹⁴² *Id.* at 37-38.

¹⁴³ *Id.* at 38.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* (citing PMS Allegation at Exhibit 3.5).

¹⁴⁶ *Id.* (citing PMS SQR at Exhibit 1).

model with five explanatory variables.¹⁴⁷ Thus, the respondents rely on methodologies that inherently generate unstable economic results even as they attempt to demonstrate the petitioner's OLS model is temporarily unstable and invalid.¹⁴⁸

- The petitioner has provided regression iterations using the quarterly dataset provided in the PMS Allegation over various time periods that is similar to the respondents' analysis.¹⁴⁹ The petitioner's results show that the respondents' analysis suffers from inadequate variation over time. The fact that the petitioner's quarterly regression analysis proves robust with the exclusion of certain years demonstrates the distortion inherent in the respondents' sub-period analysis and reveals results driven by spurious correlations due to insufficient sample size.¹⁵⁰
- The respondents' comparison of the R-squared values across temporal iterations is misleading. While the respondents assert the R-squared for the 2014-2018 iteration indicates it "fit" the data better than the petitioner's 2009-2018 OLS model, the respondents' regression not only severely restricts the analysis but also excludes the only period where HRC prices were relatively high.¹⁵¹ Thus the restricted regression of the respondents is not more predictive. Rather, the respondents' restricted regression ignores relevant data and then claims to have better explained the data it has not ignored.¹⁵²
- The petitioner identified and compiled the best available data publicly available and provided a variety of data comparisons, analyses, econometric tests, and alternative regression specifications to test the veracity of the results generated by the OLS model and to ensure a reliable model with predicative power.¹⁵³ All of this supports the integrity of the petitioner's modeling, the statistically significant inverse relationship between global steel over-capacity and HRC prices, and the quantitative relevance of the calculated PMS adjustment factor.¹⁵⁴
- The respondents refuse to engage with the fundamental issue presented: If global overcapacity is not the cause of declining steel prices, then why do we observe such a powerful statistical relationship between these variables? Rather than offer an answer, the respondents' approach is to critique the model on narrow grounds through discursive assertions. While the respondents have abandoned established econometric practice and analysis to generate desired results and invalid conclusions, the petitioner's analysis has demonstrated the relationship between overcapacity and steel prices is not a coincidence. The petitioner has demonstrated that this relationship holds in Korea, across countries, and at a global level through various measures of overcapacity, across a range of specifications and regression methodologies.¹⁵⁵ Given the petitioner's model's quantification of the impact of the PMS on the material cost of steel inputs and derivation of a corresponding adjustment

¹⁴⁷ *Id.* (citing PMS Allegation at Exhibit 3.2 and PMS SQR at Exhibit 1).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 39 and Exhibit 2.

¹⁵⁰ *Id.* at 39-40 and Figure 1.

¹⁵¹ *Id.* (citing DOSCO and HiSteel's Joint Case Brief at 39).

¹⁵² *Id.* at 40-41.

¹⁵³ *Id.* at 41 (citing PMS Allegation at 49-50 and 52-52; and Petitioner's Rebuttal Brief).

¹⁵⁴ *Id.* at 41.

¹⁵⁵ *Id.* at 41-42 (citing PMS Allegation at Exhibits 3.1, 3.2 and 3.7).

factor, Commerce should continue to apply the PMS regression methodology it applied in the *Preliminary Results*.¹⁵⁶

Commerce's Position:

Because we find that the petitioner failed to provide sufficient evidence that a PMS existed in Korea that distorted the COP of HWR in this POR, as discussed in Comment 1, the parties' arguments regarding Commerce's statutory authority to make a PMS adjustment as done in the *Preliminary Results* and whether to use the regression model to calculate the PMS adjustment are moot. Therefore, we have not addressed these issues for purposes of the final results of this administrative review.

Comment 3: Differential Pricing

In the *Preliminary Results*, we found that 81.80 percent of DOSCO's U.S. sales passed the Cohen's *d* test, which confirmed the existence of a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. However, Commerce also preliminarily determined that there was no meaningful difference between the weighted-average dumping margin calculation using the average-to-average (A-to-A) method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction (A-to-T) method to all U.S. sales. Thus, for the preliminary results, Commerce applied the A-to-A method for all U.S. sales to calculate the weighted-average dumping margin for DOSCO.¹⁵⁷

Commerce also preliminarily found that 97.41 percent of HiSteel's U.S. sales passed the Cohen's *d* test, which confirmed the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. However, Commerce again preliminarily determined that there was no meaningful difference between the weighted-average dumping margin calculation using the A-to-A method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the A-to-T method to all U.S. sales. Thus, for the *Preliminary Results*, Commerce applied the A-to-A method for all U.S. sales to calculate the weighted-average dumping margin for HiSteel.¹⁵⁸

DOSCO and HiSteel's Joint Case Brief

- HiSteel agrees with Commerce's preliminary decision to apply the A-to-A method to U.S. sales in calculating HiSteel's weighted-average dumping margin. However, Commerce's use of the differential pricing analysis is mathematically and legally improper.¹⁵⁹
- Commerce may adopt a rule that establishes numerical cut-offs that if Commerce follows the notice and comment requirements of the Administrative Procedure Act (APA), but it has not done so with respect to its differential pricing analysis. If Commerce applies the differential

¹⁵⁶ *Id.* at 42.

¹⁵⁷ See *Preliminary Results* PDM at 8.

¹⁵⁸ *Id.*

¹⁵⁹ See DOSCO and HiSteel's Joint Case Brief at 40 (citing *Preliminary Results* PDM at 8).

pricing analysis as a numerical cut-off on a case-by-case basis, it must provide evidence and analysis demonstrating why the cut-offs for the Cohen's d test and ratio test are suitable in this case, in keeping with the CIT's and U.S. Court of Appeals for the Federal Circuit (Federal Circuit)'s past rulings that Commerce must provide substantial evidence and analysis to establish such bright-line thresholds.¹⁶⁰

- Commerce cannot rely on an allegedly “widely adopted” statistical test when it is not using that test in the context for which it was proposed.¹⁶¹
- While Commerce agrees that Dr. Cohen placed limitations on his analysis, DOSCO and HiSteel argue that the limitations apply to the “T-Test for Means,” which is irrelevant to Commerce’s differential pricing analysis.¹⁶² However, the “T-Test for Means” was very relevant to Dr. Cohen’s development and presentation of his d statistic and the various cut-offs he proposed for establishing whether d is small, medium, or large.
- Despite Commerce’s acknowledgment that the subject of Dr. Cohen’s book is “statistical power analysis,” Commerce argues that it does not intend to be conducting a “power analysis” in its differential pricing analysis. However, this argument is not convincing.¹⁶³
- Commerce has applied a statistical tool in its differential pricing analysis in situations that are inconsistent with the limitations described by Dr. Cohen. It is relying on the cut-offs that Dr. Cohen used for situations that are statistically different from price distributions in a competitive market. Commerce’s assertions regarding its use of the Cohen’s test are mathematically untenable, as DOSCO and Histeel’s U.S. sales do not have the mathematical characteristics of normal distributions.¹⁶⁴
- Commerce has not cited evidence on the record that supports its novel assertion that a parametric test designed for the analysis of two normally-distributed data sets with roughly equal number of data points can be used when none of those conditions exist.¹⁶⁵
- Commerce never explained or provided support as to why 33 and 66 percent should be the thresholds for this test or why a ratio between 33 and 66 percent or over 66 percent calls for consideration of a methodology other than the A-to-A comparison method. Without

¹⁶⁰ *Id.* at 41-43 (citing *Antidumping and Countervailing Duties; De Minimis Dumping Margins and De Minimis Subsidies*, 52 FR 30660 (August 17, 1987); Public Law 103-465; Section 733(b)(3) of the Act; *Carlisle Tire v. United States*, 634 F. Supp. 419, 423 (CIT 1986) (*Carlisle Tire*); *IPSCO v. United States*, 687 F. Supp. 614, 630-31 (CIT 1988) (*IPSCO*); and *Washington Red Raspberry Comm’n v. United States*, 859 F.2d 898, 903-904 (Fed. Cir. 1988) (*Washington Red Raspberry*)).

¹⁶¹ *Id.* at 43 (citing *Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 46647 (July 18, 2016), and accompanying IDM at Comment 4).

¹⁶² *Id.* at 43-44 (citing *OCTG from Korea 2014-2015 Final Results* IDM at Comment 2 (citing Cohen, *Statistical Power Analysis for the Behavioral Sciences* (2nd ed. 1988) (Statistical Power) at 19-20)).

¹⁶³ *Id.* at 44 (citing *OCTG from Korea 2014-2015 Final Results* IDM at Comment 2; and *Preliminary Results* PDM at 7).

¹⁶⁴ *Id.* at 44-45 (citing *Preliminary Results* PDM at 7; and *OCTG from Korea 2014-2015 Final Results* IDM at Comment 2).

¹⁶⁵ *Id.* at 45-46.

justification, these thresholds are arbitrary and improper. In previous determinations, Commerce used circular reasoning to explain that the thresholds are reasonable, when numerical thresholds should be supported by record evidence.¹⁶⁶

- Commerce has failed to satisfy the statutory requirements that permit Commerce to depart from the normal A-to-A comparison to account for masked, or “targeting,” dumping. This departure is allowed only if: (1) “there is {a} pattern of prices export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or time periods”; and (2) Commerce “explains why such differences cannot be taking into account using” an A-to-A or transaction-to-transaction (T-to-T) methodology. There is no reason to believe that price differences support a finding of “targeted dumping” that would necessitate the use of comparison methodologies. Rather, the different results are primarily a function of the different treatment of non-dumped sales under Commerce’s standard methodology. Further, Commerce provided no support for its assertion that the difference in weighted-average dumping margins is “meaningful” when there is a 25 percent change in weighted-average dumping margin between the alternative calculation instead of the A-to-A calculation method. Therefore, Commerce’s use of 25 percent measure to decide which margin calculation is apply is arbitrary and improper.¹⁶⁷

Petitioner’s Rebuttal Brief

- DOSCO and HiSteel challenge Commerce’s differential pricing analysis, specifically the numerical thresholds used in the Cohen’s *d* test and the ratio test. However, Commerce has rejected the same claims raised by respondents in prior determinations, including the 2017-2018 administrative review of the underlying order. In past determinations, Commerce explained that the numerical thresholds in the differential pricing analysis are reasonable and consistent with the requirements of the statute.¹⁶⁸
- In the investigation, as well as other reviews, Commerce has explained that it is entitled to make changes and adopt a new approach in the context of its proceedings, provided it explains the basis for the change and the change is a reasonable interpretation of the statute.¹⁶⁹

¹⁶⁶ *Id.* at 46-47 (citing *Carlisle Tire*, 634 F. Supp. at 423; *Washington Red Raspberry*, 859 F.2d at 903; and *IPSCO*, 687 F. Supp. at 630-31).

¹⁶⁷ *Id.* at 47-48 (citing section 777A(d)(1)(B) of the Act; and *Preliminary Results PDM* at 11).

¹⁶⁸ See Petitioner’s Rebuttal Brief at 42-43 (citing DOSCO and HiSteel’s Joint Case Brief at 40-49; and *HWR from Korea 2017-2018 Final Results IDM*; and *HWR from Korea 2016-2017 Final Results IDM*).

¹⁶⁹ *Id.* at 43-44 (citing DOSCO’s and HiSteel Case’s Brief at 43; *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 47347 (July 21, 2016) (*HWR Korea LTFV Final*), and accompanying IDM at Comment 4; *OCTG from Korea 2015-2016 Final Results IDM* at Comment 8; *OCTG from Korea 2014-2015 Final Results IDM* at Comment 2; *WLP from Korea 2015-2016 Final Results IDM* at Comment 4; and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China: Final Results of Changed Circumstances Review and Reinstatement of Shanghai General Bearing Co., Ltd. in the Antidumping Duty Order*, 82 FR 4853 (January 17, 2017), and accompanying IDM at Comment 5).

- In other determinations, the courts have upheld key aspects of Commerce’s differential pricing analysis. In addition, in past proceedings, Commerce has similarly dismissed arguments that Dr. Cohen did not intend his test used for this purpose and that U.S. sales data does not meet the cut-off requirements of his test. It explained that the Cohen’s *d* test is a recognized measure to gauge the extent of the differences between the means of two groups and a simple way of quantifying those differences. Commerce has previously explained that DOSCO and HiSteel’s reliance on Dr. Cohen’s statement about when proposed cut-offs can be used is misplaced, as it was made in the context of “the statistical significance of the difference in the means for two sampled sets of data, and is not relevant when considering whether this difference has a practical difference.”¹⁷⁰ DOSCO and HiSteel have provided no meaningful new arguments regarding the use of the Cohen’s *d* test that would warrant a different decision from previous determinations.
- While DOSCO and HiSteel claim Commerce has never explained why the thresholds should be 33 percent and 66 percent, Commerce has already directly responded to these claims in other cases, including in the *HWR Korea LTFV Final*.¹⁷¹
- Commerce has already considered and dismissed DOSCO and HiSteel’s arguments that Commerce has not explained why a pattern of price differences cannot be taken into account using the A-to-A or T-to-T comparison methodology or that Commerce has not provided support for its assertion that the difference in the weighted-average dumping margins is meaningful when there is a certain measure between the A-to-A and an alternative comparison methodology. Further, the Federal Circuit has upheld Commerce’s framework on this issue.¹⁷²
- DOSCO and HiSteel appear to argue that the A-to-T method is only an exception to the standard comparison methodology and is not appropriate here. However, as Commerce has

¹⁷⁰ *Id.* at 44-46 (citing *Large Diameter Welded Pipe from the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 83 FR 43651 (August 27, 2018), and accompanying PDM at 10-11 (citing *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1322 (Fed. Cir. 2017) (*Apex I*); see also *OCTG from Korea 2015-2016 Final Results* IDM at Comment 8; DOSCO and HiSteel’s Joint Case Brief at 41-45; *OCTG from Korea 2014-2015 Final Results* IDM at Comment 2; *Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 82 FR 22970 (May 19, 2017), and accompanying IDM at Comment 4; and *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2014-2015*, 81 FR 62717 (September 12, 2016) (*Shrimp from Vietnam*), and accompanying IDM at Comment 1).

¹⁷¹ *Id.* at 46-47 (citing DOSCO and HiSteel’s Joint Case Brief at 46; *OCTG from Korea 2015-2016 Final Results* IDM at Comment 8 (citing *Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods from India*, 79 FR 41981 (July 18, 2014) (*OCTG from India*), and accompanying IDM at Comment 1; and *HWR Korea LTFV Final* IDM at Comment 4).

¹⁷² *Id.* at 48-49 (citing DOSCO and HiSteel’s Joint Case Brief at 47-49; *HWR Korea LTFV Final* IDM at Comments 4 and 5; *OCTG from Korea 2015-2016 Final Results* IDM at Comment 8; *OCTG from Korea 2014-2015 Final Results* IDM at Comment 2; and *Apex I*, 1322, 1330-1331).

explained in other proceedings, this argument is meritless as Commerce’s differential pricing analysis complies with the statutory criteria.¹⁷³

Commerce’s Position:

We disagree with DOSCO and HiSteel that Commerce improperly applied the differential pricing analysis. As an initial matter, we note that there is nothing in section 777A(d) of the Act that mandates how Commerce measures whether there is a pattern of prices that differs significantly or explains why the A-to-A method or the T-to-T method cannot account for such differences. On the contrary, carrying out the purpose of the statute¹⁷⁴ here is a gap filling exercise properly conducted by Commerce.¹⁷⁵ As explained in the *Preliminary Results*, as well as in various other proceedings,¹⁷⁶ Commerce’s differential pricing analysis is reasonable, including the use of the Cohen’s *d* test as a component in this analysis, and it is in no way contrary to the law.

We note that the Federal Circuit has upheld key aspects of Commerce’s differential pricing analysis, including: (1) the application of the “meaningful difference” standard, which compares the calculated weighted-average dumping margins using the A-to-A method without zeroing and an alternative comparison method based on the A-to-T method with zeroing; (2) the reasonableness of Commerce’s comparison method in fulfilling the relevant statute’s aim; (3) Commerce’s use of a “benchmark” to illustrate a meaningful difference; (4) Commerce’s justification for applying the A-to-T method to all U.S. sales; (5) Commerce’s use of zeroing in applying the A-to-T method; (6) that Congress did not dictate how Commerce should determine if the A-to-A method accounts for “targeted” or masked dumping; (7) that the “meaningful difference” test is reasonable; and (8) that Commerce may consider all sales in its “meaningful

¹⁷³ *Id.* at 49-51 (citing DOSCO and HiSteel’s Joint Case Brief at 48; *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2013-2014, 81 FR 39908 (June 20, 2016), and accompanying IDM at Comment 1; *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2012-2013, 79 FR 54264 (September 11, 2014), and accompanying IDM at Comment 1; *Certain Steel Nails from the People’s Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014) (*Steel Nails from China 2011-2012*), and accompanying IDM at Comment 7; section 777A(d)(1)(B) of the Act; and *Preliminary Results PDM* at 7-8).

¹⁷⁴ See *Koyo Seiko Co. 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)).

¹⁷⁵ 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); and *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286, 1302 (CIT 2014) (applying *Chevron* deference in the context of Commerce’s interpretation of section 777A(d)(1) of the Act).

¹⁷⁶ See, e.g., *OCTG from Korea 2015-2016 Final Results IDM* at Comment 8; *Welded Line Pipe from Korea IDM* at Comment 1; *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2012-2013, 80 FR 32937 (June 10, 2015), and accompanying IDM at Comments 1 and 2; and *Stainless Steel Pipe from Korea IDM* at Comment 4.

difference” analysis and consider all sales when calculating a final rate using the A-to-T method.¹⁷⁷

A. APA Rulemaking Is Not Required

Commerce disagrees with DOSCO and HiSteel that it is obligated to follow the APA in establishing the differential pricing analysis. 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.”¹⁷⁸ Further, Commerce normally makes these types of changes in practice (e.g., the change from the targeted dumping analysis to the current differential pricing analysis) in the context of its proceedings, on a case-by-case basis.¹⁷⁹ As the Federal Circuit 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.¹⁸⁰ The Federal Circuit has also held that Commerce’s meaningful difference analysis was reasonable.¹⁸¹ Moreover, in *Apex II*, the CIT recently held that Commerce’s change in practice (from targeted dumping to its differential pricing analysis) was exempt from the APA’s rule making requirements, stating:

Commerce explained that it continues to develop its approach with respect to the use of {A-to-T} “as it gains greater experience with addressing potentially hidden or masked dumping that can occur when {Commerce} determines weighted-average dumping margins using the {A-to-A} comparison method.” Commerce additionally explained that the new approach is “a more precise characterization of the purpose and application of {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.¹⁸²

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.

¹⁷⁷ See *Apex I*; see also *Mid Continent Steel & Wire, Inc. v. United States*, 940 F.3d 662 (Fed. Cir. 2019) (affirming Commerce’s use of zeroing in applying the A-to-T method and 0.8 as a measure of significance, but remanding for further explanation Commerce’s use of a simple average for pooled standard deviation).

¹⁷⁸ See 5 U.S.C. § 553(b)(3)(A).

¹⁷⁹ See *Differential Pricing Analysis; Request for Comments*, 79 FR 26720, 26722 (May 9, 2014) (*Differential Pricing Comment Request*).

¹⁸⁰ See *Saha Thai Steel Pipe Company v. United States*, 635 F.3d 1335, 1341 (Fed. Cir. 2011); *Washington Raspberry*, 859 F.2d at 902-03; and *Carlisle Tire*, 634 F. Supp. at 423 (discussing exceptions to the notice and comment requirements of the APA).

¹⁸¹ See *Apex I*, 862 F.3d at 1347-1351.

¹⁸² See *Apex Frozen Foods Private Ltd. v. United States*, 144 F. Supp. 3d 1308, 1322 (CIT 2016) (*Apex II*) (internal citations omitted).

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

As stated in the *Preliminary Results*, the purpose of the Cohen's *d* test is to evaluate "the extent to which the prices to a particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise."¹⁸³ The Cohen's *d* coefficient is a recognized measure which gauges the extent (or "effect size") of the difference between the means of two groups and provides "a simple way of quantifying the difference between two groups and has many advantages over the use of tests of statistical significance alone."¹⁸⁴ "Effect size quantifies the size of the difference between two groups, and may therefore be said to be a true measure of *the significance of the difference*."¹⁸⁵ As stated in the *OCTG from Korea 2015-2016 AR*, Commerce relies on the Cohen's *d* test to measure whether a difference is significant, as required by the Act.¹⁸⁶

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

Dr. Paul Ellis, in his publication *The Essential Guide to Effect Sizes*, introduces effect size by asking a question: "So what? Why do this study? What does it mean for the man on the street?" Dr. Ellis continues:

A statistically significant result is one that is unlikely to be the result of chance. But a practically significant result is meaningful in the real world. It is quite possible, and unfortunately quite common, for a result to be statistically significant and trivial. It is also possible for a result to be statistically nonsignificant and important. Yet scholars, from PhD candidates to old professors, rarely distinguish between the statistical and the practical significance of their results.

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.¹⁸⁷

¹⁸³ See *Preliminary Results* PDM at 6.

¹⁸⁴ See *OCTG from Korea 2015-2016 Final Results* IDM at Comment 8 (quoting Coe, Robert, "It's the Effect Size, Stupid: What effect size is and why it is important," (September 2002) (Coe's Paper)).

¹⁸⁵ *Id.* (emphasis in original).

¹⁸⁶ *Id.*

¹⁸⁷ See *Shrimp from Vietnam* IDM at Comment 1 (quoting Ellis, Paul D., *The Essential Guide to Effect Sizes*; Cambridge University Press (2010) (*Ellis*) at 3-5); see also *OCTG from Korea 2015-2016 Final Results* IDM at Comment 8.

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 {the Vietnamese respondent} accedes to the distinction and meaning of “effect size” when it states, “While application of the t test {a measure of statistical significance} in addition to Cohen’s *d* might at least provide the cover of statistical significance, it still would not ensure practical significance.” {Commerce} agrees with this statement—statistical significance is not relevant to {Commerce}’s examination of an exporter’s U.S. prices when examining whether such prices differ significantly. {Commerce}’s differential pricing analysis, including the Cohen’s *d* test, includes all U.S. sales which are used to calculate a respondent’s weighted-average dumping margin; therefore, statistical significance, as discussed above, is inapposite. The question is whether there is a practical significance in the differences found to exist in the exporter’s U.S. prices among purchasers, regions or time periods. Such practical significance is quantified by the measure of “effect size.”¹⁸⁸

Lastly, in *Shrimp from Vietnam*, Commerce again pointed to Dr. Ellis, where he addresses populations of data. “Dr. Ellis also states in his publication that the ‘best way to measure an effect is to conduct a census of an entire population but this is seldom feasible in practice.’”¹⁸⁹

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 test will determine whether this difference rises above the sampling error (or in other words, noise or randomness) in selecting the sample. This test will also answer the question of whether picking a second (or third or fourth) set of samples will result in a different outcome than the first set of samples. When the t-test results in determining that the difference is statistically significant (*i.e.*, the null hypothesis is false), then these results rise above the sampling error and are statistically significant.

The second measurement is whether there is a practical significance of the difference between the means of the two sets of data, as measured by an “effect size,” such as Cohen’s *d* coefficient. As noted above, this effect size quantifies the real-world relevance of this difference “and may therefore be said to be a true measure of the significance of the difference.”¹⁹⁰ This effect size is the basis for Commerce’s determination whether prices in a test group differ significantly from prices in a comparison group.

¹⁸⁸ See *Shrimp from Vietnam* IDM at Comment 1; see also *OCTG from Korea 2015-2016 Final Results* IDM at Comment 8.

¹⁸⁹ *Id.*

¹⁹⁰ See *OCTG from Korea 2015-2016 Final Results* IDM at Comment 8 (citing Coe’s Paper).

DOSCO and HiSteel claim that it is inappropriate for Commerce to use Dr. Cohen's stated thresholds to determine whether the effect size is significant. DOSCO and HiSteel state that these thresholds, and consequently the Cohen's d coefficient,

could only appropriately be applied in specific circumstances—where ‘samples, each of n cases, have been randomly and independently drawn from normal populations, ‘ and where the two samples do not have ‘substantially unequal variances’ or ‘substantially unequal sample sizes (whether small or large).’¹⁹¹

DOSCO and HiSteel's claim is misplaced. DOSCO and HiSteel's quotation is from section 2.1 of Dr. Cohen's text, “Introduction and Use” of “The T Test for Means.”¹⁹² As described above, this test 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,¹⁹³ but that is not the basis for Commerce's analysis of DOSCO and HiSteel's U.S. sale price data.

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

The arithmetic mean is by far the most frequently used measure of location by behavioral scientists, and hypotheses about means the most frequently tested. The tables have been designed to render very simple the procedure for *power analysis* in the case where two samples, each of n cases, have been randomly and independently drawn from normal populations, and the investigator wishes to test the null hypothesis that their respective population means are equal ...¹⁹⁴

Again, Commerce is not conducting a “power analysis” that 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 analysis incorporates a balance between sampling technique, including sample size and potential sampling error, with the stipulated effect size. The Cohen's d test in this final determination only measures the significance of the observed differences in the mean prices for the test and comparison groups with no need to draw statistical inferences regarding sampled price data or the “power” of Commerce's results and conclusions.

¹⁹¹ See DOSCO and HiSteel's Joint Case Brief at 43-44 (citing *OCTG from Korea 2014-2015 Final Results* IDM at Comment 2 (quoting Cohen, Jacob, *Statistical Power Analysis for the Behavioral Sciences*, Second Edition (1988) (Cohen) at 19-20)).

¹⁹² *Id.*

¹⁹³ See *OCTG from Korea 2015-2016 Final Results* IDM at Comment 8 (citing Cohen at 21-23, section 2.2.1).

¹⁹⁴ *Id.* (quoting Cohen at 19).

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

Deosen's claim that the Cohen's d test's thresholds of "small," "medium," and "large" are arbitrary is misplaced. In "Difference Between Two Means," the author states that "there is no objective answer" to the question of what constitutes a large effect. Although Deosen focuses on this excerpt for the proposition that the "guidelines are somewhat arbitrary," the author also notes that the guidelines suggested by Cohen as to what constitutes a small effect size, medium effect size, and large effect size "have been widely adopted." The author further explains that Cohen's d is a "commonly used measure" to "consider the difference between means in standardized units." At best, the article may indicate that although the Cohen's d test is not perfect, it has been widely adopted. And certainly, the article does not support a finding, as Deosen contends, that the Cohen's d test is not a reasonable tool for use as part of an analysis to determine whether a pattern of prices differ significantly.¹⁹⁵

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.¹⁹⁶

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

¹⁹⁵ See *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) (*Xanthan Gum from China*), and accompanying IDM at Comment 3 (quoting Dave Lane *et al.*, Chapter 19 "Effect Size," Section 2 "Difference Between Two Means"); see also *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013), and accompanying IDM at Comment 4; *Steel Nails from China 2011-2012* at Comment 7; and *OCTG from Korea 2015-2016 Final Results* IDM at Comment 8.

¹⁹⁶ See *Preliminary Results* PDM at 7.

differences, as does the mean difference in height between 13 – and 18-year-old girls....”¹⁹⁷ 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 DOSCO and HiSteel’s arguments that its application of the Cohen’s *d* test in this administrative review is improper. As a general matter, Commerce finds that the U.S. sales data which DOSCO and HiSteel have reported to Commerce constitute a complete population. As such, sample size, sample distribution, and the statistical significance of the sample are not relevant to Commerce’s analysis.¹⁹⁸ 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.¹⁹⁹

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.”²⁰⁰ DOSCO and HiSteel have submitted no factual evidence or argument that these thresholds should be modified or that any other aspects of the differential pricing analysis should be changed for DOSCO and/or HiSteel in this administrative review. Accordingly, DOSCO and HiSteel’s arguments at this late stage of the administrative review are unsupported by the record and appear only to convey DOSCO and HiSteel’s disagreement with the results of Commerce’s application of a differential pricing analysis in this administrative review, rather than to truly identify some aspect of this approach which is unreasonable or inconsistent with the statute.

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

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

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

¹⁹⁷ See *OCTG from Korea 2015-2016 Final Results* IDM at Comment 8 (citing Cohen at 27).

¹⁹⁸ See, e.g., *Xi’an Metals & Materials Imp. & Exp. Co. v. United States*, 256 F. Supp. 3d 1346, 1364-65 (CIT 2017) (“‘{S}tatistical significance’ is irrelevant where, as here, the agency has a complete set of data to consider.... {I}f Congress wanted {Commerce} to measure ‘statistical significance,’ it would have included the word ‘statistical’ {when it drafted the statute}.”); and *Stanley Works Langfang Fastening Sys. Co. v. United States*, 333 F. Supp. 3d 1329, 1346 (CIT 2018) (*Stanley Works*) (similar).

¹⁹⁹ See *Stanley Works*, 333 F. Supp. 3d at 1346-46 (“Commerce lawfully used these thresholds to help it determine which sales ‘pass’ its Cohen’s *d* test.”).

²⁰⁰ See *Preliminary Results* PDM at 8.

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.²⁰¹

Although the selection of these thresholds is subjective, Commerce's stated reasons behind the 33 – and 66-percent thresholds do not render them arbitrary. In their case brief, DOSCO and HiSteel proffers several pairs of other possible thresholds but without reasoning or support to argue that these values are more appropriate than those used by Commerce in this review. Likewise, during this review, DOSCO and HiSteel have not submitted factual evidence or argument that these thresholds should be modified. Accordingly, DOSCO and HiSteel's arguments at this late stage of the review are unsupported by the record and appear only to convey DOSCO and HiSteel's disagreement with the results of Commerce's application of a differential pricing analysis in this review rather than to truly identify some aspect of this approach which is unreasonable or inconsistent with the statute.

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

We agree, in part, with DOSCO and HiSteel that “the mere existence of different results is plainly insufficient, by itself, to satisfy the statutory requirements”²⁰² of whether the A-to-A method can account for significant price differences that are imbedded in DOSCO and HiSteel's pricing behavior in the U.S. market. We do agree with DOSCO and HiSteel that the difference in the results is due to zeroing because the weighted-average dumping margins calculated using the A-to-A method without zeroing and the A-to-T method without zeroing will always yield the identical results. This fact is evidenced with the calculation results for DOSCO and HiSteel in these final results where the total sum of comparison results for each comparison method (*i.e.*, the A-to-A method, the A-to-T method, and the mixed method) are identical when offsets are

²⁰¹ See *OCTG from India* IDM at Comment 1.

²⁰² See DOSCO and HiSteel's Joint Case Brief at 47.

granted.²⁰³ Only the denial of offsets when using the A-to-T method, *i.e.*, zeroing, results in differences between the three comparison methods.

The difference in the calculated results specifically reveals the extent of the masked dumping that is being concealed when applying the A-to-A method.²⁰⁴ 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,²⁰⁵ such that the A-to-A method would be unable to account for such differences.²⁰⁶ Such masking or offsetting of lower prices with higher prices may occur implicitly within the averaging of U.S. prices or explicitly when aggregating the A-to-A comparison results. Therefore, to understand the impact of the unmasked dumping, Commerce finds that the comparison of each of the calculated weighted-average dumping margins using the standard and alternative comparison methodologies quantifies the extent of the masked 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 EPs, or CEPs, with NVs). It is the interaction of these many comparisons of EPs or CEPs with NVs, and the aggregation of these comparison results, that determine whether there is a meaningful difference in these two calculated weighted-average dumping margins. When using the A-to-A method, lower-priced U.S. sales (*i.e.*, sales which may be dumped) are offset by higher-priced U.S. sales.

Congress was concerned about offsetting and that concern is reflected in the SAA, which states that so-called “targeted dumping” is a situation where “an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions.”²⁰⁷ 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 that 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 a NV that is independent from the type of U.S. price used for comparison, and the

²⁰³ See HiSteel Final Calculation Memo at Attachment 2; and DOSCO Final Calculation Memo at Attachment 2, where the calculation results of the A-to-A method, the A-to-T method and the “mixed” method are summarized. 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.

²⁰⁴ 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)).

²⁰⁵ See SAA at 842.

²⁰⁶ 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.”).

²⁰⁷ See SAA at 842.

basis for NV will be constant because the characteristics of the individual U.S. sales²⁰⁸ 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. This average is made up of a number of individual U.S. sales that 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.²⁰⁹ 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;²¹⁰
- 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; thus, there is no meaningful difference in the calculated results, and the A-to-A method will be used. Under scenario (3), there is a minimal (*i.e.*, *de minimis*) amount of dumping, such that the application of offsets will result in a zero or *de minimis* amount of dumping (*i.e.*, the A-to-A method with offsets and the A-to-T method with zeroing both result in a weighted-average dumping margin that is either zero or *de minimis*); thus, again, there is no 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*; thus, 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

²⁰⁸ These characteristics include items such as product, level-of-trade, time period, and whether the product is considered as prime- or second-quality merchandise.

²⁰⁹ The calculated results using the A-to-A method with offsets (*i.e.*, no zeroing) and the calculated results using the A-to-T method with offsets (*i.e.*, no zeroing) will be identical. Accordingly, this discussion is effectively between the A-to-T method with offsets and the A-to-T method with zeroing. See HiSteel Final Calculation Memo; and DOSCO Final Calculation Memo.

²¹⁰ 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 NV can result in a significant amount of dumping and/or offsets, both of which are measured relative to the U.S. prices.

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) is 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 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, so 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 that 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 that do not exhibit a meaningful difference with the A-to-T comparisons, there will be little or no change in the amount of dumping (*i.e.*, the numerator of the weighted-average dumping margin), but the U.S. sales value of these transactions will nonetheless be included in the total U.S. sales value (*i.e.*, the denominator of the weighted-average dumping margin). The aggregation of these intermediate A-to-A comparison results where there is no “meaningful” difference will thus dilute the significance of other A-to-A comparison results where there is a “meaningful” difference, which the A-to-T method avoids.

Therefore, Commerce finds that the meaningful difference test reasonably fills the gap in the Act to consider whether the A-to-A method (or T-to-T method) can account for any significant price differences in DOSCO and HiSteel’s pricing behavior in the U.S. market. Congress’s intent of addressing so-called “targeted dumping” when the requirements of section 777A(d)(1)(B) of the Act are satisfied²¹¹ would be thwarted if the A-to-T method without zeroing were applied because this will always produce the identical results when the standard A-to-A method without

²¹¹ See SAA at 842-843.

zeroing is applied. Under that scenario, both methods would inherently mask dumping. It is for this reason that Commerce finds that the A-to-A method cannot take into account a pattern of prices that differ significantly, *i.e.*, where Commerce identifies conditions where “targeted” or masked dumping “may be occurring” in satisfying the pattern requirement, and Commerce demonstrates that the A-to-A method cannot account for the significant price differences, as exemplified by the pattern of prices that differ significantly.

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

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

Commerce disagrees with DOSCO and HiSteel that it has failed to satisfy the statutory requirements of section 777A(d)(1)(B) of the Act and considers the application of an alternative comparison method based on the A-to-A method appropriate. As set forth in the *Preliminary Results*,²¹² Commerce’s differential pricing analysis for DOSCO and HiSteel in this administrative review is both lawful, reasonable, and completely within Commerce’s discretion in executing the trade statute.

DOSCO-Specific Issues

Comment 4: DOSCO’s Scrap Offset

DOSCO’s Case Brief

- In the *Preliminary Results*, Commerce increased DOSCO’s reported per-unit manufacturing cost by the amount of scrap related to inventory held prior to the POR. However, DOSCO did not include the scrap revenue related to inventory held prior to the POR in the scrap offset calculation.²¹³
- When the SeAH Steel Group took management control of DOSCO, some raw materials that had been held in inventory for a long time and not used in production were re-classified as HRC scrap and sold in a one-time transaction in December 2018. While the sale of these raw materials occurred during the POR, the cost of that scrap material was not included in DOSCO reported costs, and the revenue from the sale of that scrap was not included in the scrap offset.²¹⁴

²¹² See *Preliminary Results* PDM at 7-8.

²¹³ See DOSCO’s Case Brief at 2.

²¹⁴ *Id.* (citing DOSCO’s Letter, “Heavy Walled Rectangular Carbon Steel Pipes and Tubes from Korea – DOSCO’s Response to the Department’s November 19 Supplemental Questionnaire,” dated December 14, 2020 (DOSCO’s Second SDQR) at 17-18 and Appendix S2D-I-14-A).

- Because the computer system that DOSCO used through January 2019 (called “MESTIS”) did not record scrap costs or maintain scrap inventories, the reported scrap costs and scrap offset amounts for each control number do not include scrap generated or sold during the 2018 fiscal year.²¹⁵
- In the cost reconciliations, DOSCO did not deduct the revenue from sales of long-term inventories as scrap from the reported costs. Instead, DOSCO subtracted a negative amount (effectively increasing the total cost of goods sold) to reflect that the reported product-specific costs did not include any offset for that revenue, while the cost of goods sold in the financial statements had been reduced by that revenue.²¹⁶
- Consequently, the reported costs were not reduced by an offset for the revenues from the sales of long-term scrap, and the adjustment made in the *Preliminary Results* is not appropriate.²¹⁷

Petitioner’s Case Brief

- Commerce’s adjustment to DOSCO’s scrap offset was not warranted because none of the scrap offsets were included in the reported costs. Nevertheless, Commerce should not grant any offset for any 2018 scrap sales because DOSCO has not demonstrated such scrap was generated during the POR.²¹⁸ In addition, Commerce should disallow the portion of the scrap offset that was not produced by DOSCO.
- Should Commerce erroneously grant a scrap adjustment, Commerce should assume that the scrap was generated throughout the year, including before the POR. Therefore, Commerce should exclude the portion generated prior to the POR.²¹⁹
- Commerce should disallow the portion of the scrap offset that was not generated by DOSCO, including the reported scrap related to purchased merchandise and scrap generated from tolling operations.²²⁰ All such scrap should also be excluded from the scrap offset because DOSCO did not generate the scrap.

²¹⁵ *Id.* (citing DOSCO’s Second SDQR at 12).

²¹⁶ *Id.* at 3 (citing DOSCO’s Letter, “Heavy Walled Rectangular Carbon Steel Pipes and Tubes from Korea – DOSCO’s Response to Sections B, C, and D of the Department’s December 3 Questionnaire,” dated January 23, 2020 (DOSCO’s Initial BCDQR) at Appendix D-I-11-D; and DOSCO’s Letter, “Heavy Walled Rectangular Carbon Steel Pipes and Tubes from Korea – DOSCO’s Response to the Department’s April 8 Section D Supplemental Questionnaire, dated June 17, 2020 (DOSCO’s First SDQR) at Appendix SD-I-12-B).

²¹⁷ *Id.* at 5.

²¹⁸ *See* Petitioner’s Case Brief at 3 (citing DOSCO’s Second SDQR at 5).

²¹⁹ *Id.* at 2.

²²⁰ *Id.* (citing DOSCO’s Second SDQR at 11 and Appendix S2D-I-4).

DOSCO's Rebuttal Brief

- As previously explained, DOSCO did not report the scrap costs and scrap offset amounts for scrap generated or sold during the 2018 fiscal year.²²¹
- The petitioner's understanding of the reported scrap information and calculation is mistaken. As a result, the petitioner's assertion that Commerce should adjust DOSCO's reported scrap offset for DOSCO's 2018 scrap sales and scrap sales not related to DOSCO's production is irrelevant.²²²

Commerce's Position:

After further review of the data on the record, we agree with DOSCO that the adjustment made in the *Preliminary Results* was not warranted. Since the revenues from the sales of raw materials and semi-finished products that were scrapped were taken out of their respective inventory accounts, they were reported as cost of goods sold (COGS) for by-product for the fiscal year (FY) 2018.²²³ These costs were then removed from the COGS in the cost reconciliation because they were not part of the production during the POR. In addition, prior to January 2019, DOSCO used the MESTIS system that did not record scrap costs or maintain scrap inventories. Instead, the MESTIS system simply recorded the sale of scrap as "other income."²²⁴ Therefore, the scrap offset is not included in the COGS used to calculate the reported costs. Accordingly, for the final results, we have reversed the scrap adjustment to DOSCO's reported costs made in the *Preliminary Results*. Because Commerce did not grant any adjustment for the 2018 scrap, the petitioner's additional arguments regarding the 2018 scrap or the allocation of such scrap are moot.

We disagree with the petitioner that we should exclude the scrap related to purchased merchandise from the reported scrap offset. The scrap to which the petitioner refers is part of the inventory reclassified and sold as scrap in December 2018.²²⁵ Because the 2018 scrap revenue is not included in the reported scrap offset, an adjustment is not warranted.

With regards to the revenue for the scrap generated from tolling operations, we also disagree with the petitioners. According to DOSCO, the raw materials used for tolling activities are assigned a material code beginning with "6," while the raw materials used to produce pipe are assigned a material code beginning with "1."²²⁶ DOSCO explained that, because the materials used in tolling activities are owned by DOSCO's customer and the production related to these tolling activities has not been included in the reported cost data, the value of the raw materials provided by the customer was not included in the inventory movement schedule.²²⁷ The scrap generated from its tolling activities is also owned by the customer, not DOSCO. DOSCO purchases the scrap generated from its tolling operations from the tolling customer and records

²²¹ See DOSCO's Rebuttal Brief at 1.

²²² *Id.* at 2.

²²³ See DOSCO's Second SDQR at 5 and 6.

²²⁴ *Id.*

²²⁵ See DOSCO's Second SDQR Appendix S2D-I-4; and DOSCO's First SDQR at Appendix SD-12-B.

²²⁶ See DOSCO's First SDQR at 14.

²²⁷ *Id.*

such purchases in its scrap inventory.²²⁸ The value of the scrap generated from DOSCO's self-production was used as an offset to its COP; however, the scrap generated from the tolling services DOSCO provides to outside parties is not recorded as an offset to DOSCO's production costs.²²⁹ Because the scrap generated from tolling services is not included in DOSCO's reported scrap offset, no adjustment is warranted.

Comment 5: SeAH Steel Corporation (SeAH Steel)'s Scrap Offset

Petitioner's Case Brief

- The scrap data reported by SeAH Steel do not support SeAH Steel's scrap offset claim, and, therefore, the offset should be reduced.²³⁰
- In referring to the comparison of the revenue from the sales of each type of scrap to the COGS for the scrap during the POR, SeAH Steel claimed that the scrap revenue exceeded the scrap cost of goods sold, which means that the values used to determine the scrap offsets for individual production orders were less than actual values when the scrap was sold during the period.²³¹
- On a per-unit basis, SeAH Steel's POR weighted-average sale price of scrap is lower than the weighted-average POR value of scrap sold. However, under Commerce's policy, the scrap offset should be based on the quantity of scrap generated, valued at the weighted-average sales price. Thus, SeAH Steel's claimed scrap offset should be reduced.²³²

DOSCO's Rebuttal Brief

- Because the value assigned to the recovered scrap is a standard cost based on the average price for scrap sales during the previous month, there is a one-month lag between the per-unit standard cost and the per-unit actual sales revenue for scrap.²³³
- To the extent that the standard cost is lower than the actual sales value for scrap in a particular month, the standard cost of scrap in the following month will increase, and vice versa. Over time, any difference between the standard cost and the actual sales price will net to zero.²³⁴
- In these circumstances, an adjustment to SeAH Steel's scrap offset due to a nominal difference between cost of goods sold and sales revenue for scrap during the period is unwarranted.²³⁵

²²⁸ See DOSCO's Second SDQR at 11 and 12.

²²⁹ *Id.* at Appendix S2D-I-6-A.

²³⁰ See Petitioner's Case Brief at 3.

²³¹ *Id.* (citing DOSCO's Second SDQR at 4 and Appendix S2D-II-2).

²³² *Id.* at 4.

²³³ See DOSCO's Rebuttal Brief at 3.

²³⁴ *Id.*

²³⁵ *Id.*

Commerce's Position:

We agree with the petitioner that an adjustment to reduce SeAH Steel's scrap offset is warranted. Commerce's normal practice is to grant scrap offsets that reflect the actual sales value of the scrap generated during the production of the merchandise under consideration.²³⁶ According to SeAH Steel, the value assigned to recovered scrap is based on a standard cost for each type of scrap that is updated monthly based on the average price for scrap sales during the previous month.²³⁷ Therefore, SeAH Steel's reported scrap offset does not reflect the actual sales of the scrap generated during the POR. Consequently, for the final results, we have adjusted SeAH Steel's scrap offset based on the quantity of scrap generated during the POR valued at the average scrap sales price during the POR.

Comment 6: Common Expenses – DOSCO's General & Administrative (G&A) Expense Ratio

Petitioner's Case Brief

- DOSCO's allocation of the common selling and G&A expense (SG&A) accounts was based on the headcount of the employees engaged in SG&A functions.²³⁸ However, DOSCO arbitrarily split its chief executive officer (CEO) salary, which is common to all company operations, equally between indirect selling (ISE) and G&A expenses.²³⁹
- Regarding "all other company expenses," nearly all of them are unrelated to headcount, except for the total amount of employee benefits. In fact, even these benefits are usually based on the employees' salaries and would better correlate with salaries rather than headcount.²⁴⁰
- DOSCO itself acknowledged that these common "expenses such as taxes and amortization... relate to the operations of the overall company and cannot be directly tied to either the selling or administrative activities of the company."²⁴¹ This statement, matches almost exactly Commerce's definition of the G&A expenses: "In calculating the G&A expense ratio, Commerce normally includes certain expenses and revenues that relate to the general operations of the company as a whole...."²⁴²

²³⁶ See *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany: Final Determination of Sales at Less Than Fair Value*, 82 FR 16360 (April 4, 2017) (*CTL Plate from Germany*), and accompanying IDM at Comment 14.

²³⁷ See SeAH Steel's Letter, "Heavy Walled Rectangular Carbon Steel Pipes and Tubes from Korea – DOSCO's Affiliate SeAH Steel's Response to the Departments April 14 Section D Supplemental Questionnaire, dated June 17, 2020 (SeAH Steel's First SDQR) at 15.

²³⁸ See Petitioner's Case Brief at 5 (citing DOSCO's Second SDQR at 30 and Appendix S2D-I-12-D).

²³⁹ *Id.* at 5-6 and Exhibit 1.3.

²⁴⁰ *Id.* at 6 (citing DOSCO's Second SDQR at 28).

²⁴¹ *Id.* (citing DOSCO's Second SDQR at 30).

²⁴² *Id.* (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014) (*OCTG from Korea*), and accompanying IDM at Comment 19).

- Commerce addressed this issue in *Certain Steel Nails from Korea*, allocating non-salary expenses, which are of a general nature, to G&A..²⁴³
- Salaries should be revised to include the entire CEO salary in G&A expenses, while the total amount of employee benefits should be allocated in proportion to salaries rather than headcount. All other common SG&A expenses should be assigned to G&A expenses.²⁴⁴

DOSCO's Rebuttal Brief

- DOSCO's CEO salary was reasonably allocated equally to G&A expenses and ISE because the CEO oversees both the selling and administrative functions of the company.
- Allocating expenses based on the ratio of salaries of administrative and sales personnel, as suggested by the petitioner, would likely distort the allocation to reflect the wage differences between sales and administrative personnel rather than level of intensity at which those activities are performed by the company.
- Because DOSCO's accounting system records the costs for the office space in a single cost center, the specific amounts incurred just for selling or administrative personnel cannot be directly identified. However, because the usage of office space depends primarily on the number of employees performing the selling and administrative tasks, the overall costs of the office space can reasonably be allocated between selling and G&A expenses based on headcount.
- In *OCTG from Korea*, Commerce included an expense in G&A because the expense was related to the company as a whole, not a particular activity.²⁴⁵ Here, however, the expenses that DOSCO allocated were incurred for specific activities (*i.e.*, either selling or administrative).
- The petitioner also cites to Commerce's recent decision in *Steel Nails from Korea 2018-2019 Prelim*.²⁴⁶ In that case, Commerce determined that the respondent failed to adequately explain why its allocation methodology was reasonable and why the respondent recharacterized certain expenses as G&A.²⁴⁷ Here, DOSCO did not change its allocation methodology and has explained why its reported allocation methodology is reasonable. Accordingly, there is no basis for recharacterizing DOSCO's allocated expenses as G&A expenses.
- Commerce's decision in the *Steel Nails from Korea 2018-2019 Prelim* also contradicts Commerce's long-standing practice that it has applied in an innumerable number of

²⁴³ *Id.* at 6-7.

²⁴⁴ *Id.* at 7 and Exhibit 1.2.

²⁴⁵ See DOSCO's Rebuttal Brief at 5-6 (citing *OCTG from Korea* IDM at Comment 19).

²⁴⁶ *Id.* at 6-7 (citing *Certain Steel Nails from Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Recission of Antidumping Duty Administrative Review; 2018-2019*, 85 FR 69576 (November 3, 2020) (*Steel Nails from Korea 2018-2019 Prelim*), and accompanying PDM at 13-14).

²⁴⁷ *Id.*

cases.²⁴⁸ It is well established that, “an agency action is arbitrary when the agency offers insufficient reasons for treating similar situations differently.”²⁴⁹ In *Steel Nails from Korea 2018-2019 Prelim*, Commerce’s decision was clearly arbitrary and cannot be used as a basis to reach a different result in the final results of this case.²⁵⁰

Commerce’s Position:

We agree with the petitioner that certain expenses should be assigned to G&A expenses. The CIT has agreed with Commerce that G&A expenses are those expenses that relate to the general operations of the company as a whole, rather than to the production process.²⁵¹ G&A expenses by their nature are indirect expenses incurred by the company as a whole and are not directly related to any product.²⁵² Accordingly, in determining whether particular items should be included in G&A, Commerce reviews the nature of the item and its relation to the general operations of the company.²⁵³

With regards to the CEO salary, we agree with the petitioner that this expense should not be allocated equally between ISE and G&A expenses. DOSCO argues that the CEO salary was reasonably allocated because the CEO oversees both the selling and administrative functions of the company. However, in addition to the selling and administrative functions, the CEO also oversees the production and investment functions, as well as the general operations of the company. Likewise, we agree with the petitioner that the nature most of the expenses included under “Service fees” relates to the general operations of the company as a whole.²⁵⁴ Consequently, we find it appropriate to allocate the CEO salary and certain “Service fees” completely to G&A. With regards to the remaining common expenses, including employee benefits, we do not consider an adjustment is necessary. We find DOSCO’s allocation methodology based on employee headcount to be reasonable because most of the expenses depend on the number of employees performing these functions.²⁵⁵

We agree with DOSCO that the facts in the *Steel Nails from Korea 2018-2019 Prelim/Final* case are different from the facts in the instant case.²⁵⁶ In that case, Commerce found certain expenses to be of a general nature and allocated them to G&A because: (1) the respondent failed to explain these expenses or why the methodology based on the ratio of salaries or bonuses was

²⁴⁸ *Id.* at 7 (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 41955 (July 13, 2020)).

²⁴⁹ *Id.* (citing *SKF USA Inc. v. United States*, 263 F.3d 1369, 1382 (Fed. Cir. 2001) (*SKF USA*)).

²⁵⁰ *Id.* (citing *Steel Nails from Korea 2018-2019 Prelim* PDM at 13-14).

²⁵¹ See, e.g., *Acetone from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 85 FR 8252 (February 13, 2020) (*Acetone from Korea Investigation*), and accompanying IDM at Comment 5; and *U.S. Steel Group v. United States*, 998 F. Supp 1151, 1154 (CIT 1998) (*U.S. Steel Group*) (citing *Rautaruukki Oy v. United States*, 19 CIT 438, 444 (1995)).

²⁵² See *Acetone from Korea Investigation* IDM at Comment 5.

²⁵³ See *Magnesium Metal from the Russian Federation: Final Determination of Sales at Less-than-Fair Value*, 70 FR 9041 (February 24, 2005) (*Magnesium Metal from Russia*), and accompanying IDM at Comment 10.

²⁵⁴ See DOSCO’s Second SDQR at 28.

²⁵⁵ *Id.* at 30 and Appendix S2D-I-12-D; see also DOSCO’s Rebuttal Brief at 3-5.

²⁵⁶ See *Steel Nails from Korea 2018-2019 Prelim* PDM at 13-14; and *Certain Steel Nails from Korea: Final Results of Antidumping Duty Administrative Review; 2018-2019*, 86 FR 13322 (March 8, 2021) (*Steel Nails from Korea 2018-2019 Final*), and accompanying IDM at Comments 1 and 2.

reasonable or non-distortive; and (2) the respondent claimed that the non-salary expenses could not be directly identified with selling or G&A activities.²⁵⁷ In the instant case, there was no change of allocation methodology, and DOSCO explained why its allocation was necessary and reasonable.²⁵⁸

Although DOSCO argues that Commerce's decision on the *Steel Nails from Korea 2018-2019 Prelim/Final* case was contrary to Commerce's long-standing practice and arbitrary, that is not an issue before us, as we have found that case distinguishable from the instant review, and thus, not probative to our decision here. Moreover, it is an established principle that each administrative review is a separate segment of proceedings with its own unique facts.²⁵⁹ Commerce's decisions regarding what to include in G&A were based on the record developed in those cases, a review of the nature of the items at issue, and those items' relation to the general operations of the company as a whole. We also disagree with DOSCO, in part, regarding *OCTG from Korea*. Although the facts in the *OCTG from Korea* might differ from those in the instant case in determining whether particular items should be included in G&A, Commerce followed its practice by reviewing the nature of the item and its relation to the general operations of the company.²⁶⁰

Therefore, for the final results, we have revised DOSCO's G&A expense ratio calculation to include in G&A the portion of the CEO salary and the "Service fees" that were originally allocated to ISEs. In addition, because we find DOSCO's allocation methodology based on employee headcount to be reasonable, we have relied on the remaining common expenses, including employee benefits, as reported.

Comment 7: Affiliated Services – DOSCO's and SeAH Steel's G&A Expense Ratios

Petitioner's Case Brief

- In response to Commerce's first supplemental questionnaire, DOSCO provided information regarding SeAH Steel Holdings Corporation (SSHC)'s charges to DOSCO for its services.²⁶¹
- In response to Commerce's second supplemental questionnaire, DOSCO explained that the amounts reported under the column "SG&A and Cost of Production" did not represent the COP of the purchased input. DOSCO also explained that, because of the nature of the purchased inputs, which consisted of services rather than specific material items, it is not possible to identify a 'cost of production' for each input.²⁶²

²⁵⁷ See *Steel Nails from Korea 2018-2019 Final* IDM at Comment 1.

²⁵⁸ See DOSCO's Second SDQR at 27-31.

²⁵⁹ See, e.g., *Certain Steel Nails from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 77 FR 17029 (March 23, 2012) (*Steel Nails from the UAE Investigation*), and accompanying IDM at Comment 6; and *Shandong Huarong Mach. Co. v. United States*, 29 CIT 484, 491 (CIT 2005) (*Shandong*).

²⁶⁰ See *OCTG from Korea* IDM at Comment 19; and *Magnesium Metal from Russia* IDM at Comment 10.

²⁶¹ See Petitioner's Case Brief at 8-9 (citing DOSCO's First SDQR at Appendix SD-8-A and SD-8-D).

²⁶² *Id.* at 9 (citing DOSCO's Second SDQR at 19).

- SeAH Steel also submitted its purchases from affiliated companies in FY 2019, which included purchases from SSHC and SeAH Holdings Corporation (SHC).²⁶³
- DOSCO claimed that the financial statements for the companies that provided these services confirm that they operated at a profit during the relevant fiscal years.²⁶⁴ Thus, implying that the cost of the services was below the transfer price.
- However, an analysis of the 2019 unconsolidated financial statements of these affiliates shows that, if we adjust for investment-related activities, SSHC and SHC both incurred net losses before financial costs and income tax (as percentage of adjusted revenues).²⁶⁵
- Under the transactions disregarded rule, the amounts paid to SSHC and SHC need to be increased by its net loss.²⁶⁶

DOSCO's Rebuttal Brief

- Under the transactions disregarded rule, Commerce's normal practice is to adjust the transfer price for the service or input at issue so that it reflects the market price.²⁶⁷ In the absence of market-price data, Commerce will examine whether the affiliated company that provided the goods or service was profitable during the relevant period.²⁶⁸ If the affiliate was profitable, then no adjustment is warranted. Only if the affiliate that provided the goods or service was not profitable, will Commerce then make an adjustment to G&A based on the unrecovered cost.
- The audited, unconsolidated financial statements for SSHC and SHC demonstrate that both companies had operating profits during FY 2018 and FY 2019. As a result, there is no basis to make any adjustment to the reported G&A expenses for DOSCO or SeAH Steel under the transactions disregarded rule.²⁶⁹
- SSHC and SHC are holding companies whose normal business operation is investment. As a result, the dividend income earned by each company arises from the primary profitmaking activity of each company. In these circumstances, it would be unreasonable to exclude dividend income in calculating the unrecovered costs for the transactions between DOSCO and SeAH Steel and their affiliates, as suggested by the petitioner.²⁷⁰

²⁶³ *Id.* at 10 (citing SeAH Steel's Letter, "Heavy Walled Rectangular Carbon Steel Pipes and Tubes from Korea – DOSCO's Affiliate SeAH Steel's Response to the Department's November 19 Supplemental Questionnaire," dated December 14, 2020 (SeAH Steel's Second SDQR) at Appendix S2D-II-4-A.2).

²⁶⁴ *Id.* at 9 (citing DOSCO's Second SDQR at 19).

²⁶⁵ *Id.* at 9 and 10 and Exhibits 1, 1.5 and 2.

²⁶⁶ *Id.* at 10 (citing *CTL Plate from Germany* IDM at Comment 33).

²⁶⁷ See DOSCO's Rebuttal Brief at 10 (citing *Rebar Trade Action Coal v. United States*, 398 F. Supp. 3d 1359, 1372 (CIT 2019)).

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.* at 10-11 (citing Petitioner's Case Brief at 12 and Exhibit 1.5).

- The calculation for unrecovered costs suggested by the petitioner is highly distortive and contrary to Commerce’s practice.²⁷¹
- Even if dividend income is excluded, SSHC would still show a net profit for the 2019 fiscal year, while SHC would show a net loss lower than the loss calculated by the petitioner.²⁷² In these circumstances, there is no basis for making any adjustment to the fees charged by SSHC, and the adjustment to SHC’s fees would be much smaller than the adjustment suggested by the petitioner.

Commerce’s Position:

We agree with the petitioner that it is appropriate to apply the transactions disregarded rule to services obtained by DOSCO and SeAH Steel from their affiliates. Pursuant to section 773(f) of the Act, Commerce may disregard the reported value of an input (*i.e.*, the transfer price) in favor of the market price if Commerce determines that a transaction between affiliated parties “does not fairly reflect” the market value of the input. Further, where a market price is not available, Commerce has developed a consistent and predictable approach whereby it may use an affiliate’s total cost of providing the service as information available for a market price.²⁷³ In this case, DOSCO and SeAH Steel did not obtain these services from unaffiliated parties nor did the affiliates provide such services to unaffiliated parties. Therefore, we consider it reasonable to rely on whether their audited financial statements reflect a profit in determining the arms-length nature of the affiliated transactions.

We agree with the petitioner that SSHC’s and SHC’s profit/loss calculations should exclude investment-related activities. In addition, we disagree with DOSCO that, because SSHC and SHC are holding companies, their normal business operations are investment activities. In our analysis, we assess whether the prices charged for affiliated services were at arm’s length. Gains and losses on investment activity have nothing to do with the determination of a fair price for such services and accordingly should not factor into the analysis. It is Commerce’s practice to exclude investment-related gains and losses from the calculation of the COP.²⁷⁴ Investment activities are a separate profit-making activity not related to the company’s normal operations.²⁷⁵ Therefore, for the final results, we have excluded these investment-related activities (*i.e.*, dividend income, depreciation on investment properties, gain or loss on disposal of investment properties, impairment losses on investment in subsidiary, and gains on disposition of subsidiary) from the calculation of SSHC’s and SHC’s net profit or loss associated with determining whether the services provided to the respondent occurred at arm’s-length prices.

²⁷¹ *Id.* at 11.

²⁷² *Id.* at 11 and Attachment 1.

²⁷³ See, e.g., *CTL Plate from Germany* IDM at Comment 33.

²⁷⁴ See, e.g., *Large Diameter Welded Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 84 FR 6374 (February 27, 2019) (*LDWP from Korea Investigation*), and accompanying IDM at Comment 16; *CTL Plate from Germany* IDM at Comment 33.

²⁷⁵ See, e.g., *LDWP from Korea Investigation* IDM at Comment 16; *Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 49950 (July 29, 2016), and accompanying IDM at Comments 6 and 10.

With regards to SSHC, we disagree with DOSCO that, even if Commerce excludes the dividend income, SSHC still has a net profit for FY 2019 because DOSCO's calculation was incorrect. In DOSCO's calculation in its rebuttal brief, DOSCO attempted to reduce the net income before income tax expense by the dividend income and add back the depreciation on investment properties.²⁷⁶ However, DOSCO erroneously added back the accumulated depreciation on investment properties amount for FY 2019 instead of adding back the depreciation expense amount for FY 2019.²⁷⁷ Adjusting DOSCO's calculation for SSHC to: (1) remove the accumulated depreciation on investment properties amount and (2) remove the related rental revenue on investment properties; and (3) include the operating expenses incurred on investment properties including the correct amount for the depreciation expense on investment properties for the FY 2019 results in a net loss for SSHC.

With regards to SHC, we also disagree with DOSCO that the adjustment will be much smaller than what the petitioner calculated. DOSCO's calculation included impairment losses on investment in subsidiary and the gains on disposition of subsidiary. Adjusting DOSCO's calculation for SHC to: (1) exclude the rental revenue on investment properties; (2) gains on disposition of subsidiary; (3) gains on disposition of investment property; and (4) include the loss on disposition of investment property; (5) impairment losses on investment in subsidiary; and (6) operating costs on investment properties for the FY 2019 results in a net loss for SHC.

Since both affiliated suppliers' financial statements, as adjusted, show a loss for the final results, we have determined that the affiliated transactions between DOSCO and both SSHC and SHC did not occur at arms-length prices. We have therefore adjusted such transfer prices accordingly.²⁷⁸

Comment 8: Inventory Valuation Losses – DOSCO's G&A Expense Ratio

Petitioner's Case Brief

- The inventory adjustment reported in DOSCO's cost reconciliation represents the net change in the balances of valuation losses related to raw materials and semi-finished goods inventories.²⁷⁹
- In response to Commerce's supplemental questionnaire, DOSCO explained that the valuation losses were included in its cost of manufacture reconciliation.²⁸⁰ However, although included in the cost reconciliation, these valuation losses were excluded from the reported costs.²⁸¹

²⁷⁶ See DOSCO's Rebuttal Brief at Attachment 1.

²⁷⁷ *Id.*; and DOSCO's Second SDQR at Appendix S2D-I-3-B (Note 8 of SSHC's FY 2019-2018 Unconsolidated Financial Statements).

²⁷⁸ See DOSCO Final Cost Calculation Memo.

²⁷⁹ See Petitioner's Case Brief at 7-8 (citing DOSCO's Initial BCDQR at Appendix D-I-11-D and DOSCO's First SDQR at Appendix SD-3).

²⁸⁰ *Id.* at 8 (citing DOSCO's First SDQR at 12).

²⁸¹ *Id.* (citing DOSCO's Initial BCDQR at Appendix D-I-11-D).

- Commerce should include the raw materials and semi-finished goods inventory valuation losses in DOSCO's G&A expenses. However, because DOSCO did not provide the FY 2019 information, Commerce should use DOSCO's FY 2018 raw materials and semi-finished goods net inventory valuation losses as facts available.²⁸²

DOSCO's Rebuttal Brief

- The petitioner's argument is based on an incorrect understanding of the nature of these "losses," DOSCO's accounting methodology, and how costs were reported for this proceeding. Including the inventory valuation adjustment would double-count DOSCO's costs.²⁸³
- DOSCO's inventories are written down to the net realizable value whenever it is recognized that the inventories have deteriorated or decreased in market value in accordance with the Korean International Financial Reporting Standards (K-IFRS). As a result of this accounting methodology, DOSCO's financial statements reflect this inventory valuation "loss."²⁸⁴
- The valuation "losses" are not actual losses. Instead, they are allowances DOSCO records in inventory contra accounts to recognize the differences between the end-of-quarter inventory values at historical cost and inventory values at the current, lower market price. This adjustment does not result in a reduction in the inventory values of individual items. The historic purchase price of the materials is used to calculate the cost of manufacture of individual products in DOSCO's normal accounting system and in its responses to Commerce's questionnaires.²⁸⁵
- If DOSCO calculated its costs using the inventory values that had been reduced by the inventory valuation adjustment, then its reported cost of manufacture would be lower, and it would be appropriate to make an adjustment for the inventory-loss adjustment to get the reported cost of manufacture to match actual historical costs.²⁸⁶

Commerce's Position:

We agree with the petitioner that valuation gains or losses on raw materials and semi-finished goods inventory should be included in the G&A expense ratio calculation. DOSCO argues that including the inventory valuation adjustment would double-count DOSCO's costs. We disagree. DOSCO's restatement of its inventories to the lower of cost or net realizable value is a periodic adjustment required for DOSCO's audited financial statements that are based on the K-IFRS.²⁸⁷

²⁸² *Id.*

²⁸³ See DOSCO's Rebuttal Brief at 8-9.

²⁸⁴ *Id.* (citing DOSCO's Letter, "Heavy Walled Rectangular Carbon Steel Pipes and Tubes from Korea – DOSCO's Response to Section A of the Department's December 3 Questionnaire," dated January 23, 2020 at Appendix A-I-6-A).

²⁸⁵ *Id.* at 9.

²⁸⁶ *Id.*

²⁸⁷ See DOSCO's Second SDQR at Appendix S2D-1-3, note 2.1 to the financial statements.

On the balance sheet, the provision reflects the net gain or loss in the value of inventories that a company is holding at that time, while the income statement reflects the incremental gain or loss for the period. Thus, in accordance with K-IFRS, DOSCO is recognizing the gains or losses associated with the inventory it is currently holding on its balance sheet, which are unrelated to the inventory that was consumed in current production. In calculating a G&A expense ratio, Commerce normally includes such period expenses, *i.e.*, those that are more related to an accounting period and not directly related to manufacturing merchandise, as they are related to the general operations of the company as a whole. The CIT has agreed with Commerce that G&A expenses are those expenses which relate to the general operations of the company as a whole rather than to the production process.²⁸⁸ Moreover, Commerce has determined that the gains and losses on periodic raw material and semi-finished goods inventory revaluations are related to the general operations of the company as a whole and should be included in the reported costs.²⁸⁹ Consequently, we find it appropriate to include DOSCO's raw material and semi-finished goods inventory valuation gains or losses that were recorded in the company's K-IFRS-based income statement in the G&A expense ratio.

However, we disagree with the petitioner that Commerce should include DOSCO's FY 2018 raw materials and semi-finished goods net inventory valuation losses in DOSCO's G&A expenses as facts available. The FY 2019 raw materials and semi-finished goods valuation information can be determined from DOSCO's FY 2019 audited financial statements and result in a net valuation gain.²⁹⁰ We find that the resulting inventory valuation gains are periodic adjustments, which are related to the general operations of the company as a whole and were properly recognized in DOSCO's K-IFRS-based financial statements. Therefore, for the final results, we find it appropriate to include the raw materials and semi-finished goods inventory valuation gains in the calculation of DOSCO's G&A expense ratio.

Comment 9: Unassigned Material Costs Variance – SeAH Steel's G&A Expense Ratio

Petitioner's Case Brief

- SeAH Steel included the POR unassigned material cost variance for the two plants that produced subject merchandise, Gunsan and Pohang, in its reported costs.²⁹¹ SeAH Steel also allocated a portion of the total unassigned material cost variance to SeAH Steel's headquarters.²⁹²

²⁸⁸ See *U.S. Steel Group*, 998 F. Supp at 1154.

²⁸⁹ See, e.g., *OCTG from Korea 2016-2017 Final Results* IDM at Comment 8; *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 74 FR 65751 (December 11, 2009) (*PRCBs from Thailand*), and accompanying IDM at Comment 3; *Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 19153 (April 12, 2004), and accompanying IDM at Comment 7; *Stainless Steel Sheet And Strip in Coils from Taiwan: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 76721 (December 13, 2002), and accompanying IDM at Comment 9.

²⁹⁰ See DOSCO's Second SDQR at Appendix S2D-1-3, note 9 to the financial statements.

²⁹¹ See Petitioner's Case Brief at 11 (citing SeAH Steel's First SDQR at Appendix SD-II-10-E).

²⁹² *Id.* at 11-12 (citing SeAH Steel's Second SDQR at 6 and Appendix S2D-II-3).

- The unassigned material cost variance amount allocated to SeAH Steel’s headquarters should be included in SeAH Steel’s G&A expenses. However, SeAH Steel has not indicated or provided any evidence that it included this amount in its reported G&A expenses.²⁹³
- SeAH Steel did not provide a breakdown of the unassigned material cost variance for FY 2019. Therefore, as facts available, Commerce must estimate an amount for FY 2019 proportionate to the POR amount.²⁹⁴
- Commerce should add this estimated unassigned material cost variance amount to SeAH Steel’s G&A expenses and remove the same amount from the COGS denominator of SeAH Steel’s G&A expense ratio calculation.²⁹⁵

DOSCO’s Rebuttal Brief

- The amount of the total unassigned material cost variance reported for SeAH Steel’s headquarters relates to the difference between actual purchase price and standard cost for products sold through SeAH Steel’s headquarters, including purchased merchandise that will be resold without processing and merchandise that will be produced by contractors on a tolling basis. None of the subject HWR products were produced by SeAH Steel’s head office.²⁹⁶
- The unassigned material cost variance for SeAH Steel’s headquarters relates to specific products that are not subject merchandise. Therefore, those costs were properly excluded from SeAH Steel’s G&A expenses to produce HWR products. This methodology is consistent with the Commerce’s past treatment of SeAH Steel’s expenses.²⁹⁷
- The petitioner’s suggested adjustment to SeAH Steel’s G&A expenses for the unassigned material cost variance incurred by SeAH Steel’s headquarters is unwarranted.²⁹⁸

Commerce’s Position:

We agree with SeAH Steel that an adjustment to its G&A expenses for the unassigned material cost variance assigned to its headquarters is not warranted. As explained by SeAH Steel, certain adjustment amounts that relate to material purchases during a month are not assigned to individual production orders—for example, where there is an overall difference between the estimated price for the steel coils and the amounts actually paid to the supplier, or where the actual discount or rebate provided to SeAH differs from the expected amount. In such cases, SeAH Steel posts the total monthly amount of these differences directly to COGS in the month in

²⁹³ *Id.* at 12 (citing SeAH Steel’s Second SDQR at Appendix S2D-II-4).

²⁹⁴ *Id.* (citing SeAH Steel’s Second SDQR at Appendix S2D-II-4-D).

²⁹⁵ *Id.* at 12-13 (citing SeAH Steel’s Second SDQR at Appendix S2D-II-4-D); *see also* Petitioner’s Case Brief at Exhibit 2.2.

²⁹⁶ *See* DOSCO’s Rebuttal Brief at 12.

²⁹⁷ *Id.* (citing *WLP from Korea 2017-2018 Final Results* IDM at 21).

²⁹⁸ *Id.*

which they are recorded as an “unassigned” materials cost difference.²⁹⁹ SeAH Steel also explained that the unassigned material cost differences were allocated on a plant-specific basis and the portion assigned to each HWR product was included in the reported costs.³⁰⁰

The petitioner argues that the cost SeAH Steel allocated to the company’s headquarters should be included in SeAH Steel’s G&A expenses. We disagree. The CIT has agreed with Commerce that G&A expenses are those expenses that relate to the general operations of the company as a whole rather than to the production process.³⁰¹ G&A expenses by their nature are indirect expenses incurred by the company as a whole and are not directly related to any product.³⁰² These unassigned material cost differences clearly do not relate to the general operations of the company, but instead relate to production costs. Further, we agree with SeAH Steel that these cost differences were properly excluded because they relate to non-subject products. Therefore, for the final results, we have not adjusted the reported costs for the unassigned material cost differences allocated to SeAH Steel’s headquarters.

Comment 10: Packing Costs – DOSCO’s G&A Expense Ratio

Petitioner’s Case Brief

- DOSCO reclassified certain packing costs previously reported as variable overhead to the packing costs reported in its sales listing.³⁰³ Accordingly, Commerce should revise the estimated packing cost adjustment to the COGS denominator of DOSCO’s G&A expense ratio to reflect this reclassification.

DOSCO did not comment on this issue.

Commerce’s Position:

We agree with the petitioner. Therefore, we have revised the estimated packing cost adjustment to the COGS denominator of the G&A expense ratio calculation for the final results.

²⁹⁹ See SeAH Steel’s Letter, “Heavy Walled Rectangular Carbon Steel Pipes and Tubes from Korea – DOSCO’s Affiliates’ Response to Sections B and D of the Department’s December 3 Questionnaire,” dated February 6, 2020 Volume IV, Section D-II at 20; and SeAH Steel’s First SDQR at 14.

³⁰⁰ See SeAH Steel’s First SDQR at 10 n.3 and Appendix D-II-10.

³⁰¹ See, e.g., *Acetone from Korea Investigation* IDM at Comment 5; and *U.S. Steel Group*, 998 F. Supp at 1154.

³⁰² See *Acetone from Korea Investigation* IDM at Comment 5.

³⁰³ See Petitioner’s Case Brief at 11 (citing DOSCO’s and SeAH Steel’s Letter, “Heavy Walled Rectangular Carbon Steel Pipes and Tubes from Korea – Response to the Department’s December 18 Supplemental Questionnaire, dated January 7, 2021 (DOSCO’s First BCDSQR) at Exhibit SB-19. The cite to DOSCO’s January 21, 2021 response is incorrect.).

Comment 11: Collapsed G&A Expense Ratio

Petitioner's Case Brief

- Commerce should ignore DOSCO's FY 2018 "collapsed" G&A expense ratio calculation.³⁰⁴ Instead, Commerce should rely on company-specific G&A expense ratios based on FY 2019 financial statements.

DOSCO did not comment on this issue.

Commerce's Position:

In the *Preliminary Results*, Commerce calculated company-specific G&A expense ratios for DOSCO and SeAH Steel based on each company's FY 2019 audited financial statements. For the final results, we have continued to rely on the company-specific G&A expense ratios revised to reflect the adjustments discussed above.

Comment 12: Short Term Interest Income – Financial Expense Ratio

DOSCO's Case Brief

- In the *Preliminary Results*, Commerce adjusted the consolidated financial expense ratio by excluding certain amounts of interest income that were not substantiated to be short-term. However, the evidence on the record clearly demonstrates the short-term nature of the reported interest income.
- DOSCO identified the actual amounts of each type of short-term and long-term interest income for each company in the consolidated group, as well as the financial instrument that generated the short-term and long-term interest income. Source documents were provided for two of the group companies to demonstrate the accuracy of the reported amounts.³⁰⁵
- As demonstrated in the materials provided by DOSCO, the portion of interest income included in SSHC's consolidated financial statements for the 2019 fiscal year that was reported as short-term consisted exclusively of interest income from ordinary depository accounts (such as savings accounts) and short-term financial instruments.³⁰⁶ As such, the full amount of short-term interest income should be deducted from the consolidated financial expense ratio calculation.
- This result would also be consistent with Commerce's calculation of SSHC's FY 2019 financial expense ratio in other proceedings before the agency.³⁰⁷ In the preliminary

³⁰⁴ *Id.* at 13 (citing DOSCO's First BCDSQR at Exhibit SB-19).

³⁰⁵ See DOSCO's Case Brief at 6 (citing DOSCO's Second SDQR at Appendix S2D-I-13-A; and SeAH Steel's December 14, 2020 Second SDQR at Appendix S2D-II-5-A).

³⁰⁶ *Id.*

³⁰⁷ *Id.* at 7.

results of *OCTG from Korea 2018-2019*, Commerce accepted SeAH Steel's financial expense ratio calculation without making any adjustments to the reported amounts of short-term interest income.³⁰⁸ There is no basis for Commerce to reach a different result in the final results of this case.³⁰⁹

Petitioner's Rebuttal Brief

- In the *Preliminary Results*, Commerce correctly determined that DOSCO did not substantiate certain interest offsets and, accordingly, these offsets must be excluded from its calculations.
- DOSCO acknowledges that it only provided source documents for two of the group companies.³¹⁰ Of these two companies, only one company contributed a significant share of the consolidated interest income.³¹¹ Yet, DOSCO did not select other entities as a sample.
- For the final results, Commerce should continue to exclude the unsubstantiated portion of the interest income offset.

Commerce's Position:

We agree with the petitioner that we should continue to exclude the unsubstantiated portion of the interest income offset used in the calculation of the financial expense ratio. In calculating a respondent's COP and CV, it is Commerce's practice to allow a respondent to offset financial expenses with short-term interest income generated from the company's current assets and working capital accounts.³¹² The CIT has upheld Commerce's approach to calculating the financial expense offset with only short-term interest income.³¹³

In this review, Commerce requested that DOSCO provide documentation supporting the short-term nature of the interest income offset used in the calculation of its reported financial expense ratio.³¹⁴ In its response to Commerce, DOSCO provided documentation in support of the interest income for only two out of the fifteen companies that make up to the consolidated group.³¹⁵ We disagree with DOSCO that, because Commerce accepted the financial expense ratio calculation

³⁰⁸ *Id.* at 7-8 (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2018-2019*, 86 FR 6868 (January 25, 2021) (*OCTG from Korea 2018-2019*), and accompanying PDM at 18).

³⁰⁹ *Id.* at 8 (citing *SKF USA*, 263 F.3d at 1382).

³¹⁰ See Petitioner's Rebuttal Brief at 2 (citing DOSCO's Case Brief at 6; and DOSCO's Second SDQR at Appendix S2D-I-13-A).

³¹¹ *Id.* (citing DOSCO's Second SDQR at Appendix S2D-I-13-A).

³¹² See, e.g., *PRCBs from Thailand* IDM at Comment 5.

³¹³ See, e.g., *Certain Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 39940 (July 11, 2008) (*Shrimp from Brazil*), and accompanying IDM at Comment 9; *Gulf States Tube Division of Quanex Corp. v. United States*, 981 F. Supp. 630 (CIT 1997).

³¹⁴ See Commerce's Letter, "Antidumping Duty Administrative Review of Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea," dated April 8, 2020 (DSQ1-DOSCO) at 9.

³¹⁵ See DOSCO's Second SDQR at Appendix S2D-I-13-A.

in the preliminary results of *OCTG from Korea 2018-2019* without adjusting the reported short-term interest income, we should do the same here. Additionally, preliminary results are subject to change.

We also find that DOSCO's reliance in *SKF USA* is misplaced. In that case, the CIT found that Commerce's use of different definitions of "foreign like product" for price and CV purposes was not appropriately explained and appeared arbitrary. Our decision to exclude a portion of the interest income offset is based on the specific facts of this case; thus, it is not arbitrary. While we recognize that Commerce has accepted sample documentation in support of the short-term nature of the interest income offset in certain proceedings, this does not necessarily mean that such treatment is appropriate here. It is an established principle that each administrative review is a separate segment of proceedings with its own unique facts.³¹⁶ Accordingly, the decisions are made based on the record developed in each segment.

Here, we specifically asked DOSCO to demonstrate the short-term nature of the interest income offset.³¹⁷ However, DOSCO did not provide supporting documentation for all of the companies in the consolidated group. When the record evidence does not demonstrate that the financial income received is related to a company's current assets and working capital, Commerce routinely excludes the income item as an offset to financial expenses.³¹⁸ Further, the burden of proof to substantiate and document this adjustment is on the respondent making a claim for the offset.³¹⁹ In the instant case, DOSCO did not fully substantiate the interest income offset as requested by Commerce. Therefore, for the final results, we have continued to exclude the portion of the interest income offset for which DOSCO did not demonstrate its short-term nature.

Comment 13: Investment Related Gains and Losses – Financial Expense Ratio

Petitioner's Case Brief

- In the *Preliminary Results*, Commerce appropriately corrected DOSCO's submitted financial expense ratio calculations to determine a single financial expense ratio for the consolidated group. However, additional adjustments are warranted.
- DOSCO's financial expense ratio calculation included all of SSHC's gains and losses related to financial assets measured at fair value and derivatives.³²⁰
- DOSCO argues that "such gains and losses represent investments of working capital" and, therefore, "relate to normal business operations, and not to investments."³²¹

³¹⁶ See, e.g., *Steel Nails from the UAE Investigation* IDM at Comment 6; *Shandong*, 29 CIT at 491.

³¹⁷ See DSQ1-DOSCO at 9.

³¹⁸ See *PRCBs from Thailand* IDM at Comment 5.

³¹⁹ See, e.g., *Shrimp from Brazil* IDM at Comment 9; and *Timken Company v. United States*, 673 F. Supp. 495, 513 (CIT 1987).

³²⁰ See Petitioner's Case Brief at 14 (citing DOSCO's First SDQR at Appendix SD-I-14-D; and SeAH Steel's First SDQR at Appendix SD-II-14-D). The petitioner bracketed a portion of this argument. However, we have treated this as public because in its rebuttal brief and its response to Commerce, DOSCO treated it as public. See DOSCO's Second SDQR at 32-33.

³²¹ *Id.* at 15 (citing DOSCO's Second SDQR at 33; and SeAH Steel's Second SDQR at 13).

However, the source of the invested capital does not have any bearing on the nature of the investment. The company has not challenged that these are investments.

- It has been Commerce's long-established policy to exclude investment related gains and losses from the reported costs.³²²

DOSCO's Rebuttal Brief

- DOSCO's financial expense ratio calculation included both the gains and losses on valuation and disposal of financial assets related to investments of working capital, and gains and losses on valuation and disposal of derivatives related to hedging operations connected to the normal operations of SSHC and its subsidiaries.³²³
- It is Commerce's standard practice to include gains and losses from financial instruments that are related to a company's overall business operations.³²⁴
- The gains and losses excluded from the financial expense calculation in *WLP from Korea* were related to financial assets held solely for investment purposes.³²⁵ Because these items were not related to the normal business operations of the company, they were excluded.
- In contrast, SSHC's gains and losses on valuation and disposal of financial assets were properly included in the net financial expense ratio because they relate to normal business operations of the consolidated companies and not to investments.³²⁶

Commerce's Position:

We agree with the petitioner regarding the gains and losses on the valuation and disposal of financial assets. The record evidence demonstrates that these gains and losses are related to investment activity.³²⁷ Commerce has a well-established practice of excluding investment-related expenses from the reported COP.³²⁸ The reasoning is that, in calculating the COP and CV, we seek to capture the cost of producing the foreign like product and subject merchandise and to exclude the cost of investment activities.³²⁹ Investment activities constitute a separate

³²² *Id.* (citing *WLP from Korea* IDM at Comment 24).

³²³ See DOSCO's Rebuttal Brief at 13 (citing DOSCO's Second SDQR at 33).

³²⁴ *Id.* (citing *Timken Co. v. United States*, 852 F. Supp. 1040, 1048 (CIT 1994), amended, 18 CIT 164 (1994); and *Pakfood Pub. Co. v. United States*, 724 F. Supp. 2d 1327, 1357 (CIT 2010)).

³²⁵ *Id.* at 14.

³²⁶ See DOSCO's Rebuttal Brief at 14 (citing DOSCO's First SDQR at Appendix SD-I-14-D).

³²⁷ See DOSCO's First SDQR at 51-52 and Appendices SD-14-D and SD-14-E.

³²⁸ See, e.g., *Polyethylene Terephthalate Resin from Brazil: Final Determination of Sales at Less Than Fair Value*, 83 FR 48285 (September 24, 2018) (*Pet Resin from Brazil*), and accompanying IDM at Comment 4; and *Ripe Olives from Spain: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 28193 (June 18, 2018) (*Ripe Olives from Spain*), and accompanying IDM at Comment 26.

³²⁹ See, e.g., *Pet Resin from Brazil* IDM at Comment 4; and *Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle from Canada*, 64 FR 56739, 56758 (October 21, 1999).

profit-making activity not related to the company's normal operations.³³⁰ Therefore, for the final results, we have excluded the gains and losses on the valuation and disposal of financial assets designated at fair value from the financial expense ratio calculation.

However, we disagree with the petitioner regarding the gains and losses on the valuation and disposal of derivatives. Commerce includes foreign exchange gains and losses, interest, and currency swaps gains and losses in the financial expense rate calculation because such items relate to the company's overall cash management.³³¹ Forward contracts are part of a consolidated entity's management of its foreign currency exposure in any one currency and, thus, are linked and directly associated with cash management. Similar to forward contracts, interest swap contracts, currency swaps, and currency future swaps are hedging vehicles used by entities to manage interest-rate and foreign exchange exposure.³³² Therefore, for the final results, we have included the gains and losses on the valuation and disposal of derivatives in the calculation of the financial expense ratio.

Comment 14: Packing Costs – Financial Expense Ratio

Petitioner's Case Brief

- DOSCO's revision to its packing costs, discussed at Comment 10 above, should also be reflected in the estimated packing cost adjustment to the COGS denominator of the financial expense ratio.³³³

DOSCO did not comment on this issue.

Commerce's Position:

We agree with the petitioner. Therefore, we have revised the estimated packing cost adjustment to the COGS denominator of DOSCO's financial expense ratio calculation for the final results.

HiSteel-Specific Issues

Comment 15: HiSteel Transactions – Disregarded Rule

Petitioner's Brief

- Commerce should apply a transactions-disregarded adjustment to HiSteel's purchases of slitting services from its affiliate Hanil.³³⁴

³³⁰ See, e.g., *Pet Resin from Brazil* IDM at Comment 4; and *Ripe Olives from Spain* IDM at Comment 26.

³³¹ See, e.g., *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Sixteenth Administrative Review*, 76 FR 15291 (March 21, 2011), and accompanying IDM at Comment 19.

³³² *Id.*

³³³ See Petitioner's Case Brief at 15 (citing DOSCO's First BCDSQR at Exhibit SB-19).

³³⁴ See Petitioner's Case Brief at 15-17.

- Hanil likely provided services to HiSteel at less than cost because Hanil’s 2019 financial statements reveal a net loss.³³⁵
- Despite HiSteel’s claim in its questionnaire response that it provided a comparison of fees charged to HiSteel and unaffiliated companies, it did not provide any supporting documentation.
- There is no information on the record showing the actual rates charged by Hanil.
- While HiSteel claimed to have included a “worksheet summarizing the total fee charged by Hanil each month, total quantity of coil slit by Hanil during the month, and the calculated average cost of slitting,” the exhibit only includes information pertaining to a limited period not each month as asserted by HiSteel. Therefore, Commerce must rely on facts available to calculate a transactions-disregarded adjustment.³³⁶
- The petitioner provides a proposed method of calculating a transactions-disregarded adjustment.³³⁷

HiSteel’s Rebuttal Brief

- The petitioner failed to support its claim that the prices paid by HiSteel to Hanil for slitting services do not “fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration,” which is required for the application of the transactions disregarded rule pursuant to section 773(f)(2) of the Act.³³⁸
- When analyzing whether a transfer price reflects market value, Commerce’s preference is to examine the respondent’s purchases of the input or service from unaffiliated suppliers and, when no such purchases are available, the affiliated supplier’s sales to unaffiliated parties.³³⁹
- HiSteel provided a summary of Hanil’s per-unit pricing for slitting services to affiliated and unaffiliated customers for different products and services that demonstrated that HiSteel’s affiliated purchases were made at arm’s length. The summary schedule showed that the different rates reflected different products and services. Therefore, the prices paid by HiSteel represent the amount usually reflected in sales of merchandise under consideration in the market under consideration.³⁴⁰

³³⁵ *Id.* The petitioner bracketed the portion of this argument which revealed that Hanil’s 2019 financial statements showed a net loss. However, we have treated this as public because Hanil’s 2019 financial statements are public. See Exhibit Sa-5-B of HiSteel’s submission, dated June 18, 2020.

³³⁶ *Id.* at 16-17.

³³⁷ *Id.* at 17.

³³⁸ See HiSteel’s Rebuttal Brief at 1-2.

³³⁹ *Id.* at 2 (citing *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17413 (March 26, 2012) (*BMRF from Korea*), and accompanying IDM at Comment 17).

³⁴⁰ *Id.* (citing section 773(f)(2) of the Act).

- Notwithstanding petitioner’s claim that record evidence does not allow for a proper comparison, the weighted average prices can be calculated from record information.
- Commerce has ruled previously that an overall profit shown in a set of financial statements provides no information as to the arm’s length nature of individual transactions or their corresponding range of markups or losses.³⁴¹
- If Commerce decides to calculate a transactions-disregarded adjustment, there are two errors in the petitioner’s proposed calculation that overstate the adjustment. Specifically, the petitioner erroneously: (1) included non-operating losses in its calculations; and (2) allocated the entire absolute amount of the adjustment to the merchandise under consideration (MUC) even though Hanil provided slitting services for both MUC and non-MUC products.³⁴²

Commerce’s Position:

For these final results, we have adjusted HiSteel’s reported costs to reflect the average market price of slitting services provided by Hanil. According to section 773(f)(2) of the Act, Commerce may disregard transactions between affiliated persons if those transactions do not fairly reflect the value in the market under consideration (*i.e.*, if they are not made on an arm’s-length basis). In applying the transactions disregarded provision of the Act, Commerce compares the average transfer price for an input or service paid to an affiliated supplier with the average market price for that input or service.³⁴³ Commerce’s preference for establishing a market value is a respondent’s own purchases of the input or service from unaffiliated suppliers, and, when no such purchases are available, Commerce looks to the affiliated supplier’s sales to unaffiliated parties.³⁴⁴ Moreover, while Hanil’s financial statement shows an overall net loss, Hanil has multiple lines of business³⁴⁵ and there is no evidence that slitting services were provided at a loss. Indeed, Commerce has explained previously that an overall figure on a financial statement provides no information as to the arm’s-length nature of the individual transactions of the entity or the range of markups or losses therein when an affiliate has multiple lines of business along with affiliated and unaffiliated customers.³⁴⁶

In this proceeding, HiSteel submitted a schedule which purported to show that HiSteel and unaffiliated suppliers were subject to the same prices, which varied based on the nature of the

³⁴¹ *Id.* at 5 (citing *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 23).

³⁴² *Id.* at 5-6.

³⁴³ See *Certain Steel Nails from Malaysia: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 9753 (March 18, 2019), and accompanying IDM at Comment 2.

³⁴⁴ See *BMRF from Korea* IDM at Comment 17.

³⁴⁵ See HiSteel’s Letter, “Administrative Review of the Antidumping Duty Order on Heavy Walled Rectangular Carbon Steel Pipes and Tubes from Korea – Response to Section A of the Department’s December 3 Questionnaire,” dated January 7, 2020 at page 8 (explaining that Hanil “produces and sells steel-sheet pilings and H-Beam products, and it also performs coil-slitting and shot-blasting services”).

³⁴⁶ See *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 23.

service performed, for slitting services.³⁴⁷ The schedule included information on both a quantity and value basis.³⁴⁸ Because all of the services provided by Hanil pertain to slitting, we disagree with HiSteel that our analysis should focus on individual slitting services rather than the overall average price of slitting services. Accordingly, we have calculated our transactions-disregarded adjustment by comparing the overall average price charged by Hanil to HiSteel for slitting services and the overall average price charged by Hanil to unaffiliated customers.

Comment 16: Allocation of Common Expenses for HiSteel

Petitioner's Brief

- Commerce should treat all common SG&A expenses as G&A expenses rather than allocate common expenses between G&A expenses and indirect selling expenses.³⁴⁹
- It Commerce's practice to include expenses that relate to the general operations of the company in the G&A expense ratio.³⁵⁰

HiSteel's Rebuttal Brief

- The petitioner's argument confuses the manner expenses are recorded with the nature of the expenses (*i.e.*, selling expenses are selling expenses regardless of how they are recorded).
- When a company's system does not segregate certain expenses into separate selling and administrative cost centers, a reasonable allocation of such expenses is needed to assign the expenses to the underlying activities that gave rise to them.
- For HiSteel, the payroll ledger enables the segregation of selling and administrative salaries, but the remaining expenses reflected in the 'selling and administrative' expense line item in HiSteel's income statement are recorded in a single account in HiSteel's financial accounting system.
- For example, HiSteel provides office space to both sales and administrative personnel and, rather than record the respective amounts in two separate accounts, HiSteel records the entire expense (*e.g.*, rent) in a single account.
- HiSteel followed the allocation methodology accepted in prior proceedings, and the petitioner has not identified any reason why the allocation methodology is inappropriate.

³⁴⁷ See HiSteel's Letter, "Administrative Review of the Antidumping Duty Order on Heavy Walled Rectangular Carbon Steel Pipes and Tubes from Korea – Response to Sections B, C, and D of the Department's December 3 Questionnaire," dated January 23, 2020 at Exhibit D-3-C.

³⁴⁸ *Id.*

³⁴⁹ See Petitioner's Case Brief at 17-18 (citing *Steel Nails from Korea 2018-2019 Prelim PDM* at 13-14, unchanged in *Steel Nails from Korea 2018-2019 Final IDM* at Comment 1).

³⁵⁰ *Id.* (citing *OCTG from Korea IDM* at Comment 19).

- Petitioner’s reliance on *OCTG from Korea* is unavailing because, in that proceeding, the issue was whether miscellaneous losses due to a liability claim should be excluded from the calculation of net G&A expenses, and Commerce determined that, because the expense was incurred by the company as a whole and was not attributable to a particular activity, the expense should be included in G&A.³⁵¹
- Petitioner’s reliance on *Steel Nails from Korea 2018-2019 Prelim* is also unavailing because that case involved the failure of the respondent to explain why changing from an allocation methodology based on headcount in the previous administrative review to an allocation ratio based on salaries in the following review was reasonable.³⁵²
- HiSteel used the same allocation methodology it had used in previous proceedings and Commerce did not raise any questions concerning the methodology.
- Commerce’s decision in *Steel Nails from Korea 2018-2019 Prelim* to treat expenses that relate to both selling and administrative activities solely as administrative expenses contradicts long-standing practice.³⁵³
- It is well established that “an agency action is arbitrary when the agency offers insufficient reasons for treating similar situations differently.”³⁵⁴
- Finally, while the petitioner argues that *Steel Nails from Korea 2018-2019 Prelim* supports the reclassification of all expenses except for freight and export expenses to G&A, Commerce only reclassified non-salary expenses in that proceeding and did not alter the allocation of salary expenses between indirect selling and G&A.

Commerce’s Position:

For the final results, we have relied on HiSteel’s reported allocation of common expenses between G&A expenses and indirect selling expenses. In this proceeding, Commerce did not request that HiSteel revise its allocation of common expenses. Moreover, unlike *Steel Nails from Korea 2018-2019 Prelim/Final*, this proceeding does not involve a situation where the respondent adopted an allocation methodology and was unable to explain why the methodology was non-distortive.³⁵⁵ Finally, we note that the petitioner has not substantiated its claim that the allocated expenses do not pertain, in part, to selling activities.

³⁵¹ See at HiSteel’s Rebuttal Brief at 8-9 (citing *OCTG from Korea* IDM at Comment 19).

³⁵² *Id.* at 9.

³⁵³ *Id.* at 9-10.

³⁵⁴ *Id.* at 10 (citing *SKF USA*, 263 F.3d at 1382; and *JTEKT Corp. v. United States*, 33 C.I.T. 1797, 1841 (2009)).

³⁵⁵ See *Steel Nails from Korea 2018-2019 Final* IDM at Comment 1.

Comment 17: HiSteel's Miscellaneous Income Items

Petitioner's Brief

- Commerce should exclude certain miscellaneous income items from the calculation of HiSteel's net G&A expenses.³⁵⁶
- Commerce requested that HiSteel provide a schedule of the items included in one category of items included in miscellaneous income.
- HiSteel failed to provide an adequate explanation for the largest item in the schedule and, because some items pertain to value added tax (VAT) refunds, Commerce should assume all items pertain to VAT.
- These items should not be included in the calculation of net G&A expenses because the corresponding payments were not recorded in cost of manufacturing in HiSteel's normal books and records.³⁵⁷

HiSteel's Rebuttal Brief

- Petitioner's argument is based on the erroneous claim that all portions of the "Miscellaneous Gains" line item should be assumed to represent VAT refunds.
- Even though HiSteel demonstrated that the "Miscellaneous Gains" total was comprised of several different items, the petitioner only raises an issue with respect to one item and then, without addressing the other items, argues that the total amount of the "Miscellaneous Gains" line item should be disallowed.
- Petitioner's arguments concerning one of the miscellaneous gains categories is premised on a false assertion that Commerce should assume that all items represent VAT refunds even though HiSteel provided a schedule which clearly distinguishes VAT refunds from other tax refunds.
- Moreover, there is no basis for the petitioner's claim that, because the VAT payments were not included in HiSteel's cost of manufacturing, the actual VAT refunds should be excluded from G&A expenses. Specifically, the schedule of items included in miscellaneous gains shows that the refunds were not related to manufacturing expenses.

Commerce's Position:

For the final results, we have disallowed an offset to HiSteel's net G&A expenses for several of the items included in the schedule discussed above. Due to the proprietary nature of the various

³⁵⁶ See Petitioner's Case Brief at 18-19.

³⁵⁷ *Id.* at 19.

items in the schedule, please see the business proprietary version of the final cost calculation memorandum for HiSteel.³⁵⁸

VI. RECOMMENDATION

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

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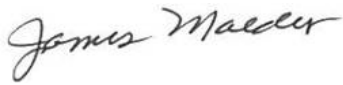
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Agree

Disagree

6/25/2021

X



Signed by: JAMES MAEDER

James Maeder

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations

³⁵⁸ See HiSteel Final Cost Calculation Memo.