



A-580-881
Administrative Review
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July 23, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the
2018-2019 Administrative Review of the Antidumping Duty Order
on Certain Cold-Rolled Steel Flat Products from the Republic of
Korea

I. SUMMARY

The Department of Commerce (Commerce) has analyzed the comments submitted by the interested parties in the administrative review of the antidumping duty (AD) order on certain cold-rolled steel flat products (CRS) from the Republic of Korea (Korea) covering the period of review (POR) September 1, 2018, through August 31, 2019.

Based upon our analysis of the comments received, we made certain changes from the *Preliminary Results*.¹ We revised the margin calculations for the two mandatory respondents, Hyundai Steel Company (Hyundai) and POSCO/POSCO International Corporation (PIC) (collectively, POSCO). We continue to find that Hyundai and POSCO have not sold the subject merchandise in the United States at prices below the normal value (NV). We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

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

¹ See *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2018-2019*, 86 FR 6871 (January 25, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

- Comment 1-A: Lawfulness of Commerce’s Interpretation of the Particular Market Situation (PMS) Provision
Comment 1-B: Evidence of a PMS
Comment 1-C: Quantification of PMS Adjustment
Comment 2: Constructed Export Price (CEP) Offset for POSCO
Comment 3: Correction of Calculation Errors
Comment 4: Whether Hyundai’s Cost Accounting Merits Adverse Facts Available (AFA)
Comment 5: Assignment of an Assessment Rate to a Certain U.S. Affiliate

II. BACKGROUND

On January 25, 2021, Commerce published the *Preliminary Results* of this administrative review.² In accordance with 19 CFR 351.309(c), we invited interested parties to comment on the *Preliminary Results*.³ On February 24, 2021, Hyundai, POSCO, and United States Steel Corporation (U.S. Steel) each submitted case briefs.⁴ On March 5, 2021, ArcelorMittal USA LLC (AMUSA), AK Steel Corporation (AK Steel), and Cleveland-Cliffs Steel LLC (Cleveland-Cliffs) (collectively, the Petitioners),⁵ U.S. Steel, Hyundai, and POSCO submitted rebuttal briefs.⁶

On February 23 and 24, 2021, Hyundai, POSCO, and U.S. Steel each filed a request for a hearing.⁷ On March 10 and 12, 2021, all parties withdrew their respective requests to hold a hearing.⁸

On May 14, 2021, we extended the time limit for the final results of this review by 59 days. The final results are due no later than July 23, 2021.⁹

² See *Preliminary Results*.

³ *Id.*

⁴ See POSCO’s Letter, “Cold Rolled Steel Flat Products from the Republic of Korea: POSCO’s Case Brief,” dated February 24, 2021 (POSCO Case Brief); see also Hyundai’s Letter, “Cold Rolled Steel Flat Products from the Republic of Korea: Hyundai Steel’s Case Brief,” dated February 24, 2021 (Hyundai Case Brief); U.S. Steel’s Letter, “Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Case Brief of United States Steel Corporation,” dated February 24, 2021 (U.S. Steel Case Brief).

⁵ We refer to U.S. Steel’s briefs as U.S. Steel’s Case Brief or U.S. Steel’s Rebuttal Brief. For the separate briefs filed on behalf of ArcelorMittal USA LLC, AK Steel Corporation and Cleveland-Cliffs Steel LLC, we refer to these domestic interested parties as the “petitioners.”

⁶ See POSCO’s Letter, “Cold Rolled Steel Flat Products from the Republic of Korea: POSCO’s Rebuttal Brief,” dated March 5, 2021 (POSCO Rebuttal Brief); see also Hyundai’s Letter, “Cold Rolled Steel Flat Products from the Republic of Korea: Hyundai Steel’s Rebuttal Brief,” dated March 5, 2021 (Hyundai Rebuttal Brief); U.S. Steel’s Letter, “Cold-Rolled Steel Flat Products from South Korea: Rebuttal Brief of United States Steel Corporation,” dated March 5, 2021 (U.S. Steel Rebuttal Brief); and Petitioners’ Letter, “Cold Rolled Steel Flat Products from Korea: Petitioners’ Rebuttal Brief Concerning POSCO,” dated March 5, 2021 (Petitioners’ Rebuttal Brief).

⁷ See POSCO’s Letter, “Cold-Rolled Steel Flat Products from Korea: POSCO’s Request for Hearing,” dated February 23, 2021; see also Hyundai’s Letter, “Cold Rolled Steel Flat Products from Korea: Hyundai Steel’s Request for Hearing,” dated February 23, 2021; U.S. Steel’s Letter, “Certain Cold Rolled Steel Flat Products from the Republic of Korea: U.S. Steel Request for Public Hearing,” dated February 24, 2021.

⁸ See POSCO’s Letter, “Cold Rolled Steel Flat Products from the Republic of Korea: Withdrawal of Request for Hearing,” dated March 10, 2021; see also Hyundai’s Letter, “Cold-Rolled Steel Flat Products from the Republic of Korea: Withdrawal of Request for Hearing,” dated March 10, 2021; and U.S. Steel’s Letter, “Certain Cold-Rolled Steel Flat Products from the Republic of Korea: U.S. Steel Withdrawal of Hearing Request,” dated March 12, 2021.

⁹ See Memorandum, “Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,” dated May 14, 2021.

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

III. SCOPE OF THE ORDER

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

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

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

Steel products included in the scope of the order are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

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

- 0.30 percent of zirconium

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

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

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

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

- Ball bearing steels;¹⁰
- Tool steels;¹¹
- Silico-manganese steel;¹²
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in *Grain-Oriented Electrical Steel from*

¹⁰ Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

¹¹ Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

¹² Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

*Germany, Japan, and Poland.*¹³

- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan.*¹⁴

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS)¹⁵ under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0040, 7209.16.0045, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0040, 7209.17.0045, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050.

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

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

¹³ See *Grain-Oriented Electrical Steel from Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances*, 79 FR 42501, 42503 (July 22, 2014). This determination defines grain-oriented electrical steel as “a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths.”

¹⁴ See *Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders*, 79 FR 71741, 71741-42 (December 3, 2014). The orders define NOES as “cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term ‘substantially equal’ means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.”

¹⁵ See Memorandum, “Request from Customs and Border Protection to Update the ACE AD/CVD Case Reference File,” dated July 23, 2021.

IV. CHANGES SINCE THE *PRELIMINARY RESULTS*

For the final results of review, Commerce based the margin calculations for Hyundai and POSCO¹⁶ on CEP, export price (EP), and constructed value (CV), where appropriate. We used the same methodology as stated in the *Preliminary Results*, with the exception of a change to the PMS determination for Hyundai and POSCO, as discussed in Comment 1, and correcting certain programming errors, as discussed in Comment 3, below.

V. RATE FOR NON-EXAMINED COMPANY

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

For these final results, we calculated weighted-average dumping margins for Hyundai and POSCO that are zero percent. We have not calculated any weighted-average dumping margins which are not zero, *de minimis*, or entirely based on facts available. Accordingly, we have continued to assign a zero percent margin to the company not individually examined in this review¹⁷ (*i.e.*, KG Dongbu Steel Co., Ltd),¹⁸ which is the average of Hyundai's and POSCO's calculated zero percent weighted-average dumping margins, pursuant to section 735(c)(5)(B) of the Act.

¹⁶ In the *Preliminary Results*, Commerce preliminarily collapsed POSCO and POSCO International Corporation (PIC), treating these companies as a single entity. Commerce also preliminarily found that PIC is the successor-in-interest to POSCO Daewoo Corporation (PDW), and, as a consequence, is part of the collapsed POSCO single entity. See Memorandum, "Cold-Rolled Steel Flat Products from the Republic of Korea: POSCO and POSCO International Corporation Affiliation and Collapsing Memorandum," dated January 15, 2021 at 9-10. Commerce did not receive any comments from interested parties regarding these preliminary findings. Accordingly, for these final results, we continue to collapse POSCO and PIC, and find that PIC is the successor-in-interest to PDW.

¹⁷ See *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Partial Rescission of Antidumping Duty Administrative Review; 2018-2019*, 85 FR 63253 (October 7, 2020) (rescinding review of all companies except Hyundai, POSCO, Dongbu Incheon Steel Co., Ltd., and Dongbu Steel Co., Ltd.).

¹⁸ Commerce preliminarily determined that KG Dongbu Steel Co., Ltd. (KG Dongbu Steel) is the successor-in-interest to Dongbu Steel Co., Ltd. (Dongbu Steel) and Dongbu Incheon Steel Co., Ltd. (Dongbu Incheon) for purposes of determining antidumping duty (AD) cash deposits and liabilities pursuant to the AD orders on certain cold-rolled steel and certain corrosion resistant steel products from Korea. See *Certain Cold-Rolled Steel Flat Products and Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results of Antidumping Duty and Countervailing Duty Changed Circumstance Reviews*, 86 FR 287 (January 5, 2021), unchanged in *Certain Cold-Rolled Steel Flat Products and Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews*, 86 FR 10922 (February 23, 2021).

VI. DISCUSSION OF THE ISSUES

Comment 1: Particular Market Situation (PMS)

Background:

In the *Preliminary Results*, we determined that a PMS existed in Korea which distorted the cost of production (COP) of CRS, based on the cumulative effect of: (1) steel overcapacity and price suppression; (2) Korean government subsidization of hot-rolled coil (HRC); (3) distortions in Korean electricity input costs; and (4) steel industry restructuring efforts by the Korean government (collectively, the four elements of PMS).¹⁹ In the *Preliminary Results*, we quantified the impact of the PMS in Korea by making an upward adjustment to the respondents' reported HRC costs for CRS, basing that adjustment on the factor derived in the regression analysis.²⁰

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

Hyundai's Comments:

- For the final results, Commerce should reverse its affirmative PMS determination that Hyundai's CRS costs are distorted, as the preliminary finding of a PMS is not warranted.²¹
- Consistent with the statute and U.S. Court of International Trade (CIT) precedent, Commerce does not have the authority to adjust a respondent's costs for purposes of the sales-below-cost test of section 773(b) of the Act.²²
- The CIT has twice rejected Commerce's PMS determinations in prior segments of this proceeding, and Commerce's finding in this review, which is based on findings in prior segments, will not withstand judicial scrutiny.²³
- In the first and second reviews of oil country tubular goods from Korea, the CIT reversed Commerce's PMS findings on the basis of unsupported evidence, individually and collectively, of the five factors upon which Commerce based its PMS determination.²⁴ In the second review, Commerce relied upon its findings in the first review as the basis for its PMS determination, which was also rejected by the CIT. In *NEXTEEL I*, the CIT rejected, for instance, Commerce's argument that Chinese overcapacity of steel production resulted in a flood of cheap imports of Chinese steel.²⁵ In *NEXTEEL II* and *NEXTEEL III*, for instance, the CIT concluded that the record evidence does not support a

¹⁹ See *Preliminary Results* PDM at 16-17.

²⁰ See Memorandum, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Preliminary Particular Market Situation Memorandum," dated January 15, 2021 (Preliminary PMS Memo).

²¹ See Hyundai Steel's Case Brief at 6-10.

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 8-9 (citing *NEXTEEL Co., Ltd. v. United States*, 399 F. Supp. 3d 1353 (CIT 2019) (*NEXTEEL I*); *NEXTEEL Co., Ltd. v. United States*, 392 F. Supp. 3d 1276 (CIT 2019) (*NEXTEEL II*); and *NEXTEEL Co., Ltd. v. United States*, 450 F. Supp. 3d 1333 (CIT 2020) (*NEXTEEL III*)).

²⁵ *Id.* at 8-9 (citing *NEXTEEL I*, 399 F. Supp. 3d at 1356-57).

conclusion that the global glut of Chinese HRC imports caused price distortions specific to the Korean steel market.²⁶

- The PMS provision of section 773(e) of the Act applies strictly to the calculation of CV, as established within section 773(e)(1) of the Act.²⁷
- Particular market situations are reserved for rare and unique circumstances that should only be found where the record contains substantial evidence of distortion in a respondent's costs of production, and the petitioners have not shown this is beyond the "ordinary course of trade."²⁸
- The circumstances in Korea are not novel or unusual such that it would warrant a PMS finding, but rather reflects a normal situation that has been ongoing for many years.²⁹
- Commerce must empirically analyze the PMS allegation with respect to actual costs.³⁰

POSCO's Comments:

- The statute authorizes PMS adjustments only in a CV context, not in a sales-below-cost context.³¹
- PMS adjustments to costs are limited to calculations under section 773(e) of the Act, and Commerce is obligated to act in conformity with that holding.³²
- As the CIT has stated, "the potential broad effect on prices creates a situation outside the scope of a particular market situation, as the impact of Chinese exports in the Korean market are also reflected in other markets across the world."³³

U.S. Steel's Comments:

- Similar to Commerce's finding that Chinese steel is distorting the Korean market, Commerce should also find that Australian iron ore, which by itself makes up most of the Korean market, distorts the Korean steel market, as Korea has zero domestic iron ore production. This type of finding would be consistent with other cases, such as *Fluid End Blocks from Germany* in which Commerce found that low-priced imports of ferrochrome from Kazakhstan affected prices for ferrochrome in the German market; and in *LDWP from Turkey*, in which Commerce considered the impact of distorted Russian steel in the cost of producing welded pipe in Turkey.³⁴
- Commerce unlawfully ignored iron ore as a contributor to PMS. Commerce acted contrary to the statute, Congressional intent, and its own consistent practice by not considering and acting upon the petitioners' submitted evidence pertaining to iron ore

²⁶ *Id.* at 11 (citing *NEXTEEL II*, 392 F. Supp. 3d at 1286-89; and *NEXTEEL III*, 450 F. Supp. 3d at 1337-43).

²⁷ *Id.*

²⁸ *Id.* at 8 (citing section 771(15) of the Act).

²⁹ *Id.* at 14.

³⁰ *Id.* at 16.

³¹ See POSCO Case Brief at 2.

³² See POSCO Case Brief at 6 (citing *NSK Ltd. v. United States*, 819 F. Supp. 1096, 1099 (CIT 1993) ("Commerce, however, is cautioned that they are to adhere to the law and to the decisions of the Court on this issue. If not, this Court will be compelled to order sanctions against the government and hold Commerce in contempt of court for repeatedly ignoring the well-established law on this issue")).

³³ *Id.* at 9 (citing *NEXTEEL Co. Ltd. v. United States*, 355 F. Supp. 3d 1336, 1350 (CIT 2019)).

³⁴ See U.S. Steel Case Brief at 42-43 (citing *Forged Steel Fluid End Blocks from the Federal Republic of Germany*, 85 FR 80018 (December 11, 2020) (*Fluid End Blocks from Germany*), and accompanying Issues and Decision Memorandum (IDM) at 24-25; *Large Diameter Welded Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 84 FR 6362 (February 27, 2019), and accompanying IDM at 7).

market distortion. There is nothing that would limit Commerce's PMS finding to a particular country.³⁵

- Adjusting for fewer than all aspects of the PMS for which record evidence permits an adjustment is an abdication of Commerce's statutory duty, which violates Congressional intent. The PMS Allegation alleges six distortions, but Commerce preliminarily recognized only four. The statute and Congressional intent require Commerce to implement additional adjustments. In *Fluid End Blocks from Germany*, Commerce included a separate adjustment for every factor found to contribute to a PMS; Commerce should do the same here.³⁶

U.S. Steel's Rebuttal Comments:

- Commerce correctly found a PMS in Korea during the POR.³⁷
- As in previous reviews, the respondents repeatedly mistake the governing law and attempt to implicitly dictate how the agency should implement the statute.³⁸
- Commerce's analytical methodology in the *Preliminary Results* parallels its consistent interpretation of the statute over several years and a variety of recent proceedings.³⁹
- Commerce should continue to find that a PMS existed in Korea over the POR.⁴⁰
- The respondents' suggestion that Commerce's negative price-based PMS finding in the second administrative review of the order (AR2) precludes a positive cost-based PMS finding in AR2 is mistaken.⁴¹
- Commerce's analysis of prices for CRS does not control its analysis of the cost of hot-rolled steel (HRS), iron ore, electricity, or other production expenses; the inverse, however, is not true. Input cost distortion tends to derivatively distort the price of downstream products. Thus, Commerce's price-based PMS determination in the second administrative review was unsupported by substantial evidence and unlawfully deviated from Commerce's prior practice, but even accepting Commerce's decision as-is, the respondents' critiques fail.⁴² Input cost distortion tends to derivatively distort the price of downstream products.⁴³

Commerce's Position: In their case briefs, Hyundai and POSCO both argue that Commerce's affirmative PMS finding in the *Preliminary Results* is contrary to law. We disagree with the respondents that the statute does not permit Commerce to examine whether a PMS exists within a particular market, such as Korea. As stated in previous segments of this proceeding, section 504 of the TPEA⁴⁴ added the concept of a "particular market situation" in the definition of the term "ordinary course of trade" for purposes of CV under section 773(e) of the Act, and through these provisions for purposes of the COP under section 773(b)(3) of the Act, added the concept of the term "particular market situation" to the definition of "ordinary course of trade," under

³⁵ *Id.* at 43-45.

³⁶ See U.S. Steel Case Brief at 41-42 (citing *Fluid End Blocks from Germany* IDM at 20-22, 24-25).

³⁷ See U.S. Steel Rebuttal Brief at 3.

³⁸ *Id.* at 4 (citing *Dongbu Steel Co. v. United States*, 635 F.3d 1363, 1372-73 (Fed. Cir. 2011)).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 17.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA).

section 771(15) of the Act. Section 773(e) of the Act states that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the COP in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.” Thus, we find that together, section 504 of the TPEA and section 773(e) of the Act provide Commerce with the means to ascertain whether a PMS exists and also allows Commerce the discretion to develop a methodology to account for it, *i.e.*, “the administering authority may use another calculation methodology under the subtitle or any other calculation methodology,” to support its PMS finding.⁴⁵

In the previous administrative review of this proceeding, Commerce used its discretion under section 504 of the TPEA and section 773(e) of the Act and found that a PMS existed, based on the existing law and record evidence on the administrative record of the specific proceeding. That is, in each segment of this proceeding, Commerce has undertaken an extensive analysis of information on the individual record of the proceeding to determine whether distortions exist within Korea that may impact the cost of producing merchandise sold to the United States. The TPEA intended for Commerce to have the flexibility to conduct such an analysis wherever the cost of producing subject merchandise is outside the ordinary course of trade. In this regard, it is fully within Commerce’s discretion to determine whether a PMS exists in Korea by conducting an extensive analysis, as envisioned by the SAA.

Although the CIT in *NEXTEEL I* (2014-15 POR), *NEXTEEL II*, *NEXTEEL III* (2015-16 POR), and *SEAH* (2016-17 POR),⁴⁶ remanded this issue on case-specific evidentiary grounds, the CIT upheld Commerce’s methodological approach, which was based on a “totality of circumstances,” *i.e.*, a collection of contributing PMS factors. In this review, Commerce continues to apply this same conceptual approach. As we have stated in prior administrative reviews, our PMS finding centers on the entire market; it is not limited to an individual company’s experience. That is, because we rely on the “totality of circumstances” approach, we continue to evaluate the existence of a PMS as a market-wide circumstance, based on the record of this administrative review, including each of the factors presented in a PMS allegation. In this regard, we evaluate the existence and impact of price distortions on the market, as a whole. Because of our reliance on the statute, which gives us the authority to conduct an analysis on whether a PMS exists, Commerce also has the discretion to examine all record evidence to determine whether it supports the existence of a PMS. Accordingly, as discussed below, for this administrative review, pursuant to the statutory provisions that permit a PMS adjustment, we conducted an exhaustive examination of each of the factors presented in the petitioners’ PMS allegation, as part of our “totality of circumstances” approach, to determine whether a particular market situation exists within Korea.

⁴⁵ See section 773(e) of the Act.

⁴⁶ See *SeAH Steel Corp. et al. v. United States*, Consol. Court No. 19-00086, Slip Op. 21-43 (CIT April 14, 2021) (*SEAH*).

Comment 1-B: Evidence of a PMS

U.S. Steel's Comments:

- HRC produced by the respondents is part of the Korean HRC market, the respondents' HRC unit cost is artificially low by virtue of its unnecessary production, and the respondents' HRC production contributes to oversupply and depressed Korean market prices. These are the types of distortion for which the benchmarking and regression adjustments are intended to account, and Commerce should revisit its preliminary findings on the respondents' self-produced HRC.⁴⁷
- If Commerce differentiates the adjustment to HRC produced by the respondents, it should, nevertheless, adjust such HRC costs for overcapacity and oversupply-based distortions. Such overcapacity triggers additional market distortions, including: (1) imports entering Korea's market from third countries with overcapacity; and (2) despite negative price signals domestic steelmakers continue producing steel that cannot be sold for more than the cost of production. As a result, imports and net domestic production exceed Korean flat product consumption, building up a surplus from 2015-2019. If Commerce declines to apply benchmark or regression adjustments to HRC costs, it should increase the total cost of HRC produced by the respondents by the amount by which the respondents reduced unit HRC costs through uneconomic production of HRC.⁴⁸
- Commerce has drawn unlawful and arbitrary lines to avoid engaging with the facts of the domestic producers' iron ore allegation and should consider argument and evidence new to this review.⁴⁹
- Commerce's *Preliminary Results* misstated facts and failed to account for arguments, rendering the *Preliminary Results* unsupported by substantial evidence.⁵⁰
- There is no factual justification to find that a PMS exists with respect to Hyundai's HRC costs.⁵¹
- There is no solid evidence that shows Korean producers' costs to manufacture subject CRS in this administrative review were distorted by alleged steel overcapacity in China, Korea or globally.⁵²
- Minuscule levels of subsidization of HRC, along with the fact that POSCO and Hyundai are integrated producers who do not "source" HRC for CRS production, demonstrate a lack of substantial lack of evidence. Hyundai is an integrated producer who, aside from minimal external purchases does not "source" HRC for cold rolled production.⁵³
- The record does not support any claim that Korean domestic electricity costs are not market-based.⁵⁴

⁴⁷ See U.S. Steel Case Brief at 29-33.

⁴⁸ *Id.* at 33-38.

⁴⁹ *Id.* at 43.

⁵⁰ *Id.* at 46-52.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* at 20.

⁵⁴ *Id.* at 22.

- Australian iron ore contributes to a PMS as the iron ore was necessarily reduced by subsidization and tax evasion, Australian iron ore makes up the large majority of Korea's supply.⁵⁵
- Australia annually provides hundreds of millions of dollars in subsidies; BHP Billiton evaded over one billion dollars' worth of state and federal taxes on its international iron ore sales, and Rio Tinto likewise avoided over 400 million dollars' worth of state taxes on its international iron ore sales; these two companies are Hyundai's largest iron ore suppliers.⁵⁶
- Commerce has failed to acknowledge this evidence, the respondents provided no factual information disputing the existence of these conditions, and respondents' counterarguments are unsupported by the record, the law, or logic.⁵⁷
- Commerce states that "prices for Korean and Brazilian iron ore are roughly equivalent when grade and form are taken into account," citing the respondent's rebuttal submission which claims to provide an "apples to apples" comparison based on Hyundai's purchase data at Exhibit Iron-10;⁵⁸ however there is a notable discrepancy in the effect of grade upon price, with U.S. Steel having provided data that lower grades (62 percent) generally exceed prices of higher grades (65 percent) and respondents having provided data that show varying price gaps between these grades.⁵⁹
- Commerce fails to address any independent review of the "form" of the iron ore causing the prices differences between Brazilian and Australian iron ore; absent such evidence Commerce cannot presume what respondents wish.⁶⁰

Hyundai's Comments:

- There is no "cost-based" PMS with respect to HRC inputs in the production of subject merchandise.⁶¹
- Commerce should reverse its preliminary PMS finding in light of the CIT's holdings in *NEXTEEL I*, *NEXTEEL II*, and *NEXTEEL III*.⁶²
- The petitioners have failed to clarify whether and how the information submitted in support of their PMS allegation is relevant to the current POR.⁶³

⁵⁵ *Id.* at 47 (citing U.S. Steel's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Comments Concerning the Particular Market Situation in Korea in Advance of Commerce's Preliminary Determination," dated December 8, 2020 (U.S. Steel Pre-Prelim Comments) at 40-43).

⁵⁶ *Id.* (citing Petitioners' Letter, "Cold Rolled Steel Flat Products from the Republic of Korea: Allegation of a Particular Market Situation Affecting Respondent's Inputs Costs," dated March 23, 2020 (Petitioners' PMS Allegation) at 67-70 and Exhibits 286 to 307; Respondents' Letter, "Cold-Rolled Steel Products from Korea: Submission of Factual Information in Response to U.S. Steel's July 31, 2020, Clarifying PMS Submission," dated September 24, 2020 (Respondents' PMS Clarifying Letter) at Exhibit 305; Preliminary PMS Memorandum at 19-20; Hyundai's Letter, "Cold-Rolled Steel Flat Products from the Republic of Korea: Initial Section A Questionnaire Response," dated February 14, 2020 at Appendix II at Section II.a (PDF page 1420)).

⁵⁷ *Id.* at 48.

⁵⁸ *Id.* at 49 (citing POSCO and Hyundai's Letter, "Cold-Rolled Steel Products from the Republic of Korea: Particular Market Situation Comments and Rebuttal Factual Information," dated August 3, 2020 (Respondents' PMS Comments and Rebuttal) at Exhibit Iron-10).

⁵⁹ *Id.* (citing Preliminary PMS Memorandum at 20).

⁶⁰ *Id.* (citing U.S. Steel Pre-Prelim Comments at 46; Respondents' PMS Clarifying Letter at Exhibits 2 and 3).

⁶¹ See Hyundai Case Brief at 6.

⁶² *Id.* at 7.

⁶³ *Id.* at 10.

- Commerce also cannot square its determination that a PMS exists in the hot rolled steel market in Korea with its prior determination in the previous second review that no PMS exists with respect to CRS prices in Korea.⁶⁴
- The petitioners have not shown that the “particular market situation” in Korea is not “ordinary.”⁶⁵
- Commerce must empirically analyze the PMS Allegation with respect to actual costs.⁶⁶
- There is no factual justification to find that a PMS exists with respect to Hyundai’s HRC Costs.⁶⁷
- Commerce’s analysis must focus on the impact that alleged distortions have on the cost of production for Hyundai Steel. There simply is no evidence here of the required quantifiable link between the claimed global overcapacity and a distortion of the cost of production of subject merchandise for a particular respondent (Hyundai Steel) in the particular market (Korea).⁶⁸
- An examination of import and export data for Korea and China demonstrates that there is no basis to conclude that Chinese steel flat products could have an impact on Korean domestic steel flat product pricing, let alone the costs to produce flat rolled steel in Korea.⁶⁹
- There is no evidence showing that Korean producers’ costs to manufacture subject CRS in this administrative review were distorted by alleged steel overcapacity in China, Korea, or globally.⁷⁰
- There is no evidence of Korean government “subsidization” of HRC.⁷¹
- Hyundai Steel is an integrated producer who, aside from minimal external purchases, does not “source” HRC for cold-rolled production, thus any “downward pressures on HRC prices in Korea” do not have any relevance in determining whether the respondents’ costs are outside of ordinary course of trade.⁷²
- The record does not support any claim that Korean domestic electricity costs are not market based.⁷³
- Electricity prices charged to industrial users in Korea reasonably reflect the actual costs for electricity, so there can be no distorting effect impacting actual manufacturing costs.⁷⁴
- The petitioners’ proposed global excess capacity-based regression methodology is flawed and must be rejected as a basis for quantifying a PMS adjustment.⁷⁵

⁶⁴ *Id.* at 13.

⁶⁵ *Id.* at 14.

⁶⁶ *Id.* at 16.

⁶⁷ *Id.* at 16.

⁶⁸ *Id.* at 17.

⁶⁹ *Id.* at 17-18.

⁷⁰ *Id.* at 19.

⁷¹ *Id.* at 20.

⁷² *Id.*

⁷³ *Id.* at 22.

⁷⁴ *Id.* at 24.

⁷⁵ *Id.* at 25.

POSCO's Comments:

- There is no “cost-based” PMS with respect to HRC inputs in the production of subject merchandise.⁷⁶
- The petitioners have not shown that the PMS in Korea is not “ordinary.”⁷⁷
- Commerce must empirically analyze the PMS Allegation with respect to actual costs.⁷⁸
- There is no factual justification to find that a PMS exists with respect to POSCO’s HRC Costs.⁷⁹
- The petitioners did not provide evidence showing that Korean producers’ costs to manufacture subject CRS were distorted by alleged steel overcapacity in this review.⁸⁰
- There is no evidence of Korean government “subsidization” of HRC.⁸¹ POSCO and Hyundai Steel are integrated producers who do not “source” HRC for CRS.⁸²
- The record does not support any claim that Korean domestic electricity costs are not market based.⁸³
- Electricity prices charged to industrial users in Korea reasonably reflect the actual costs for electricity, so there can be no distorting effect impacting actual manufacturing costs.⁸⁴

U.S. Steel's Rebuttal Comments:

*In Calculating Dumping Based on Price-to-Price Comparisons, the Korean PMS is Relevant to Testing Whether Certain Normal Value Sales Are in the Ordinary Course of Trade*⁸⁵

- The Korean PMS is relevant to testing whether certain NV sales are in the ordinary course of trade.⁸⁶
- The statute cannot be reasonably read to preclude Commerce from testing the universe of sales to determine whether any fall outside the course of trade due to the identified PMS.⁸⁷
- The sales-below-cost test, which is a test Congress provided Commerce for identifying a PMS, was used by Commerce for testing the universe of sales to determine whether any fall outside the ordinary course of trade due to the identified PMS.⁸⁸

⁷⁶ See POSCO Case Brief at 7.

⁷⁷ *Id.* at 14.

⁷⁸ *Id.* at 15.

⁷⁹ *Id.* at 16.

⁸⁰ *Id.* at 19.

⁸¹ *Id.* at 20.

⁸² *Id.*

⁸³ *Id.* at 23.

⁸⁴ *Id.* at 24. Commerce previously declined to quantify a PMS adjustment in the Oil Country Tubular Goods (OCTG) from Korea case, which related to electricity costs because “the information on the record is insufficient for determining the impact of government intervention with respect to electricity on the cost to produce Certain Oil Country Tubular Goods (OCTG).” See *Certain Oil Country Tubular Goods from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 51442 (October 11, 2018), and accompanying PDM at 22–23, unchanged in *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), and accompanying IDM at Comment 1.

⁸⁵ See U.S. Steel Rebuttal Brief at 2.

⁸⁶ *Id.* at 3.

⁸⁷ *Id.*

⁸⁸ *Id.*

- Commerce must continue testing home market sales through some form to ensure that it is using only those sales that Congress directs it to use in calculating the dumping margin.⁸⁹

*Commerce Correctly Adjusted Respondent's HRC Input Costs to Account for Overcapacity Distortions in Korea.*⁹⁰

- The respondents omit any proposed alternative regression adjustment.⁹¹
- The respondents' costs are distorted by overcapacity and a reasonable method of adjusting for this distortion is available on the record for this review.⁹²
- The respondents wish to make the cost-based PMS provision impossible to apply in practice.⁹³
- The respondents' contentions are untenable as Congress specifically identified Korean steel market distortion as a "case in point" when passing the TPEA.⁹⁴
- Commerce should continue to adjust the respondents' HRC costs using the regression analysis provided by Domestic Producers (including for self-produced HRC).⁹⁵

*Having found a PMS, Commerce reasonably evaluated which home market sales should be included in a price-based normal value.*⁹⁶

- The statute is clear: Commerce shall only use prices in the dumping calculation that are in the ordinary course of trade.⁹⁷
- Concerning the ordinary course of trade, Congress unambiguously spoke to its meaning such that, *inter alia*, "situations in which the administering authority determines that the particular market situation prevents a proper comparison with the export price or constructed export price" are outside the course of trade.⁹⁸
- The sales-below-cost provision, like the price-based NV provision, mandates that Commerce establish NV "based on the remaining sales of the foreign like product in the ordinary course of trade."⁹⁹

*Because the Act Instructs Commerce to Not Use Home Market Prices Outside the Ordinary Course of Trade in Determining Normal Value, Commerce Must Test whether a Cost-Based PMS Impacts Home Market Prices*¹⁰⁰

- Commerce reasonably analyzed whether the cost-based PMS it found caused any price-based sales to be outside the ordinary course of trade.¹⁰¹

⁸⁹ *Id.*

⁹⁰ *Id.* at 5.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 5 (citing *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), and accompanying IDM at 11).

⁹⁵ *Id.*

⁹⁶ *Id.* at 6.

⁹⁷ *Id.*

⁹⁸ *Id.* at 6-7 (citing section 771 (15) of the Act).

⁹⁹ *Id.* at 7 (citing section 773(b)(1) of the Act).

¹⁰⁰ *Id.* at 8.

¹⁰¹ *Id.*

- Congress did not direct Commerce how to conduct this analysis, so it falls to Commerce to interpret Congress’s directive.¹⁰²

*Use of the Sales-Below Cost Test is a reasonable means to test whether Home Market Prices Affected by a PMS are in the Ordinary Course of Trade*¹⁰³

- Commerce reasonably analyzed whether the cost-based PMS it found caused any price-based sales to be outside the ordinary course of trade.¹⁰⁴
- Congress did not direct Commerce how to conduct this analysis, so it falls to Commerce to interpret Congress’s directive.¹⁰⁵
- Use of the sales-below-cost test is a reasonable means to test whether home market prices affected by a PMS are in the ordinary course of trade.¹⁰⁶
- Beginning with section 773(b)(1), the Act requires Commerce to: (1) determine whether there are “reasonable grounds to believe or suspect” that home market sales were made at prices “represent{ing} less than the cost of production”; and (2) if so, determine whether sales were “in fact” “made at less than the cost of production.”¹⁰⁷
- The method Commerce used in the preliminary results to test home market sales for whether home market prices are outside the ordinary course of trade is not the only reasonable method.¹⁰⁸
- There is no absolute ban on Commerce using the sales-below-cost test to determine which home market sales are outside the ordinary course of trade due to the existence of a PMS, which by definition is a situation that is outside the ordinary course of trade. Commerce is thus justified in making an adjustment to the respondents’ reported costs to account for PMS-related distortion when conducting the sales below cost test.¹⁰⁹

*Respondent’s Substantive Arguments Fail to Address or Meaningfully Undermine the Record Evidence Cited by Commerce.*¹¹⁰

- Global and Chinese Overcapacity
 - Low average unit values (AUVs) of imported HRC during this review period and the continued overcapacity of steel production by China negatively impact Korea’s steel market.¹¹¹
- Korean Overcapacity
 - Commerce correctly identified “overcapacity in the Korean market” and “severe excess steel supply in Korea” as contributing to the PMS.¹¹²
 - What the respondents euphemistically describe as “steady” was, in fact, stagnation

¹⁰² *Id.* (citing *Chevron, U.S.A., Inc. v Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984) (*Chevron*)).

¹⁰³ *Id.* at 9.

¹⁰⁴ *Id.* at 8.

¹⁰⁵ *Id.* (citing *Chevron*, 467 U.S. at 844).

¹⁰⁶ *Id.* at 9.

¹⁰⁷ *Id.* at 9 (citing TPEA of 2015, Pub. L. No. 114-27, § 505(a), 129 Stat. 362, 385 (codified at section 773(b)(2)(A)(ii) of the Act); *see also Id.* at § 504(c) (codified at section 773(e) of the Act)).

¹⁰⁸ *Id.* at 10.

¹⁰⁹ *Id.* at 12.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 19 (citing Preliminary PMS Memorandum at 15).

¹¹² *Id.* at 20 (citing Preliminary PMS Memorandum at 13, 19).

- that consistently resulted in surplus steel trapped in Korea, year after year.¹¹³
 - Korean producers left a post-export 27.7 million MT domestic glut of flat products over the medium term (2015-2019) contributing 4.5 million MT of flat products to this buildup in 2019 alone.¹¹⁴
- Korean Government Intervention
 - The Government of Korea (GOK) has greatly assisted in the acceleration of the growth and development of the Korean Steel Industry.¹¹⁵
 - The GOK signed 19 memoranda of understanding with Korean steel producers with cooperative measures to overcome the crisis in the steel region.¹¹⁶
 - The respondents have not made an attempt to refute these claims.¹¹⁷
- Government-Set Korean Electricity Prices Do Not Cover Cost of Service.¹¹⁸
 - The respondents claim that the Korean Electrical Power Corporation's (KEPCO) profit levels have nothing to do with electricity pricing in Korea, however, this is contradicted by KEPCO itself who repeatedly pled in vain for the GOK to permit it to raise prices in order to stem its losses.¹¹⁹

Hyundai's Rebuttal Comments:

*Commerce Should Not Apply Any Adjustment Based on Hot-Rolled Steel Pricing*¹²⁰

- As Hyundai Steel demonstrated throughout this proceeding, there is no legal or factual basis to make any adjustments to Hyundai Steel's cost of producing cold-rolled coil (CRC).¹²¹
- The petitioners have simply failed to explain how the alleged distortions with respect to HRC pricing have anything to do with Hyundai Steel's reported cost of producing CRS.¹²²
- Commerce correctly declined to apply a PMS adjustment to self-produced inputs.¹²³

*The Petitioner's Various Proposed PMS Adjustments are Unreasonable and Unsupportable.*¹²⁴

- The petitioners' proposed benchmark methodology to adjust the respondents' HRC costs is flawed and must be rejected as a basis for quantifying a PMS adjustment.¹²⁵

¹¹³ *Id.* at 20.

¹¹⁴ *Id.* (citing U.S. Steel's Letter, "Cold-Rolled Steel from the Republic of Korea: Factual Information to Clarify Aspects of Domestic Interested Parties' Particular Market Situation Allegation (U.S. Steel's Clarifying Information) at Exhibit 13).

¹¹⁵ *Id.* at 21-22 (citing Preliminary PMS Memorandum at 18).

¹¹⁶ *Id.* at 24 (citing Petitioners' PMS Allegation at Exhibit 162).

¹¹⁷ *Id.* at 20.

¹¹⁸ *Id.* at 24.

¹¹⁹ *Id.* at 25.

¹²⁰ See Hyundai Rebuttal Brief at 33.

¹²¹ *Id.* (citing Respondents' PMS Comments and Rebuttal at 82; see also Hyundai Case Brief at 2-31 (Sections I – IV)).

¹²² See Hyundai Rebuttal Brief at 33.

¹²³ *Id.* at 35.

¹²⁴ *Id.* at 48.

¹²⁵ *Id.* at 49.

- The evidence placed on the record by the petitioners suggests that the allegedly distortive pricing of unfairly traded Chinese HRS is a global phenomenon; the respondents addressed these flaws at pages 57-58 of the PMS Rebuttal submission.¹²⁶
- Commerce should not make any PMS adjustment based on countervailing duty (CVD) rates.¹²⁷
 - Adjusting the respondents' costs here to account for the hot-rolled or cold-rolled CVD rates would double count the impact of any subsidies on the companies and would amount to double counting.¹²⁸
 - Commerce has declined to adopt this suggestion in the prior second administrative review and the petitioners have presented no new arguments that would justify Commerce revisiting its decision in this administrative review.¹²⁹
- Commerce cannot apply a HRC regression adjustment to inputs other than HRC.¹³⁰
 - The petitioners' claim that "{r}espondents' failure to procure HRC from third parties" contributed "to the problem of overcapacity in Korea."¹³¹ has nothing to do with the question of whether Hyundai Steel's actual costs of producing subject merchandise are distorted.¹³²
 - Hyundai Steel's decision to use either the self-produced or purchased HRC inputs demonstrates that Hyundai Steel is an integrated steel producer that operates in a functioning, market-driven, market.¹³³
- There are no market distortions in the Korean HRC market to justify any adjustment to the respondents' HRC costs.¹³⁴
 - There is no basis to entertain the petitioners' fictional, "non-distorted" market of "what if Hyundai Steel had produced forty percent of its actual production" during the POR, or why that level of production is an appropriate assumption.¹³⁵
 - Unsupported by record evidence is the petitioners' proposed adjustment factor calculations, which rely on a hypothetical production level, unexplained assumptions (*i.e.*, arbitrarily treating certain cost elements as "fixed" costs and shifting around variable costs), and a mix of the respondents' reported data.¹³⁶
- Commerce should reject the proposed PMS adjustments to Korean electricity costs.¹³⁷
 - The petitioners claim that Commerce did not address distorted electricity input costs.
 - Commerce did address the petitioners' claim, but it did not make any adjustment related to electricity because the petitioners failed to substantiate its allegation as to how the alleged electricity distortion affects respondents' cost of producing subject CRS.¹³⁸

¹²⁶ *Id.* at 48.

¹²⁷ *Id.* at 50.

¹²⁸ *Id.* at 51.

¹²⁹ *Id.* at 39.

¹³⁰ *Id.* at 35.

¹³¹ *Id.* at 39.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.* at 45.

¹³⁶ *Id.*

¹³⁷ *Id.* at 51.

¹³⁸ *Id.* at 52.

- Commerce should not make any adjustments to inbound raw material freight costs.¹³⁹
 - In the previous review, Commerce determined the petitioners' allegation of distorted shipping rates did not contribute to a PMS and, therefore, rejected the petitioners' proposed adjustment.¹⁴⁰
- Commerce should refrain from making any PMS adjustments to the cost of iron ore.¹⁴¹
 - Commerce has no reliable basis to quantify U.S. Steel's claim regarding subsidization of Australian iron ore.¹⁴²
 - The petitioners were unable to provide "sufficient evidence to establish a distortion in Australian iron ore prices" in the last administrative review as Commerce has correctly found, and the same deficiencies exist in the instant review, warranting outright reject of the petitioners' arguments regarding iron ore input costs.¹⁴³

Commerce's Position: In this review, the petitioners alleged that a PMS exists in Korea which distorts the COP of CRS based on the following six factors: (1) Chinese overcapacity that floods the Korean market, depressing steel prices; (2) overcapacity in the Korean steel market; (3) GOK subsidization of domestic HRC production; (4) government involvement in the Korean electricity market; (5) distorted shipping rates for raw material inputs in HRC production; and (6) distorted iron ore costs.¹⁴⁴ 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*, we found that a PMS exists in Korea that distorts the COP of CRS resulting from the collective impact of four of the six factors identified above. That is, for the reasons cited in the Preliminary PMS Memorandum, we did not find that shipping rates for raw material inputs in HRC production or that distorted iron ore costs contributed to a PMS within Korea.¹⁴⁵

After careful examination of the information on our record and considering the parties' comments, we find that the petitioner has not supported its claims that the elements identified above contribute to finding that a PMS existed in Korea during the POR with respect to the price of HRC used in the production of CRS. With respect to the information Commerce may consider in its evaluation of whether a PMS exists within Korea, we disagree with Hyundai and POSCO that Commerce may not rely on newspaper articles or other secondary sources to support our PMS analysis. Although we may weigh varying types of evidence differently (*e.g.*, secondary sources versus primary sources), we have evaluated all record evidence before us. The secondary sources submitted in the PMS Allegation serve as the best information publicly available to the petitioners upon which to demonstrate whether there exists a PMS within the Korean market. In reaching our PMS determination for these final results of review, we have considered all newspaper and other articles, as well as analyses and arguments presented by the petitioners in their PMS allegation, along with other information pertaining to this issue.

¹³⁹ *Id.* at 58.

¹⁴⁰ *Id.* at 52 (citing *Certain Cold Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017–2018*, 85 FR 41955 (July 13, 2020) (CRS Korea 2017-18), and accompanying IDM at Comment 1).

¹⁴¹ *Id.*

¹⁴² *Id.* at 57.

¹⁴³ *Id.* at 58.

¹⁴⁴ See PMS Allegation at 5-9.

¹⁴⁵ See Preliminary PMS Memorandum at 19-20.

In addition, to date, the CIT has struck down Commerce’s affirmative PMS findings in prior administrative reviews of the OCTG from Korea antidumping duty order in *NEXTEEL I*, *NEXTEEL II*, and *SEAH* related to each factor raised by the petitioners in their PMS allegations. This has added an additional layer of complexity to our PMS analyses, such as examining prior judicial findings in considering whether the petitioners’ allegation contains sufficient evidence to fully support each factor that allegedly contributes to the finding of a PMS in Korea. While the CIT has upheld Commerce’s overall methodology of evaluating a PMS based on the totality of circumstances, it has been extremely skeptical, if not dismissive, regarding supporting evidence related to each of the factors that the petitioners allege to be contributing to a PMS within Korea. Whether viewed individually or as a whole, when examining our PMS findings in prior reviews of this antidumping duty order, the CIT has found the existence of a PMS in Korea based on the factors alleged by the petitioners as unreasonable and unsupported by substantial evidence. Accordingly, our analysis of each of the alleged factors and evidence relating to those factors is addressed below.

GOK Restructuring Initiative

Regarding the factor of intervention in the steel industry by the GOK, the petitioners point to GOK restructuring initiatives, which purportedly aim to aid the steel industry, and to GOK subsidization of the steel market. According to the petitioners, the GOK instituted a variety of restructuring plans (*e.g.*, 2017 Action Plan for Industrial Restructuring) to bolster the steel industry prior to and during this POR. As part of this restructuring initiative, the petitioners point to several programs (*e.g.*, the One Shot Act and Special Act on Corporate Revitalization) that they contend assist companies with subsidies, loans, tax support, support for research and development, reducing regulatory burden and addressing oversupply. While the petitioners have identified restructuring initiatives by the GOK and provided evidence that the Korean government announced such programs, there is no evidence on the record to demonstrate that Korean respondents have availed themselves of benefits under the government-wide initiatives, as alleged by the petitioners. The CIT has pointed to the lack of evidence of the occurrence of any actual restructuring assistance or other government interference as a weakness of this element of the petitioners’ allegations in the past.¹⁴⁶ With regard to this factor, steel industry restructuring by the GOK, the CIT has also pointed to the non-contemporaneity of the information used to support this alleged factor, finding that it is unsupported by substantial evidence.¹⁴⁷

Furthermore, the petitioners suggest Commerce adjust the cost for all HRC, a significant input of CRS, using the most recent finalized CVD rate for each producer, *i.e.*, 0.51 percent for Hyundai, and 0.54 percent for POSCO.¹⁴⁸ While the petitioners point out the need for Commerce to apply an adjustment to address the impact of distortive subsidization, we note that CVD rates of just over 0.50 percent demonstrate that any subsidization in the Korean market was not only minimal but, barely above *de minimis*.¹⁴⁹ Thus, subsidization existed on the record of prior administrative

¹⁴⁶ See *NEXTEEL III*, 450 F. Supp. 3d at 1343.

¹⁴⁷ See *SEAH* at 40-42.

¹⁴⁸ See U.S. Steel Case Brief at 35.

¹⁴⁹ See *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review*; 2018, 86 FR 10533 (February 22, 2021).

reviews and the CIT found this evidence to be insufficient.¹⁵⁰ Specifically, the CIT stated that “Commerce’s determination that ‘heavily subsidized’ {HRC} contributed to a particular market situation that distorted the cost of production is not supported by substantial evidence because the documents cited by Commerce do not address the issue of subsidization of {HRC} by the {GOK}.”¹⁵¹

Additionally, with regard to the information supporting the GOK’s efforts to advance restructuring programs for the steel industry, as raised by the petitioners in their PMS allegation, this source information for specific programs (*e.g.*, the One Shot Act and Special Act on Corporate Revitalization) is not contemporaneous with the POR, further weakening this alleged PMS factor.¹⁵²

In addition, the CIT has previously dismissed even evidence that was based on contemporaneous data.¹⁵³ As mentioned above, evidence on the record of this review is largely not contemporaneous with the POR. Based on our examination of this information, in light of prior judicial decisions regarding the restructuring factor, we do not find the GOK’s restructuring initiative(s) to be a contributing factor to the existence of a PMS within Korea during the instant review period.

Chinese and Korean Overcapacity

The petitioners argue that global overcapacity, largely driven by Chinese overcapacity, has resulted in large quantities of unfairly priced Chinese steel products that have flooded the Korea steel market, placing downward pressure on steel prices, including HRC. The petitioners argue

¹⁵⁰ See *NEXTEEL III*, 450 F. Supp. 3d at 1343; see also *SEAH* at 42-43.

¹⁵¹ See *SEAH* at 43.

¹⁵² See, *e.g.*, PMS Allegation at 23-39398 (citing “China will cut, remove export tariffs on some steel, fertilizer” Reuters (December 15, 2017) (Exhibit 64); “China to cancel steel products’ export tax in 2018,” Kallanish Commodities (December 15, 2017) (Exhibit 65); “Korean Government to Assist Steel Industry in Restructuring from August,” Business Korea (June 10, 2016) (Exhibit 135); “Korea’s ‘One Shot’ act supports steel restructuring,” Kallanish Commodities (June 13, 2016) (Exhibit 136); “One Shot Turnaround Law Aids 10 Companies,” Korea Joongang Daily (November 23, 2016) (Exhibit 137); “S. Korea Designates Two More Steel Firms for Fast-Track Corporate Restructuring,” Aju Business Daily (November 22, 2016) (Exhibit 138); “Gov’t picks 3 firms for fast-track restructuring,” The Investor (November 22, 2016) (Exhibit 139); “Hyundai Steel, Dongkuk Steel become latest beneficiaries of fast-track restructuring program,” Pulse (November 23, 2016) (Exhibit 140); “Hyundai, Dongkuk win ‘one shot’ government approval,” Kallanish Commodities (November 23, 2016) (Exhibit 141); “5 more firms picked for fast-track restructuring program,” Yonhap via Korea Herald (February 28, 2017) (Exhibit 143); “POSCO to get government aid for BF No. 1,” Kallanish Commodities (January 23, 2017) (Exhibit 144); “13 Businesses’ One-shot Law Enacted Now Golden Time” KOSA (December 12, 2015) (Exhibit 145); “Corporate vitality law, some industries are not alone,” KOSA (December 24, 2015) (Exhibit 146); “Let’s look at the one-shot method,” KOSA (June 24, 2016) (Exhibit 147); “Congressman Park Myung-jae launches National Assembly Steel Forum,” KOSA (June 28, 2016) (Exhibit 148); “Rep. Park Myung-jae urged strong support for the steel industry,” KOSA (August 26, 2016) (Exhibit 149); “Representative Chan-Yeol Lee Proposed ‘Stale Steel Destruction Act’,” KOSA (September 13, 2016) (Exhibit 150); “Ministry expands total amount of trade insurance,” KOSA (September 19, 2016) (Exhibit 151); “Ministry Presents a Sketch of Strengthening Competitiveness,” KOSA (September 30, 2016) (Exhibit 152); “Ministry, Hyundai Steel and Dongkuk Steel Mill approved business,” KOSA (November 22, 2016) (Exhibit 153); “MOTIE Press Release: Vice Minister of Industry Dangiin Visit,” KOSA (December 7, 2016) (Exhibit 154); “Ministry encourages steel industry business reorganization and investment,” KOSA (December 7, 2016) (Exhibit 155)).

¹⁵³ See, *e.g.*, *NEXTEEL III*, 450 F. Supp. 3d at 1343 (the CIT found that the information relied upon in Commerce’s remand redetermination in the 2015-2016 review of OCTG was unsupported by substantial evidence); see also *SEAH* at 41 (where the CIT cited the need for reliance upon more contemporaneous information).

that respondents have offered little evidence to overcome the issue of Chinese overcapacity in the Korean market, including oversupply of steel within Korea that has not been exported. We disagree with the petitioners' overcapacity arguments.

We have reexamined the record regarding this alleged factor, as well as arguments presented by all parties and find that the evidence provided by the petitioners does not support the overall premise of the petitioners' overcapacity argument. As an initial matter, we note that the petitioners utilize data over inconsistent time frames to demonstrate overcapacity. In certain instances, they have relied upon data covering a five-year time period and in other instances, they have relied upon data covering a seven- and eleven-year period to demonstrate their overall premise of overcapacity. The inconsistency in selecting time periods for the data presented to support their argument of overcapacity provides unstable and unreliable results. To ensure a logical argument based on consistent data within the same time period, we have reevaluated the data submitted by the petitioners, generally using a period of five years that covers this POR and the four years prior to the POR.

The petitioners attempt to demonstrate that Chinese imports in relation to all Korean imports have continued to dominate the Korean market by relying upon import data, in table format, in their PMS allegation.¹⁵⁴ Our examination of this data reveals otherwise. Using data provided in the petitioners' PMS allegation, we examined the data covering the time frame of 2015 through 2019, where possible.¹⁵⁵ We observed that the data demonstrate a drop of approximately 50 percent in the rate of Chinese imports of HRS in Korea during the relevant period.¹⁵⁶ Similarly, in their PMS allegation, as part of their overcapacity argument, the petitioners attempt to demonstrate HRS penetration in the Korean market, *i.e.*, HRS imports as a percentage of Korean domestic hot-rolled flat product production.¹⁵⁷ Because the data in this table is limited with respect to 2019, we considered only 2018 in our analysis. Considering the five-year period of 2014 through 2018, HRS imports from China have declined significantly, decreasing to low levels of Chinese HRS imports into the instant review period. For instance, according to the petitioners' table, Chinese HRS imports as percent of Korean HRS production showed a significant decline of nearly 70 percent, from 22.69 percent in 2014 to 6.13 percent in 2018. Similarly, when examining Chinese imports as percent of net HRS production in Korea, the numbers show a decline of nearly 75 percent over this time period, from 30.53 percent in 2014 to 7.81 percent in 2018.¹⁵⁸ Our examination of this data controverts the petitioners' argument of a steady deluge of excess Chinese steel supply targeting Korea during this period of review. We emphasize that our analysis is limited to examining whether a particular market situation existed during this particular period of review and caution against extrapolating our findings to other periods of review, because the data depends on time periods examined and could render different results and outcomes for different periods of review.

Also, we find that the AUV data contradict the petitioners' argument regarding Chinese overcapacity into Korea during this period of review. That is, in examining the AUV of Chinese imports into Korea, we find that the AUV of HRC is \$518.03/MT in 2019. When compared with

¹⁵⁴ See PMS Allegation at 32.

¹⁵⁵ *Id.* (in certain instances, the petitioners' data was not available for 2019; when this occurred, we adjusted our analysis by one year to cover the period from 2014 through 2018).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 34.

¹⁵⁸ *Id.*

the AUV of HRC and plate over a five-year period, the data demonstrates that the AUV has actually increased by approximately 30 percent.¹⁵⁹ Even if we were to consider a longer time frame of data, the AUV is very similar to 2018 and 2019 levels, and matches the trend with the AUVs of imports from other countries.¹⁶⁰ Based on these analyses, these data do not demonstrate an increasing or steady impact of overcapacity depressing Korean steel prices in the steel market, including HRC. In fact, they show a lessening effect on HRC prices over time. Once again, we caution against extrapolating our findings regarding this period of review to other reviews, which would require independent evaluation of data that is specific to those periods of review. With respect to the issue of whether a PMS exists, it is useful to look at import penetration. However, a more comprehensive analysis would also include an examination of the Korean market share captured by Chinese imports of HRS (Chinese imports of HRS as a percentage of Korean apparent consumption¹⁶¹ of HRS). Neither the petitioners nor respondents have provided such information. Based on the information on this record, we have concluded that we cannot find that the alleged overcapacity in HRS contributes to a PMS in Korea during the POR.

Further, the Courts have pointed out that while overcapacity impacts the global market, there is little information presented in the OCTG proceeding to demonstrate that oversupply of low-priced Chinese product is particular to the Korean market or that they cause price distortions specific to the Korean steel market.¹⁶² As stated above, in the current review, having examined the evidence that is specific to the Korean market, we find the record evidence contradicts the overcapacity argument as advanced by the petitioners.

Electricity

The petitioners point to KEPCO's losses as a basis for finding distortion in Korea's electricity market. The petitioners also assert that KEPCO is government-owned and, as such, it wields large influence in Korea's electricity market. As a state-owned electricity supplier, the petitioners argue that the Korean government intended to subsidize the steel industry to combat low prices. Further, the petitioners argue that the fact that Commerce has not found electricity to be subsidized does not imply that the cost of electricity for CRS steel providers is not distorted.

With regard to the petitioners' allegation of distortion present in the Korean electricity market, consistent with the Statement of Administrative Action of the Uruguay Agreements Act (SAA), 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.¹⁶³ In the first administrative review of OCTG from Korea, Commerce previously found that electricity in Korea functions as a tool of the government's industrial policy.¹⁶⁴ Furthermore, the largest electricity supplier, KEPCO, is a government-controlled entity. However, on this record, there is no further evidence to suggest that this factor creates such a substantial market distortion in Korea during the POR such that it affirmatively contributes to a PMS. Additionally, there is no evidence that the mandatory respondents received any electricity benefits from the GOK during

¹⁵⁹ *Id.* at Exhibit 118.

¹⁶⁰ *Id.*

¹⁶¹ Apparent consumption is equal to domestic production plus imports minus exports.

¹⁶² See *NEXTEEL III*, 450 F. Supp. 3d at 1339.

¹⁶³ See SAA, H.R. Doc. 103-316, vol. 1 (1994) at 822.

¹⁶⁴ See *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 82 FR 18105 (April 17, 2017), and accompanying IDM at Comment 3.

this review period. Evidence of direct subsidization of the mandatory respondents or subsidization of the steel industry related to CRS would permit a reexamination of electricity as a contributing factor of an alleged PMS within Korea.

With respect to electricity, for instance, the CIT has pointed to previous CVD cases in which Commerce has found no evidence of steel producers receiving countervailable subsidies specific to electricity. Thus, while an argument can be made as to whether KEPCO is a government-controlled entity that may exert influence on the rate of electricity charged to different categories of users, including industrial users, upon examination of electricity in countervailing duty cases, Commerce has found no measurable benefit and thus, that electricity was not provided at any amount less than adequate remuneration.¹⁶⁵ In this regard, we find that there is no record evidence in this review demonstrating that the mandatory respondents have received electricity benefits, a factor previously evaluated by the CIT. We recognize that market distortions could exist even when there is no countervailable subsidy provided. However, there is not sufficient evidence on this record to demonstrate that electricity as a tool of Korea's industrial policy has caused distortions in the market. KEPCO provides electricity to different types of users in Korea that range from residential to agricultural to industrial. On this record, we are not able to conclude that the rates charged to industrial users, such as the respondents, were so distorted that they require an upward adjustment, because they are below the rates that would have been charged in the open market. We recognize that in principle, electricity rates could be distorted as a result of government policy; however, we must have sufficient evidence demonstrating such distortion and need for an adjustment, which we lack on the current record.

Distorted Shipping Rates

The petitioners challenged Commerce's *Preliminary Results* on the issue of inbound bulk shipping, arguing that Commerce erred in its understanding of facts and in its reasoning to ultimately dismiss this issue as a factor contributing to a PMS in Korea. For these final results, we continue to find that the petitioners have not presented a logical argument regarding inbound bulk shipping, which they base on a decrease in global shipping rates and on Hyundai Merchant Marine (HMM), one of the largest shipping companies in the world that, according to the petitioners, dominates the Australia-to-Korea bulk circuit, transporting iron ore and coking coal used by the Korean steel industry, and which according to the petitioners is highly subsidized.

We find that the petitioners have not demonstrated that the mandatory respondents used HMM as a carrier for inputs used to produce the subject merchandise. Absent evidence of this direct connection, any issue of subsidization of HMM bears no impact on the cost of CRS inputs. Furthermore, the petitioners' reliance upon HMM and the freight rates charged by HMM is unpersuasive. HMM does not service only the corridor between Australia and Korea. As a global shipping company, HMM's shipping rates are influenced by a myriad of factors that are impacted by global price and cost fluctuations. With regard to the issue of Commerce disregarding container shipping costs, while the petitioners focus on shipping rates for iron ore, coking oil, and steel coil, because both products are shipped in bulk, the alleged distortions pertaining to Korean container carriers do not appear relevant. Nevertheless, to the extent that bulk shipping is allegedly distorted, while the petitioners argue that freight rates for shipments to China are lower than freight rates for shipments made to Brazil, we find that this argument is far

¹⁶⁵ See *NEXTEEL III*, 450 F. Supp. 3d at 1342.

removed from freight rates associated with direct imports of raw materials, such as HRC, used in the production of CRS. Accordingly, for these final results, we continue to find that the petitioners have not provided supporting evidence demonstrating a direct impact of distorted shipping rates in this POR, nor do we find the alleged distorted shipping rates contribute to a PMS within Korea.

Iron Ore Shipping Costs

The petitioners argue that a large majority of iron ore and coking oil is imported from Australia and that Australia-to-Korea bulk shipping costs are distorted by global bulk shipping overcapacity. The petitioners argue that because Commerce dismissed this factor as contributing to a PMS within Korea, Commerce has not given fair consideration to distortions in the Korean market that affect prices of iron ore and inbound shipping costs.¹⁶⁶ We disagree. As an initial matter, and contrary to the petitioners' comments that Commerce misunderstood the argument advanced by the petitioners with respect to iron ore, and that Commerce did not fully weigh the record information submitted by the petitioners, we examined all information submitted by the petitioners. The fact that we disagree with the petitioners does not translate into a misunderstanding of this alleged PMS factor. While the petitioners provided information on distorted iron ore shipping costs, we continue to find that the petitioners have not demonstrated how such distorted costs allegedly distort the cost of HRC used to produce CRS.

Furthermore, regardless of whether the HRS subsidy rates are above *de minimis*, the issue related to subsidization of the HRS input has a direct bearing on the COP of CRS. However, absent an investigation of whether HRS or HRC are being subsidized in Australia, or elsewhere for that matter, we cannot apply a subsidy rate or make an adjustment for subsidization for the input used in the production of CRS. Accordingly, we do not consider the subsidization of that input as among the contributing factors for determining the existence of a PMS within Korea. With respect to iron ore, however, the fact that Australian iron ore prices are below the global average of iron ore prices does suggest that they contribute to a finding that a PMS exists within Korea.

Additionally, we note that much of the petitioners' argument on this alleged factor rests on subsidization *within* Australia, *not within* Korea. If a product is subsidized in a third country, that fact alone will not speak to its effect on prices for the input in question to producers of subject merchandise in Korea. Even if the prices are lower, in this case, in Australia than they might otherwise be absent the subsidy, that does not speak to the effects on iron ore prices

in Korea. Absent evidence linking Australian iron ore subsidies to iron ore prices paid in Korea, this information is inconsequential for a PMS analysis. Accordingly, for these final results, we do not find that this factor contributed to a PMS within Korea and as such, we have not changed our determination with respect to the prices of Australian iron ore.

Comment 1-C: Quantification of PMS Adjustment

U.S. Steel's Comments:

¹⁶⁶ See U.S. Steel's Case Brief at 64-77.

- Commerce’s overcapacity adjustment calculation is flawed; evidence new to the record of this review establishes that U.S. utilization rates are not transferrable to the global market. Commerce should instead use a capacity utilization threshold of 85 percent that is applicable to the global market.¹⁶⁷
- In AR2, Commerce left domestic producers’ regression model essentially unchanged but calculated a price adjustment to estimate prices at 80 percent capacity utilization; Commerce’s sole basis was that this capacity utilization threshold was used in section 232 report,¹⁶⁸ however, that report’s analysis of capacity utilization was limited to the U.S. market and it was not representative of the global market.¹⁶⁹
- Evidence new to the record of this review establishes that U.S. utilization rates are not transferrable to the global market;¹⁷⁰ Commerce should instead use a global capacity utilization threshold tuned to the global market.¹⁷¹
- Domestic producers have provided ample record evidence, including U.S. government pronouncements in global fora, that establishes 85 percent utilization as the threshold applicable to the global market. Commerce has not addressed most of this evidence. Furthermore, Commerce should use an 85 percent threshold.¹⁷²
- A capacity utilization threshold of 83 percent would at least be closer to the reality of the global steel industry than Commerce’s existing approach.¹⁷³ The respondents did not respond to any of U.S. Steel’s pre-preliminary arguments on this point, but even the respondents argued that capacity utilization was 81 percent in 2018.¹⁷⁴
- Adjusting for fewer than all aspects of the PMS for which record evidence permits an adjustment is an abdication of Commerce’s statutory obligation, which violates Congressional intent.¹⁷⁵
- Congress provided Commerce with a tool for remedying all six distortions but Commerce’s preliminary PMS determination recognized four, and this recognition lacked any practical effect absent the associated adjustments necessary to eliminate those distortions from respondents’ reported costs.¹⁷⁶ Preliminarily, Commerce made only a single-regression-based adjustment that Commerce described only as “an appropriate method to measure the impact of an overcapacity-driven PMS.”¹⁷⁷
- Congress plainly intended that after identifying a PMS, Commerce would address each and every cost distortion for which an adjustment was reasonably available.¹⁷⁸

¹⁶⁷ *Id.* at 38-41.

¹⁶⁸ *Id.* at 38.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 38.

¹⁷¹ *Id.* at 39.

¹⁷² *Id.* at 39-40.

¹⁷³ *Id.* at 40.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 41.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 42.

POSCO's Comments:

- The petitioners' proposed global excess capacity-based regression methodology is flawed and must be rejected as a basis for quantifying a PMS.¹⁷⁹
- Data considerations confirm that Commerce should not apply a PMS adjustment factor and that the petitioners' data are flawed.¹⁸⁰
- Global capacity utilization was strong during the POR.¹⁸¹
- There is no product-specific data in the petitioners' regression model.¹⁸²
- The petitioners' model lacks other significant variables.¹⁸³
- The petitioners fail to include variables related to energy prices; energy is an input whose prices impact production costs and in turn energy impacts demand as such that oil prices increases spur demand for steel products.¹⁸⁴
- The respondents have included regression models for energy as well as data for oil, coke, and natural gas prices.¹⁸⁵

Hyundai's Comments:

- Commerce should reject the petitioners' regression analysis because: (1) the regression analysis does not establish a causal effect of excess capacity on HRC prices but only a correlation that is demonstrably biased; and (2) the adjustment factor is incorrectly calculated.¹⁸⁶
- Data considerations confirm that Commerce should not apply a PMS adjustment factor and that the petitioners' data are flawed.¹⁸⁷
- Global capacity utilization was strong during the POR.¹⁸⁸
- There is no product specific data in the petitioners' regression model.¹⁸⁹
- The petitioners' model lacks other significant variables.¹⁹⁰

U.S. Steel's Rebuttal Comments:

*Subject to modifications set forth in U.S. Steel's case brief, Commerce should continue to adjust for overcapacity-related distortion using the regression-based calculation.*¹⁹¹

- The respondents' "expert" conducted a flawed analysis.¹⁹²
 - The respondents' paid expert never analyzed or assessed the 10-year, 2009-2018, 46-country regression model actually used in Commerce's *Preliminary Results*.¹⁹³
 - It is noteworthy that the structure of his analysis begins by altering the data used in the petitioners' regression analysis on a dubious, unsubstantiated premise, and

¹⁷⁹ See POSCO Case Brief at 25.

¹⁸⁰ *Id.* at 28.

¹⁸¹ *Id.*

¹⁸² *Id.* at 29.

¹⁸³ *Id.* at 31.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ See Hyundai Case Brief at 26.

¹⁸⁷ *Id.* at 27.

¹⁸⁸ *Id.* at 28.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 30-31.

¹⁹¹ See U.S. Steel Rebuttal Brief at 25.

¹⁹² *Id.* at 27.

¹⁹³ *Id.* at 27.

- moving further afield from there, swapping variables, and shifting timescales.¹⁹⁴
- The expert never analyzed the actual regression model put forth by the petitioners but, rather a series of different models contrived by the economic policy professor who authored the analysis.¹⁹⁵
 - The respondents have provided no evidence to warrant altering the AUVs used in the regression model.¹⁹⁶
 - The respondents’ arguments are based begins by altering the AUVs for HRC to exclude HRS products which it alleges cannot be used in CRS production, in favor of a limited group of six-digit HTS figures.¹⁹⁷
 - None of the characteristics at the six-digit level concern the physiochemical properties of the HRS.¹⁹⁸
 - The regression model accounts for appropriate supply and demand side explanatory variables, and record evidence does not support the addition of variables proposed by the respondents.¹⁹⁹
 - The ordinary least squares methodology and underlying assumptions are econometrically sound.²⁰⁰

*Commerce’s Post-Regression Calculation Is Reasonable*²⁰¹

- Oversupplied steel that has steadily built up in the Korean market over the past five years is ample evidence that a five-year average in fact corresponds more closely to the POI market reality.²⁰²
- The goal of the PMS analysis is to measure the effect of overcapacity on the respondent’s HRC costs, which includes accounting for the medium-term impact of the global overcapacity crisis.²⁰³
- The five-year average is better than the most recent year in terms of reliability.²⁰⁴
- The respondents’ case briefs identify no record evidence that would contradict the foregoing observations.²⁰⁵

*Subject to the Issues Identified in U. S. Steel’s Case Brief, Commerce’s Preliminary Adjustment for Overcapacity Was Reasonable as a Whole*²⁰⁶

- For global steel overcapacity, at capacity utilization thresholds of 80, 81, 82, 83, 84, and 85 percent.²⁰⁷

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 28.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ See U.S. Steel Rebuttal Brief at 30.

²⁰⁰ *Id.* at 31.

²⁰¹ *Id.* at 33.

²⁰² *Id.* at 34.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.* at 35 (citing U.S. Steel’s Letter, “Cold-Rolled Steel from the Republic of Korea: Response to Particular Market Situation for Information,” dated January 7, 2021 (U.S. Steel’s Response for Information) at Exhibit 2 and Exhibit 3).

- That analysis indicates HRC prices would have been 32.83 percent higher if global steel production operated at a utilization rate of 83 percent, demonstrating the significant degree to which the HRC prices in the Korean market have been depressed directly and indirectly by the excess steel capacity crisis.²⁰⁸
- By increasing the cost of all of respondents' hot-rolled inputs by 32.83 percent in the final results, Commerce can account in full for the distortive effects of the "Steel Overcapacity and Price Suppression" distortive PMS factor in Korea.²⁰⁹

Hyundai's Rebuttal Comments:

*Commerce Should Not Apply Any Adjustment Based on Hot-Rolled Steel Pricing*²¹⁰

- As Hyundai demonstrated throughout this proceeding, there is no legal or factual basis to make any adjustments to Hyundai's cost of producing CRC.²¹¹
- The petitioners have simply failed to explain how the alleged distortions with respect to HRC pricing have anything to do with Hyundai's reported cost of producing CRS.²¹²
- Commerce correctly declined to apply PMS adjustment to self-produced inputs.²¹³

*Petitioner's Various Proposed PMS Adjustments are unreasonable and unsupportable.*²¹⁴

- The petitioner's proposed benchmark methodology to adjust the respondents' HRC costs is flawed and must be rejected as a basis for quantifying a PMS adjustment.²¹⁵
 - The evidence placed on the record by the petitioners suggests that the allegedly distortive pricing of unfairly traded Chinese HRS is a global phenomenon, Respondents addressed these flaws at pages 57-58 of the PMS Rebuttal submission.²¹⁶
- Commerce should not make any PMS adjustment based on CVD rates.²¹⁷
 - Adjusting the respondents' costs here to account for the hot-rolled or cold-rolled CVD rates would double count the impact of any subsidies on the companies and would amount to double counting.²¹⁸
 - Commerce has declined to adopt this suggestion in the prior second administrative review and the petitioners have presented no new arguments that would justify Commerce revisiting its decision in this administrative review.²¹⁹
- Commerce cannot apply an HRC regression adjustment to inputs other than HRC.²²⁰
 - The petitioners' claim that "the respondents' failure to procure HRC from third parties" contributed "to the problem of overcapacity in Korea" has nothing to do with the question of whether Hyundai Steel's actual costs of producing subject

²⁰⁸ *Id.* (citing U.S. Steel Response for Information at Exhibit 3).

²⁰⁹ *Id.* (citing U.S. Steel Case Brief at Section II-1).

²¹⁰ See Hyundai Rebuttal Brief at 33.

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.* at 35.

²¹⁴ *Id.* at 48.

²¹⁵ *Id.* at 49.

²¹⁶ *Id.* at 48.

²¹⁷ *Id.* at 50.

²¹⁸ *Id.* at 51.

²¹⁹ *Id.* at 39.

²²⁰ *Id.* at 35.

- merchandise are distorted.²²¹
- Hyundai Steel’s decision to use either the self-produced or purchased HRC inputs demonstrates that Hyundai Steel is an integrated steel producer that operates in a functioning, market-driven, market.²²²
 - There are no market distortions in the Korean HRC market to justify any adjustment to the respondents’ HRC costs.²²³
 - There is no basis to entertain petitioners’ fictional, “non-distorted” market of “what if Hyundai Steel had produced forty percent of its actual production” during the POR, or why that level of production is an appropriate assumption.²²⁴
 - Unsupported by record evidence is the petitioners’ proposed adjustment factor calculations, which rely on a hypothetical production level, unexplained assumptions (*i.e.*, arbitrarily treating certain cost elements as “fixed” costs and shifting around variable costs), and a mix of the respondents’ reported data.²²⁵
 - Commerce should reject the proposed PMS adjustments to Korean electricity costs.²²⁶
 - Despite the petitioners’ claim that Commerce did not address distorted electricity input costs, Commerce did address it, but did not make any adjustment related to electricity because the petitioner failed to substantiate its allegation as to how the alleged electricity distortion affects respondents’ cost of producing subject CRS.²²⁷
 - Commerce should not make any adjustments to inbound raw material freight costs.²²⁸
 - In the previous review, Commerce determined the petitioners’ allegation of distorted shipping rates did not contribute to a PMS and therefore also rejected the petitioners’ proposed adjustment.²²⁹
 - Commerce should refrain from making any PMS adjustments to costs of iron ore.²³⁰
 - The petitioners were unable to provide “sufficient evidence to establish a distortion in Australian iron ore prices” in the last administrative review as Commerce has correctly found, and the same deficiencies exist in the instant review, warranting outright rejection of the petitioners’ arguments regarding iron ore input costs.²³¹
 - Commerce has no reliable basis to quantify U.S. Steel’s claim regarding subsidization of Australian iron ore.²³²
 - Commerce should not adopt the petitioners’ suggested 83 or 85 percent production capacity targets.²³³
 - Given the petitioners’ inability to support its 83 percent or 85 percent production capacity targets and consistent with Commerce’s rationale in recent cases, it is unrealistic to presume that long-term sustainability and profitability in the global steel

²²¹ *Id.* at 39.

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.* at 44.

²²⁵ *Id.* at 45.

²²⁶ *Id.* at 51.

²²⁷ *Id.* at 52.

²²⁸ *Id.* at 58.

²²⁹ *Id.* at 52 (citing *CRS Korea 2017-18 IDM* at Comment 1).

²³⁰ *Id.*

²³¹ *Id.* at 58.

²³² *Id.* at 57.

²³³ *Id.* at 45.

- industry requires a minimum capacity utilization rate of 85 percent.²³⁴
- A regression analysis based on a minimum 85 percent (or 83 percent as the petitioner now advocates) global capacity utilization rate is not reasonable, and Commerce must not rely on any PMS adjustment methodology that itself is based on an unreasonable and unnecessary level of capacity utilization.²³⁵

POSCO's Rebuttal Comments:

*Commerce Should Not Apply Any Adjustment Based on Hot-Rolled Steel Pricing*²³⁶

- The entire premise of the petitioners' regression analysis to quantify the alleged distortion is to estimate a counterfactual price of HRC in the Korean market presuming a certain level of global HRC production capacity utilization.²³⁷
- The allegation and proposed adjustments have nothing to do with the cost to produce HRC.²³⁸

*Commerce Correctly Declined to Apply a PMS Adjustment to Self-Produced Inputs*²³⁹

- As an integrated producer, POSCO makes business decisions based on, among other things, market supply and demand, profitability, and product availability.²⁴⁰
- The petitioners' claim that "Respondents' failure to procure HRC from third parties" contributed "to the problem of overcapacity in Korea" has nothing to do with the question of whether POSCO's actual costs of producing subject merchandise are distorted.²⁴¹
- Again, POSCO only used self-produced HRC to produce subject cold-rolled products.²⁴²
- Commerce cannot apply a HRC regression adjustment to inputs other than HRC.²⁴³

*Commerce Should Not Adopt Petitioners' Suggested 83 or 85 Percent Production Capacity Targets*²⁴⁴

- The petitioners' inability to support its 83 percent or 85 percent production capacity targets and consistent with Commerce's rationale in recent cases, it is unrealistic to presume that long-term sustainability and profitability in the global steel industry requires a minimum capacity utilization rate of 85 percent.²⁴⁵
- A regression analysis based on a minimum 85 percent (or 83 percent as the petitioners now advocates) global capacity utilization rate is not reasonable, and Commerce must not rely on any PMS adjustment methodology that itself is based on an unreasonable and unnecessary level of capacity utilization.²⁴⁶

²³⁴ *Id.* at 48.

²³⁵ *Id.*

²³⁶ See POSCO Rebuttal Brief at 3.

²³⁷ *Id.* at 4.

²³⁸ *Id.*

²³⁹ See POSCO Rebuttal Brief at 5.

²⁴⁰ *Id.* at 9.

²⁴¹ *Id.* at 9.

²⁴² *Id.*

²⁴³ *Id.* at 6.

²⁴⁴ *Id.* at 15.

²⁴⁵ *Id.* at 18.

²⁴⁶ *Id.*

*The petitioners' various proposed PMS adjustments are unreasonable and unsupportable*²⁴⁷

- Commerce correctly concluded in the *Preliminary Results* that the petitioners' benchmark analysis is not an appropriate method to measure the purported impact of a PMS.²⁴⁸
- The evidence placed on the record by the petitioners suggests that the allegedly distortive pricing of unfairly traded Chinese HRS is a global phenomenon (POSCO addressed these flaws as pages 57-58 of the rebuttal PMS submission).²⁴⁹
- Commerce should not make any PMS adjustment based on CVD rates.²⁵⁰
 - Adjusting POSCO's costs to account for the hot rolled or cold rolled CVD rates would double count the impact of any subsidies on the companies and would amount to double counting.²⁵¹
 - Commerce declined to adopt this suggestion in the prior second administrative review and the petitioners have presented no new arguments that would justify Commerce revisiting its decision in this administrative review.²⁵²
- Commerce should reject the proposed PMS adjustments to Korean electricity costs.²⁵³
 - The petitioners' method does not result in a fair reflection of the prices that Korean industrial consumers pay for electricity.²⁵⁴
 - The petitioners' method does not and cannot account for POSCO's self-generated electricity.²⁵⁵
- Commerce should not make any adjustments to inbound raw material freight costs.²⁵⁶
 - In this review, the petitioners did not even attempt to quantify an adjustment to POSCO's freight rates, stating the petitioners would wait for data in the questionnaire responses to "quantify these distortions."²⁵⁷
 - Commerce should recognize the petitioners' inability to even attempt to quantify an adjustment as an admission that their allegation is nonsensical and any adjustment, even after respondents' responses, would be unacceptable.²⁵⁸
 - Inbound freight is a miniscule portion of total costs and any distortion has no meaningful impact on the reported costs.²⁵⁹
- Commerce should refrain from making any PMS adjustments to costs of iron ore.²⁶⁰
 - Commerce has no reliable basis to quantify the petitioners' claim regarding subsidization of Australian iron ore.²⁶¹
 - The petitioners were unable to provide "sufficient evidence to establish a distortion in Australian iron ore prices" in the last administrative review as Commerce has correctly found, and the same deficiencies exist in the instant review, warranting

²⁴⁷ *Id.* at 18-19 (citing Preliminary PMS Memorandum at 21).

²⁴⁸ *Id.* at 19 (citing *CRS Korea 2017-18* IDM at Comment 3 at 52).

²⁴⁹ *Id.*

²⁵⁰ *Id.* at 20.

²⁵¹ *Id.* at 21.

²⁵² *Id.*

²⁵³ *Id.* at 21.

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *Id.* at 22.

²⁵⁷ *Id.* (citing Petitioners' PMS Allegation at 87).

²⁵⁸ *Id.* at 22.

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *Id.* at 27.

outright reject of the petitioners' arguments regarding iron ore input costs.²⁶²

Commerce's Position: Because we find that the petitioners failed to provide sufficient evidence that a PMS existed in Korea that distorted the COP of CRS in this POR, we are not making a PMS adjustment in the final results of this administrative review. Accordingly, we determine that it is unnecessary to address the arguments regarding quantification of a PMS adjustment for purposes of the final results of this administrative review.

Comment 2: Constructed Export Price (CEP) Offset for POSCO

POSCO's Comments:²⁶³

- POSCO's selling functions establish that a CEP offset is warranted.²⁶⁴
- POSCO does not need to engage in significant sales and marketing efforts to sell to its U.S. affiliates at the CEP level of trade.²⁶⁵

Petitioners' Rebuttal Comments:

- Commerce properly denied POSCO's request for a CEP offset in the *Preliminary Results* and should continue to deny a CEP offset in the final results.²⁶⁶
- Commerce stated that it could not "determine if the home market sales and U.S. sales are made at different LOTs," "{b}ecause POSCO/PIC did not provide the data or documentation to support its quantitative analysis of the selling functions it performed," and that Commerce was "unable to rely on the data POSCO/PIC provided with respect to the intensity of its selling functions."²⁶⁷
- Commerce is correct in its determination that POSCO did not provide sufficient supporting documentation.²⁶⁸
- The very limited data that POSCO did submit on the record actually contradict POSCO's claims regarding the differences in selling functions and level of trade between POSCO's home market and U.S. CEP sales, thus there is no basis to grant a CEP offset to POSCO in the final results.²⁶⁹
- Data provided by POSCO actually demonstrate that POSCO's home market sales were not subject to higher levels of selling activity. Given all of the above, POSCO's entire argument for why it should be granted the CEP offset falls apart.²⁷⁰
- POSCO provides no legal or factual basis for not maintaining detailed records that Commerce requires in order to qualify for a CEP offset.²⁷¹
- The evidence that POSCO submitted does not support its request for a CEP offset.²⁷²

²⁶² *Id.*

²⁶³ *See* POSCO Case Brief at 31.

²⁶⁴ *Id.* at 32.

²⁶⁵ *Id.* at 33.

²⁶⁶ *See* Petitioners' Rebuttal Brief at 2.

²⁶⁷ *Id.* at 1-2.

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.* at 6.

²⁷¹ *Id.*

²⁷² *Id.*

- POSCO's reported differences in selling activities do not constitute a difference in level of trade.²⁷³
- POSCO has not reported substantial differences in selling functions between markets.²⁷⁴
- POSCO has failed to provide the type of data explicitly requested by Commerce.²⁷⁵
- POSCO provided a calculation of its market-specific total hours worked by sales personnel that shows home market sales were not subject to more intense selling activities.²⁷⁶
- POSCO has failed to provide any other type of supporting documentation maintained in the ordinary course of business that establish and support POSCO's claimed differences in the selling functions performed for home market and U.S. CEP sales.²⁷⁷
- The facts on the record do not indicate that POSCO's "whole scheme of marketing" differs enough between its home market and U.S. CEP sales in order for a difference in level of trade to exist.²⁷⁸
- There is insufficient support by POSCO to suggest that POSCO's home market sales were made at a more advanced stage of marketing.²⁷⁹

Commerce's Position: We continue to find that no CEP offset is warranted for POSCO's CEP sales in these final results. As we noted in the *Preliminary Results*, Commerce will grant a CEP offset, under section 773(a)(7)(B) of the Act, if it determines that NV is established at a level of trade (LOT) constitutes a more advanced stage of distribution than the LOT of the CEP, and the data available do not provide an appropriate basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible).²⁸⁰

In these final results, we continue to find that the: (1) sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support services provided by POSCO in the United States are too insignificant to establish that POSCO's CEP sales are at a separate LOT than POSCO's home market sales.²⁸¹ Moreover, we note that our analysis of POSCO's LOT in these final results is consistent with that employed in the *LTFV Final Determination*, wherein we also determined that the selling functions provided by POSCO on its U.S. sales were too insignificant to establish POSCO's CEP sales as separate and distinct from POSCO's other U.S. sales or to POSCO's sales in the home market.²⁸²

²⁷³ *Id.* at 7.

²⁷⁴ *Id.* at 10.

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ See *Preliminary Results* PDM at 19.

²⁸¹ See POSCO's Letter, "Cold Rolled Steel Flat Products from the Republic of Korea: Initial Section A Questionnaire Response," dated February 14, 2020 (POSCO February 14, 2020 Section A Questionnaire Response) at A-19 through A-29 and Exhibits A-6.2 and A-7.

²⁸² See *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 11757 (March 7, 2016) (*LTFV Preliminary Determination*), and accompanying PDM at 18-2,1 unchanged in *Certain Cold Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 49953 (July 29, 2016) (*LTFV Final Determination*).

In this review, and consistent with section 773(a)(7)(B) of the Act, we have analyzed the: (1) sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support services provided by POSCO in both the home market and the United States.²⁸³ Our analysis of these selling functions continues to indicate that POSCO provided sales support to its CEP entities, which were supported by POSCO in Korea, and that the sales activities undertaken by POSCO in Korea benefited both CEP and Korean sales.²⁸⁴ The role of these multiple entities in the sales process suggests that sales and marketing, freight and delivery, inventory maintenance, and warranty and technical support had minor variations across both CEP and home market channels.²⁸⁵

Based on the foregoing, and consistent with our finding in the *LTFV Final Determination* of this proceeding and the record of this review, we continue to find, based on our examination of POSCO's home market and CEP selling activities, that POSCO's CEP sales are not at a level of trade substantially more advanced than POSCO's home market sales.²⁸⁶ Accordingly, we have continued to deny POSCO a CEP offset in these final results. Moreover, as the petitioners have also noted, with respect to CEP sales, POSCO provides certain selling functions (*e.g.*, sales forecasting, strategic planning, market research and marketing support), which benefit both POSCO International Corporation and POSCO America Corporation who sell subject merchandise to the United States.²⁸⁷ As such, we continue to find that such activities benefit both home market and CEP sales activities. Given that POSCO's sales activities (*e.g.*, sales forecasting, strategic planning, market research and marketing support) benefit both markets, we dispute POSCO's assertion that it consistently provides a greater degree of sales support on home market transactions than it provides for CEP transactions.²⁸⁸

Based on our examination of the selling functions reported by POSCO in the home market and on its CEP sales, we continue to find insufficient evidence to suggest that the home market LOT is sufficiently more advanced than the CEP LOT to warrant granting POSCO an LOT adjustment. Moreover, we find no evidence that establishes the difference in either sales activity or selling expenses which accrue through POSCO selling out of inventory as opposed to POSCO selling directly to its customer. Accordingly, consistent with the *Preliminary Results*, we are not making a CEP offset in these final results.

²⁸³ See *LTFV Final Determination* IDM at Comment 9; see also *Preliminary Results*.

²⁸⁴ See POSCO February 14, 2020 Section A Questionnaire Response at Exhibit A-6.1 (home market sales) and Exhibit A-6.2 (U.S. sales).

²⁸⁵ *Id.*

²⁸⁶ See *LTFV Preliminary Determination* PDM at 18-21, unchanged in *LTFV Final Determination*; see also, *e.g.*, *Silicomanganese from Australia: Final Determination of Sales at Less Than Fair Value*, 81 FR 8682 (February 22, 2016), and accompanying IDM at Comment 2; and *Cut to Length Plate from Korea* IDM at Comment 9.

²⁸⁷ See POSCO February 14, 2020 Section A Questionnaire Response at A24-A29.A-18-A-21 and Exhibits A-6(1) and A-6(2).

²⁸⁸ See POSCO Case Brief at 32-37.

Comment 3: Correction of Calculation Errors

POSCO's Comments:²⁸⁹

- Commerce's preliminary margin calculation contained errors with respect to: (1) the reported home market gross unit price; and (2) the variable cost of manufacturing (VCOMCOP).²⁹⁰
- Specifically, Commerce used the incorrect gross unit price for home market sales by applying the data field that includes freight revenue charged to customers (*i.e.*, GRSUPRH).²⁹¹
- In regard to VCOMCOP, Commerce erroneously failed to account for the variance field (VAR_FOH).²⁹²

Hyundai's Comments:

- Both home market warehousing (WAREHSH) and warranty (WARRH) expenses, which pertain to direct selling expenses, should be deducted from gross unit price in the margin calculation.²⁹³
- Late payment (LATEPAYU) relates to charges Hyundai Steel requests from customers in instances where the customer is late in paying Hyundai Steel for its order; thus, these are not direct selling expenses but price adjustments.²⁹⁴
- U.S. duties (USDUTYU) was incorrectly applied twice in the margin program, but it should only be applied one time.²⁹⁵

No other interested parties commented on these issues.

Commerce's Position: We agree with the respondents that Commerce made certain errors in the programming applied in the margin programs used in the *Preliminary Results*.

Specifically, for POSCO, for these final results, we have corrected the error concerning gross unit price by applying the gross unit price net of freight revenue charged to POSCO's customers and the variable cost of manufacturing. For Hyundai, we corrected the error made to the home market warehousing variables by deducting them from the gross unit price, as well as applying the field LATEPAYU as a price adjustment, and we removed the duplicate application of USDUTYU.

²⁸⁹ *Id.* at 37.

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Id.* at 38.

²⁹³ See Hyundai Case Brief at 31.

²⁹⁴ *Id.* at 32.

²⁹⁵ *Id.* at 33.

Comment 4: Whether Hyundai's Cost Accounting Merits AFA

U.S. Steel's Comments:

- Hyundai refused to follow Commerce's instructions for proper reporting of cost of manufacturing (COM), warranting application of facts available with adverse inferences.²⁹⁶
- Commerce requested that Hyundai alter its reporting and Hyundai failed to comply.²⁹⁷
- Hyundai's contentions to the contrary are unsupported and do not rehabilitate Hyundai's failures.²⁹⁸
- Commerce should disallow Hyundai's byproduct credits. Hyundai is making an untenable claim for a byproduct credit, and the respondent bears the burden of providing evidence that the amount is reasonable before any credit can be claimed.²⁹⁹
- Hyundai's proposed calculation is flawed regarding by-product offsets, and there is no good reason to treat certain material costs differently than other material costs.³⁰⁰
- Hyundai's reporting of yield losses is flawed.³⁰¹
- Hyundai's responses do not rehabilitate its understatement of costs, as Hyundai's failure to properly account for yield loss is contrary to Commerce's instructions and results in significant distortions to Hyundai's reported COM.³⁰²

Hyundai's Rebuttal Comments:

*There is no basis in fact or law to apply AFA*³⁰³

- Commerce, not the petitioners, is charged with the responsibility of examining the record through the use of statute through section 782(d) of the Act.³⁰⁴
- Hyundai fully complied with the reporting requirements in the initial questionnaire, and fully responded to Commerce's supplemental questions absent further inquiries, Commerce cannot at this stage resort to AFA.³⁰⁵
- Commerce took no steps to identify any deficiency in Hyundai's reporting as would be required by section 782(d) of the Act prior to resorting to any form of adverse inferences.³⁰⁶

*Hyundai Followed Commerce's Instructions and the Statute in Properly Reporting of the Costs of Manufacturing*³⁰⁷

- Commerce requires respondents to report the costs of manufacturing.³⁰⁸
 - As Hyundai has explained, it has a process cost accounting system, whereby raw

²⁹⁶ See U.S. Steel Case Brief at 5.

²⁹⁷ *Id.* at 5.

²⁹⁸ *Id.* at 10.

²⁹⁹ *Id.* at 12.

³⁰⁰ *Id.* at 23.

³⁰¹ *Id.* at 28.

³⁰² *Id.* at 28.

³⁰³ See Hyundai Rebuttal Brief at 5.

³⁰⁴ *Id.* at 8. (section 776(d) of the Act).

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

- materials are introduced into a particular production process where they undergo further processing.³⁰⁹
- The costs incurred in that process are allocated to the products coming out of that process by various means.³¹⁰
 - Hyundai reported costs of manufacturing in full compliance with Commerce's requirements.³¹¹
 - Hyundai fully responded to Commerce's supplemental questionnaire.³¹²
 - Commerce asked Hyundai in its supplemental section D Questionnaire about the average cost of manufacture of each CONNUM.³¹³
 - Commerce ultimately rejected U.S. Steel's theory that the reported costs should not account for changes in inventory and did not issue any further questions on this topic.³¹⁴
 - U.S. Steel's suggested remedy of AFA is barred as a matter of law. On this point, Commerce's supplemental question was in direct contradiction to the standard questionnaire.³¹⁵
 - Commerce's practice that is long-standing and, in any event, subsequently clarified portends that if Commerce could possibly view Hyundai Steel's reporting to be deficient, Commerce would need to issue further supplemental questionnaires before resorting to AFA.³¹⁶
 - U.S. Steel's suggested cost reporting construct is inconsistent with Commerce practice.³¹⁷
 - U.S. Steel continues to advance a misguided theory that the reported costs should ignore changes in beginning and ending WIP and semi-finished products inventory.³¹⁸

*Commerce Should Not Disallow Hyundai's By-Product Credits*³¹⁹

- U.S. Steel rehashes its argument that Commerce should disallow the by-product credits that are reflected in Hyundai's reported costs of manufacturing, claiming that respondents have an express burden to demonstrate that the amount is reasonable before any credit can be claimed.³²⁰
- U.S. Steel points to non-market economy cases, where Commerce has stated that where parties request a by-product credit in Commerce's calculation, parties need to present not only evidence that the generated by-product is sold or reused but also that Commerce has

³⁰⁹ *Id.* at 8-9.

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² *Id.* at 14.

³¹³ *Id.* at 16.

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ *Id.* at 17.

³¹⁸ *Id.*

³¹⁹ *Id.* at 23.

³²⁰ *Id.* at 16.

all necessary information to incorporate such offsets into the margin calculation.³²¹

*Hyundai Appropriately Accounted for Yield Losses in Its Reported Costs*³²²

- U.S. Steel’s claim that Hyundai’s reported costs do not properly reflect yield loss stems from its attempt to calculate artificial costs based on the initial inputs applying successive yield losses and ignoring changes in semi-finished product inventories.³²³
- As a preliminary matter, yield loss in and of itself is not an essential component to calculate costs, but rather is separately measured from the production process.³²⁴
- Specifically, yield loss is measured by comparing the output quantity to the input quantity for the same process.³²⁵
- Hyundai allocates all costs to finished production (*i.e.*, net of yield loss) in its normal cost accounting, thus incorporating yield loss in its reported costs.³²⁶

Commerce’s Position: Consistent with the *Preliminary Results*,³²⁷ we disagree with the petitioners’ assertion that Hyundai did not respond properly to Commerce’s questionnaires regarding its reported COM. Based on Commerce’s analysis of Hyundai’s cost reporting as discussed below, we also disagree with the petitioners’ claims that the application of AFA is warranted based on Hyundai’s reporting of by-product offsets and yield losses.

AFA for reported COM

Commerce issued its questionnaire on January 17, 2020, and in section D requested that Hyundai report information about the COP of merchandise sold in the foreign market and the CV of merchandise sold in the United States.³²⁸ On May 15, 2020, Commerce issued a supplemental questionnaire pertaining to section D in order to clarify Hyundai’s response.³²⁹ In question nine of the supplemental questionnaire, Commerce asked Hyundai to “{r}eport the average cost of manufacture by CONNUM that: (a) is not influenced by inventory movements within and between various facilities within each process step; (b) reflects the calculated yields; and (c) is weight averaged by the production quantities used to calculate the yields.”³³⁰ Counsel for Hyundai contacted Commerce regarding this question and asked for clarification regarding how it should report certain COMs.³³¹ In response, Commerce explained that Hyundai’s COMs

³²¹ *Id.*; see also *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China*, 73 FR 40485 (July 15, 2008), and accompanying IDM at Comment 34.

³²² *Id.* at 30.

³²³ *Id.*

³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ *Id.*

³²⁷ See *Preliminary Results* PDM.

³²⁸ See Letter to Hyundai, AD Questionnaire, dated January 17, 2020.

³²⁹ See Letter to Hyundai, “Antidumping Duty Administrative Review of Cold-Rolled Steel Flat Products from Korea: Supplemental Questionnaire for Section D,” dated May 15, 2020.

³³⁰ *Id.* at 5.

³³¹ See Memorandum, “Certain Cold Rolled Steel Flat Products from the Republic of Korea: *Ex-Parte* Communication; 2018-2019,” dated May 22, 2020.

should be based on COM and not the transfer price of movements within and between facilities.³³²

When Commerce clarified question nine of the supplemental section D questionnaire by explaining that “Hyundai’s reported costs of manufacturing should be based on cost of manufacturing and not the transfer prices of movements within and between facilities,”³³³ our intention was that Hyundai should not include any transfers of work-in-progress (WIP) or finished goods (FG) within and between facilities at a transfer price. Our emphasis was on the reporting of the actual costs of manufacturing and not transfer prices. Hyundai explained and demonstrated in its responses that its cost accounting system records transfers of WIP between cost stages and facilities at the actual cost of production.³³⁴ These costs are then combined and cumulated with the current stage of WIP to calculate the cumulative costs of production at that stage. The petitioners, however, interpreted supplemental question nine as requesting that Hyundai exclude WIP, but include movements in FG.³³⁵ This was not our intent as changes in WIP are appropriately part of COM, and FG is not part of the COM. COM is normally calculated by adding beginning raw materials inventory to beginning work-in-progress, plus material purchases and processing costs, minus ending raw materials inventory and ending work-in-progress, according to generally accepted accounting principles (GAAP).³³⁶ The differences noted by the petitioners appropriately involve the movement of semi-FG inventory (*e.g.*, WIP) and ending FG inventory of the relevant stage of production, and does not relate to the yield losses incurred. In addition, the petitioners ignore the transfer of actual production for each stage in the production process to the next stage when it analyzes each stage of production on its own.³³⁷ As Hyundai has responded to our question and because Hyundai’s COM properly reflects changes in raw materials and WIP inventory, we determine that AFA is not warranted in this instance, and we have accordingly, not adjusted Hyundai’s reported COM to exclude such changes in inventory.

By-Products

Hyundai generates by-products in its fully integrated steel mill that are both sold and re-used.³³⁸ Hyundai explained in its responses that it produces different types of energy by-products.³³⁹ Further, Hyundai self-consumes these energy by-product inputs in its production and sells any excess.³⁴⁰ U.S. Steel challenged Hyundai’s reuse of energy by-product inputs. However, the

³³² *Id.*

³³³ *Id.*

³³⁴ See Hyundai’s Letter, “Cold Rolled Steel Flat Products from the Republic of Korea: Hyundai Steel’s Supplemental Section D Questionnaire Response,” dated June 5, 2020 (Hyundai’s June 5, 2020 Supplemental Section D Response) at SD-4; and Hyundai’s Rebuttal Brief at 19-20.

³³⁵ See U.S. Steel Case Brief at 11-12.

³³⁶ See Epstein, Barry J. et. al., *GAAP 2005: Interpretation and Application of Generally Accepted Accounting Principles*. Wiley, 2005.

³³⁷ See U.S. Steel Case Brief at 11-12. Hyundai rebuts this contention by explaining that its response relied on its actual books and records, which reflect changes in WIP and semi-finished product inventory. See Hyundai Rebuttal Brief at 16, 19-22.

³³⁸ See Hyundai’s June 5, 2020 Supplemental Section D Response at SD-6.

³³⁹ *Id.*

³⁴⁰ *Id.* at SD-6 to SD-8.

credit for the by-product offsets and the self-consumed energy produced from them are properly annotated in Hyundai's response to supplemental section D of Commerce's questionnaire.³⁴¹

In the supplemental section D questionnaire, Commerce identified these credits and requested supporting documentation from Hyundai, to which Hyundai demonstrated how it recorded the relevant by-product offsets and its related consumption of the energy produced from the by-products.³⁴² Although the petitioners raise questions regarding other by-product offsets such as scrap and coil in their case brief,³⁴³ these by-product offsets are small³⁴⁴ and the petitioners' failure to raise them earlier in the investigation prevented Commerce from including questions relating to these smaller by-product offsets in a supplemental questionnaire. Nevertheless, during this administrative review, Commerce requested additional information regarding the larger and most relevant by-product offsets.³⁴⁵ Because we have determined that the recorded by-product offsets related to energy appear reasonable, and we have not adjusted the reported by-product offsets, we do not find it necessary to consider Hyundai's arguments that the calculations proposed by the petitioners are inaccurate. Therefore, we are relying on Hyundai's submitted by-product offsets, as reported.

Yield Loss Reporting

In Hyundai's normal books and records, yield loss ratios are not used to compute costs, but rather, are separately measured from the production process for informational purposes.³⁴⁶ Hyundai calculated its yield loss ratios by comparing output quantity to input quantity.³⁴⁷ In actuality, Hyundai incorporates yield losses by allocating all costs to finished production in its normal cost accounting system.³⁴⁸ Hyundai's responses demonstrate that Hyundai's costs fully account for yield losses by allocating all the costs cumulated successively from each step of the production process to the final, finished stage of production.³⁴⁹

Based on the above analysis, we find that Hyundai has sufficiently reported COM, based on its books and records, as well as demonstrated why its by-product offsets are appropriate, and that its yield loss reporting is reasonable. Therefore, Commerce has not adjusted Hyundai's reported costs. Based on the aforementioned facts on the record, Commerce determines that application of AFA to Hyundai is not warranted for these final results.

³⁴¹ See Hyundai's June 5, 2020 Supplemental Section D Response at SD-9.

³⁴² *Id.* at SD-5 to SD-9.

³⁴³ See U.S. Steel Case Brief at 15-17.

³⁴⁴ See Hyundai's June 5, 2020 Supplemental Section D Response at Exhibit SQD-8.10.

³⁴⁵ See, e.g., Hyundai's June 8, 2020 Supplemental Section D Response at SD-7 and Exhibit SDQ-8 (containing multiple examples of Hyundai allocating the costs over the output at a given stage of production in the sample CONNUM build-ups).

³⁴⁶ See Hyundai's Letter, "Cold Rolled Steel Flat Products from the Republic of Korea: Hyundai Steel's Initial Sections D and E Response," dated March 2, 2020 at D-25 and Exhibits D-10 (containing yield loss ratios).

³⁴⁷ *Id.* at D-38 and Exhibits D-12 to D-13.

³⁴⁸ *Id.* at D-36 to D-39 and Exhibits D-12 to D-13.

³⁴⁹ See Hyundai's June 5, 2020 Supplemental D Response at Exhibit SQD-8.1 (Containing a sample cost buildup for CONNUM with the largest U.S. sales finished in Dangjin, where in step 5 for Semi Finished Goods – SHCJ, the total costs are allocated over total production quantity).

Comment 5: Assignment of an Assessment Rate to a Certain U.S. Affiliate

POSCO's Comments:³⁵⁰

- Commerce should correct the liquidation instructions such that a certain U.S. affiliate is assigned a separate assessment rate for its subject merchandise entries for consumption during the POR.³⁵¹
- The U.S. affiliate at issue was involved in the sales of subject merchandise to the United States during the POR.

No other interested parties commented on this issue.

Commerce's Position: We agree with POSCO that we erred by inadvertently omitting a certain U.S. affiliate of POSCO's in the draft U.S. Customs and Border Protection (CBP) liquidation instructions that Commerce issued to interested parties with the *Preliminary Results*. We determine that POSCO's relevant U.S. affiliate imported subject merchandise into the United States during the POR.³⁵² Further, Commerce's practice is to include such importers in the liquidation instructions when they had entries of subject merchandise during the period of review.³⁵³ Accordingly, Commerce will correct the CBP liquidation instructions for these final results and properly include POSCO's U.S. affiliate.

VII. RECOMMENDATION

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



Agree



Disagree

7/23/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh

Acting Assistant Secretary

for Enforcement and Compliance

³⁵⁰ See POSCO Case Brief at 39. The name of the U.S. affiliate is considered business proprietary information.

³⁵¹ *Id.*

³⁵² See POSCO's Letter, "Cold Rolled Steel Flat Products from the Republic of Korea: Initial Section C Questionnaire Response," dated February 14, 2020 at 49.

³⁵³ See, e.g., Commerce's liquidation instruction regarding POSCO issued in the 2017-18 administrative review of the antidumping duty order of certain cold-rolled steel flat products from the Republic of Korea (CBP Message No. 0232401 dated August 19, 2020); see also POSCO's February 14, 2020 Section A Questionnaire Response at 11 (containing POSCO's response to Commerce's request for importer names).