UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-580-870
Administrative Review
POR: 9/1/2018-8/31/2019
Public Document
E&C/OVI: FS, DF, MF

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 Oil Country Tubular Goods from the Republic of Korea

I. SUMMARY

The Department of Commerce (Commerce) has analyzed the comments submitted by the interested parties in the administrative review of the antidumping duty (AD) order on certain oil country tubular goods (OCTG) from the Republic of Korea (Korea) covering the period of review (POR) September 1, 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 calculation for the two mandatory respondents, Hyundai Steel Company (Hyundai Steel) and SeAH Steel Corporation (SeAH). We continue to find that SeAH sold the subject merchandise in the United States at prices below normal value (NV), and we find that Hyundai Steel did not. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

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

[1] *See Certain Oil Country Tubular Goods from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2018-2019*, 86 FR 6868 (January 25, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

General Issues

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

Hyundai Steel-Specific Issues

Comment 4: Arm's Length Adjustment for Services from Affiliate
Comment 5: Transportation of OCTG from Affiliate
Comment 6: Cost of Prime Products Sold in the United States
Comment 7: Transfer Price as an Indirect Selling Expense
Comment 8: Correcting Drafting Errors
Comment 9: Hyundai Steel's Entered Value
Comment 10: U.S. Warehousing Expense
Comment 11: Reallocating an Input as a Packing Expense

SeAH-Specific Issues

Comment 12: PMS Adjustment in the Sales-Below-Cost Test
Comment 13: Freight Revenue Cap
Comment 14: Calculation of General and Administrative (G&A) Expenses Incurred by SeAH's U.S. Affiliate
Comment 15: Correction of a Ministerial Error in SeAH's Preliminary Margin Program
Comment 16: SeAH's Kuwait Sales to Calculate Normal Value
Comment 17: Constructed Export Price (CEP) Offset

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 25, 2021, the following parties submitted case briefs: (1) Maverick Tube Corporation, Tenaris Bay City, Inc., and IPSCO Tubulars Inc. (collectively, Maverick);[4] (2) United States Steel Corporation (U.S. Steel);[5] (3) Hyundai Steel;[6] (4) SeAH;[7]

[2] *See Preliminary Results.*
[3] *Id.*
[4] *See* Maverick's Letter, "Oil Country Tubular Goods from the Republic of Korea: Case Brief of Maverick Tube Corporation, Tenaris Bay City, Inc., and IPSCO Tubulars Inc.," dated February 25, 2021 (Maverick's Case Brief).
[5] *See* U.S. Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea: Case Brief of United States Steel Corporation," dated February 26, 2021 (U.S. Steel's Case Brief).
[6] *See* Hyundai Steel's Letter, "Certain Oil Country Tubular Goods from the Republic of Korea – Case Brief," dated February 25, 2021 (Hyundai Steel's Case Brief).
[7] *See* SeAH's Letter, "Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea – Case Brief of SeAH Steel Corporation," dated February 25, 2021 (SeAH's Case Brief).

and (5) Husteel Co., Ltd. (Husteel).[8] Also on February 25, 2021, AJU Besteel Co., Ltd. (AJU Besteel)[9] and ILJIN Steel Corporation (ILJIN)[10] submitted letters in support of Hyundai Steel's case brief. On March 4, 2021, the following parties submitted rebuttal briefs: (1) Maverick;[11] (2) U.S. Steel;[12] (3) Hyundai Steel;[13] and (4) SeAH.[14] Also on March 4, 2021, Husteel submitted a letter in support of Hyundai Steel's and SeAH's rebuttal briefs.[15]

On February 24, 2021, U.S. Steel,[16] Hyundai Steel,[17] and SeAH,[18] filed a request for a hearing. Between March 23, 2021, and April 14, 2021, U.S. Steel,[19] Hyundai Steel,[20] and SeAH,[21] withdrew their hearing requests. On April 13, 2021, Commerce held a video conference with counsel for U.S. Steel.[22] On April 22, 2021, Commerce held a video conference with counsel for Hyundai Steel and SeAH.[23]

On April 28, 2021, we extended the deadline for issuing the final results of this administrative review, until July 23, 2021.[24] Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

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[8] *See* Husteel Co., Ltd. (Husteel)'s Letter, "Oil Country Tubular Goods from the Republic of Korea, Case No. A-580-870: Husteel's Case Brief," dated February 25, 2021 (Husteel's Case Brief).
[9] *See* AJU Besteel's Letter, "Certain Oil Country Tubular Goods from the Republic of Korea – Letter in Support of Case Briefs," dated February 25, 2021.
[10] *See* ILJIN's Letter, "Certain Oil Country Tubular Goods from the Republic of Korea – Letter in Support of Case Briefs," dated February 25, 2021.
[11] *See* Maverick's Letter, "Oil Country Tubular Goods from the Republic of Korea: Rebuttal Brief of Maverick Tube Corporation, Tenaris Bay City, Inc. and IPSCO Tubular Inc.," dated March 4, 2021 (Maverick's Rebuttal Brief).
[12] *See* U.S. Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea: Rebuttal Brief of United States Steel Corporation," dated March 5, 2021 (U.S. Steel's Rebuttal Brief).
[13] *See* Hyundai Steel's Letter, "Certain Oil Country Tubular Goods from the Republic of Korea – Rebuttal Brief," dated March 4, 2021 (Hyundai Steel's Rebuttal Brief).
[14] *See* SeAH's Letter, "Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from Korea – Rebuttal Brief of SeAH Steel Corporation," dated March 5, 2021 (SeAH's Rebuttal Brief).
[15] *See* Husteel's Letter, "Oil Country Tubular Goods from Republic of Korea, Case No. A-580-870: Letter in Support of Respondents' Rebuttal Briefs," dated March 4, 2021.
[16] *See* U.S. Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea: U.S. Steel Request for Public Hearing," dated February 24, 2021.
[17] *See* Hyundai Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea: Request for Public Hearing," dated February 24, 2021.
[18] *See* SeAH's Letter, "Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from the Republic of Korea – Hearing Request," dated February 24, 2021.
[19] *See* U.S. Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea: U.S. Steel Withdrawal of Request for Public Hearing," dated April 13, 2021.
[20] *See* Hyundai Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea: Withdrawal of Request for Public Hearing," dated April 14, 2021.
[21] *See* SeAH's Letter, "Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from the Republic of Korea – Hearing Request Withdrawal," dated March 23, 2021.
[22] *See* Memorandum, "Antidumping Duty Order on Oil Country Tubular Goods from the Republic of Korea: 2018-2019 Administrative Review," dated April 16, 2021.
[23] *See* Memorandum, "Antidumping Duty Order on Oil Country Tubular Goods from the Republic of Korea: 2018-2019 Administrative Review," dated April 22, 2021.
[24] *See* Memorandum, "Oil Country Tubular Goods from the Republic of Korea: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review, 2018-2019," dated April 28, 2021.

III. SCOPE OF THE ORDER

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

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

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

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

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

IV. CHANGES SINCE THE *PRELIMINARY RESULTS*

For the final results of review, Commerce based the margin calculations for each mandatory respondent on CEP, export price (EP), and CV, where appropriate, for Hyundai Steel and SeAH. We used the same methodology as stated in the *Preliminary Results*, with the exception of removing the PMS adjustment rate for Hyundai Steel and SeAH, removing Hyundai Steel's prime adjustment, removing transfer price as an indirect selling expense for Hyundai Steel, modifying our methodology concerning SeAH's U.S. Affiliate's G&A expenses, and correcting programming errors.

V. RATE FOR NON-EXAMINED COMPANIES

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

For these final results, we calculated a weighted-average dumping margin that is not zero, *de minimis*, or determined entirely on the basis of facts available for SeAH. Accordingly, Commerce has assigned to the companies not individually examined (*see* the Appendix for a full list of these companies) a margin of 0.77 percent, which is the weighted-average dumping margin calculated for SeAH for these final results.

VI. DISCUSSION OF THE ISSUES

General Issues

Comment 1: Particular Market Situation

Background: In the *Preliminary Results*, we determined that a PMS existed in Korea which distorted the cost of production (COP) of OCTG, based on the cumulative effect of: (1) steel overcapacity and price suppression; (2) Korean government subsidization of hot-rolled coil (HRC); (3) distortions in Korean electricity input costs; and (4) steel industry restructuring efforts by the Korean government (collectively, the four elements of PMS). In the *Preliminary Results*, we quantified the impact of the PMS in Korea by making an upward adjustment to the respondents' reported HRC costs for OCTG, basing that adjustment on the factor derived in the regression analysis, which is discussed in Comment 1-C, below.[25]

Comment 1-A: Lawfulness of Commerce's Interpretation of the PMS Provision

U.S. Steel's Comments:

Commerce Did Not Make All PMS Adjustments Under the Provisions of the Law

- While Commerce recognized the six alleged PMS factors, it adjusted for only four of the six factors for the *Preliminary Results*. In addition, Commerce neglected to take into account other distortions, including electricity input costs and Korean government HRC subsidization.

[25] *See* Memorandum, "Oil Country Tubular Goods from the Republic of Korea: Preliminary Particular Market Situation Memorandum," dated January 15, 2021 (Preliminary PMS Memorandum).

- The statute and congressional intent require Commerce to implement these additional adjustments to account for multiple distortions.[26]
- In other cases, such as *Fluid End Blocks from Germany*, Commerce has made separate adjustments for every factor that contributed to an affirmative PMS finding, and Commerce should do so for the final results of this review.[27]

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 Domestic Interested Parties'[28] submitted evidence pertaining to iron ore market distortion. There is nothing that would limit Commerce's PMS finding to a particular country.
- 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 *FEBs from Germany* in which Commerce found that distortions in Kazakhstan served as an impactful PMS factor; and *LDWP from Turkey*, in which Commerce considered the impact of distorted Russian steel on the cost of producing welded pipe in Turkey.[29]

Hyundai Steel's Comments:[30]

PMS Determination is Contrary to Law

- Commerce's preliminary PMS finding is contrary to law and unsupported by substantial record evidence. For the final results, Commerce should reverse its affirmative PMS determination that Hyundai Steel's OCTG costs are distorted, as the preliminary finding of a PMS is not warranted.[31]
- It is well-established that the party alleging the existence of a PMS has the burden of demonstrating that there is a reasonable basis for believing that a PMS exists.[32] The DIPs' outdated PMS allegations do not rise to a level that justifies an affirmative PMS finding.
    - Many of the articles submitted by the DIPs are not contemporaneous with the POR, which is an important factor, given dynamic market prices in the steel market.
    - The Korean steel market functions in the same way as the global market for steel, where supply and demand dictate prices. The Korean steel market continues to

[26] *See* U.S. Steel's Case Brief at 43.
[27] *Id.* at 43-45 (citing *Forged Steel Fluid End Blocks from the Federal Republic of Germany: Final Determination of Sales at Less Than Fair Value*, 85 FR 80018 (December 11, 2020) (*FEBs from Germany*), and accompanying Issues and Decision Memorandum (IDM).
[28] References to the Domestic Interested Parties (DIPs) refer collectively to the following U.S. companies: United States Steel Corporation, Maverick Tube Corporation, Tenaris Bay City, Inc., IPSCO Tubulars, Inc., Vallourec Star, L.P., and Welded Tube USA.
[29] *Id.* at 45-46 (citing *FEBs from Germany* 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) (*LWDP from Turkey*), and accompanying IDM at 7.
[30] *See* Hyundai Steel's Case Brief at 6-19.
[31] *Id.* Hyundai Steel's Case Brief at 5.
[32] *Id.* at 7-9.

function in the same way it has for many years, including those prior to this review period.[33]

- The U.S. Court of International Trade (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.[34]
- In the first and second reviews of this order, 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.[35] 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.
    - In NEXTEEL III, for instance, the CIT found "analytical deficiencies," regarding Commerce's finding that Chinese steel products placed downward pressure on Korean domestic steel prices, concluding that the record evidence does not support a conclusion that the global glut of Chinese HRC imports caused price distortions specific to the Korean steel market.[36]
- The DIPs have yet to show that the market situation in Korea is not normal. Notwithstanding this fact, even if the DIPs were able to demonstrate this, based on Commerce's own definition of the term "ordinary course of trade," the practices within Korea would no longer be extraordinary because they have occurred over an extended period of time. That is, even if a PMS did exist within Korea, the approximate five-year period over which Commerce has made an affirmative PMS determination demonstrates that such practices are "ordinary" in Korea and as such, a PMS cannot exist. Thus, Commerce cannot reasonably consider market conditions that allegedly existed for so long to be outside the ordinary course of trade.[37]
- The PMS provision of the statute should be reserved for only rare circumstances. In the 1997 preamble to the antidumping and countervailing duty regulations, Commerce indicated that PMS findings should be limited, and not commonly found in antidumping cases, stating that PMS "fall{s} into the category of issues that Commerce need not, and should not, routinely consider." Thus, it is no longer rare if Commerce repeatedly applies this provisions of the statute under 773b(a)(l)(B)(ii)(III) (concerning particular market or situations with respect to home market or third country sales) and 773b(e)(3) (related to particular market situations concerning constructed value).[38]

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[33] *Id.*
[34] *Id.* at 9 (citing *NEXTEEL Co., Ltd. v. United States*, 399 F. Supp. 3d 1353, 1357 (CIT 2019) (NEXTEEL I).
[35] *Id.* at 10 (citing *NEXTEEL Co., Ltd. v. United States*, 392 F. Supp. 3d 1276, 1288 (CIT 2019) (NEXTEEL II); *NEXTEEL Co., Ltd. v. United States*, 450 F.Supp.3d 1333, 1339 (CIT 2020) (NEXTEEL III).
[36] *Id.* at 11.
[37] *Id.* at 12.
[38] *Id.* at 14-16 (citing *Preamble*, 62 FR at 27357).

SeAH's Comments:[39]

- The statute requires Commerce to analyze whether a PMS it has found resulted in an input cost that "does not accurately reflect the cost of production in the ordinary course of trade." Therefore, Commerce may adjust costs only when evidence demonstrates that, as a result of a "particular market situation," "the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade" in accordance with Subparagraph (b) of section 504 of the TPEA.[40]
- Commerce did not identify any evidence that the allegedly distorted HRC prices failed to reflect the cost of production of HRC in the ordinary course of trade. As a result, the *Preliminary Results* in this case failed to address the statutory requirements for making a PMS adjustment to cost.[41] Commerce's preliminary results show that Commerce applied its PMS adjustment only to the cost of purchased hot rolled coils; Commerce made no PMS adjustment to the cost of self-produced hot rolled coils. This methodology unfairly discriminates against companies like SeAH, which do not produce hot rolled coils, instead relying on purchases from other manufacturers. The statutory requirement that Commerce make a finding that the input cost does not reflect the cost of production in the ordinary course of trade was intended precisely to prevent such discrimination.[42]

Husteel's Comments:[43]

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

U.S. Steel's Rebuttal:[44]

- The CIT has upheld Commerce's methodology of relying on the "totality of circumstances" as reasonable for purposes of finding the existence of a PMS within Korea.[45]
- Respondents fail to acknowledge that their proposals to address PMS in Korea have been rejected in both judicial and administrative law. Respondents advocate that Commerce reinterpret Section 773(e) of the Act in several ways, variously relying on inapposite precedent and failing to acknowledge that their proposals have been rejected in both judicial and administrative proceedings before Commerce, such as previous OCTG reviews and other cases.[46]

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[39] *See* SeAH's Case Brief at 22-28.
[40] *Id.* at 22-24.
[41] *Id.* at 24-25.
[42] *Id.* at 26-28.
[43] *See* Husteel's Case Brief at 3-6.
[44] *See* U.S. Steel's Rebuttal Brief at 6-22.
[45] *Id.* at 7 (citing, *e.g.*, *NEXTEEL II-1*, "the court held that Commerce's finding of a single particular market situation based on the totality of circumstances was reasonably in theory").
[46] *Id.* at 8 (citing, *e.g.*, *Welded Carbon Steel Standard Pipes and Tubes from India*, 85 FR 2715 (January 16, 2020), and accompanying IDM at 15 (rejecting the comparison of the respondent's HRC purchases with other Indian HRC prices).

SeAH's Rebuttal:[47]

- The U.S. countervailing duty law does not permit Commerce to assume that subsidies exist based on newspaper reports and other second-hand uncorroborated information as a basis for an affirmative PMS determination. As a matter of law, Commerce may only find that subsidies exist based on a thorough investigation that affords the alleged subsidy recipients the full right to present information and argument in their defense.[48] Commerce cannot rely on such flawed allegations, examples of which are provided below:
    - The DIPs contend that massive subsidization of the steel industry by the Korean Government profoundly altered economic forces operating within the Korean steel industry, which distorted prices for HRC in a manner that prevented the prices from reflecting the cost of producing HRC in the ordinary course of trade. However, Commerce's own examination of subsidies in a different Korean steel case found only minuscule subsidy rates of approximately 0.5 percent.[49]
    - While the DIPs' claim that the Korean government provided subsidized electricity to Korean steel producers, Commerce has actually examined those claims on numerous occasions and has consistently found that there were no such subsidies, such as in *Welded Line Pipe from Korea*.[50]
    - The DIPs argued that Korean steel prices were distorted by alleged effects of purported subsidies on international shipping rates and Australian iron ore. The DIPs base these claims on unreliable reports, without the full procedures that normally must be followed when examining subsidy claims. Thus, there is no basis for Commerce to find that subsidies existed or conferred any benefit on Korean producers of HRC.[51]
- The DIPs' allegation that Korean HRC producers benefitted from alleged subsidies affecting international shipping rates and iron ore prices is inconsistent with the statutory provisions concerning upstream subsidies. The statute does not permit Commerce to impose duties whenever there is a mere allegation that suppliers of the respondent received subsidies.[52]

Commerce's Position: In their case briefs, Hyundai Steel and SeAH both argue that Commerce's affirmative PMS finding with respect to Korea is contrary to law. We disagree with 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 TPEA[53] added the concept of a "particular market situation" in the definition of the

[47] *See* SeAH's Rebuttal Brief.
[48] *Id.* at 2-4.
[49] *Id.* at 4.
[50] *Id.* at 7-10 (citing, *e.g.*, *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017–2018*, 85 FR 41949 (July 13, 2020) (*OCTG from Korea 2017-2018*), and accompanying IDM at 10 ("The plain language of the statute uses the term 'particular market situation, which indicates that such situation exists in a *market* and, consequently, Commerce may reasonably analyze the Korean HRC market as a whole."); *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015) (*Welded Line Pipe from Korea*), and accompanying IDM at Comment 1, page 22.
[51] *Id.* at 5.
[52] *Id.* at 6.
[53] *See* Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).

term "ordinary course of trade" for purposes of constructed value (CV) under section 773(e) of the Act, and through these provisions for purposes of the COP under section 773(b)(3) of the Act, added the concept of the term "particular market situation" to the definition of "ordinary course of trade," under section 771(15) of the Act. Section 773(e) of the Act states that "if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the COP in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology." 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.[54]

In previous administrative reviews of this proceeding, Commerce has used its discretion under Section 504 of the TPEA and section 773(e) of the Act and found that a PMS existed in those segments of the proceeding, based on the existing law and record evidence on the administrative record of each 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) and *NEXTEEL II* (2015-16 POR) and SeAH (2016-17 POR)[55] remanded this issue on case-specific evidentiary grounds, the court upheld Commerce's methodological approach, which was based on a "totality of circumstances," *i.e.*, a collection of factors contributing to a PMS. 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 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 DIPs' PMS allegation, as part of our "totality of circumstances" approach, to determine whether a particular market situation exists within Korea.

[54] *See* section 773(e) of the Act.
[55] *See SeAH v. United States*, Ct. No. 1900086, Slip Op. 21-43 (April 14, 2021) (*SeAH*).

Comment 1-B: Evidence of a PMS

U.S. Steel's Comments:[56]

Commerce Should Adjust for All Market Distortions

- Commerce should make a separate adjustment to respondents' HRC costs to offset distortion. The adjustment for distortive subsidization proposed in the PMS Allegation is necessary to account for subsidization's distortive impact. Commerce should adjust all HRC (including "self-produced" HRC, which would very directly benefit from such subsidization), using the most recent finalized countervailing duty (CVD) rate for each producer subject to this review.[57]
- In addition, because KEPCO charges significantly less for electricity than the cost to produce that electricity, Commerce should adjust respondents' reported electricity costs by 30.41 percent. The percentage adjustment reflects Hyundai Steel's understated costs and is reflective of KEPCO's 2019 average cost of production, plus a modicum of profit.[58]
- Commerce has stated in this OCTG proceeding that the statute does not care whether distortive government subsidization meets the statutory definition of countervailability. For example, Commerce stated in AR3 that "{a}lthough the provision of countervailable subsidies could be a relevant factor supporting the existence of PMS, it is not a prerequisite for finding market distortion..." That Commerce did not find in prior cases that the provision of electricity to industrial users in Korea constituted a countervailable subsidy does not mean that there can be no market distortion in Korean electricity costs."
- Given that KEPCO was selling electricity for less than the cost of production over the POR, it is incumbent upon Commerce to remedy Korean interference in the electricity market and related distortions in the respondents' reported costs.[59]

Fair Consideration Not Given to Iron Ore and Inbound Bulk Shipping

- For the final results of review, Commerce should fully weigh the DIPs' arguments and evidence regarding iron ore and inbound bulk shipping, which Commerce has largely ignored in this review and in the prior review period.[60]
    - Commerce's preliminary analysis on imports of iron ore from Australia is misstated and misplaced. For instance, Commerce references the Baltic Dry Index, which has nothing to do with the price of iron ore. The World Bank's data show a sharp decline in Australian iron ore prices since 2016, which were below the global average of iron ore prices. The significant drop in iron ore prices is likely attributable to subsidization and tax evasion.
    - Commerce failed to consider the evidence submitted by the DIPs on the massive subsidization and tax evasion in Australia, which signifies a lack of market principles occurring within Australia. [61]

[56] *See* U.S. Steel's Case Brief at 42-52.
[57] *Id.* at 5-7, 42-44.
[58] *Id.* at 45-48.
[59] *Id.* at 47.
[60] *Id.* at 49-52.
[61] *See* U.S. Steel's Case Brief at 49-50.

- Commerce improperly fixates on a comparison of prices from Australia to Brazil. Record evidence submitted to Commerce demonstrates that Australian iron ore prices remained more than 14 percent lower, even after deducting freight expenses.
- For these final results of review, Commerce should rely on benchmark prices and case precedent for an alternative adjustment of 20.55 percent. [62]
- Commerce erred in its understanding that freight expenses used were HMM container shipment pricing rather than bulk freight rates. Record evidence demonstrates that the Australian iron ore price is CFR *China*, whereas the Brazil price is CFR *world*, so deducting the respective China-bound freight rates *understates* the degree of Australian iron ore price depression, given that most importers of Brazilian iron ore are nearer than China.[63]
- Commerce need not rely on the Australia-Brazil price comparison, because U. S. Steel has devised an alternative adjustment using established benchmark sources and prior Commerce practice to demonstrate iron ore distortion, resulting in a 20.55 percent difference with the Australian iron ore price for 2018.[64]

Distorted Production Cost

- Commerce should address the distorted OCTG production cost of Korean producers. Specifically, Commerce should adjust all HRC costs for overcapacity distortion, which is caused by the oversupply of hot-rolled steel produced by Hyundai's Dangjin plant.
- Hyundai Ulsan's decision to purchase HRC from Hyundai Dangjin, rather than source HRC from the oversupply elsewhere in the Korean market has severely impacted the HRC glut of oversupply within Korea, thus contributing to the distortion of HRC prices. The transfer price paid by Hyundai Ulsan is based on sales of HRC to unaffiliated customers, which is distorted, in nature, because of the overall market price depression.[65]
- There is no reason for Commerce not to make a PMS adjustment to self-produced HRC costs, which Commerce has done in other steel cases, such as *CRS from Korea*.[66] While Hyundai argues that it is improper to apply an adjustment HRC price to the inputs used to produce HRC, this ignores the impact that transfer pricing has on prices charged to outside parties for the same finished HRC in a market with excess supply.[67]
- It is unclear as to how Hyundai determined the amount of self-produced HRC used to produce OCTG, and Hyundai offers no supporting calculations to explain its calculation of the figure in question. It appears that the figure Hyundai used for this calculation may have been based on value. For purposes of accuracy, Commerce should calculate the proportion of HRC purchased from sources other than the HRC that was sourced from Hyundai Dangjin and used in the production of OCTG.[68]
- During the POR, the Korean market was significantly oversupplied. Flat product supply, including HRC, thus exceeded demand by 105.95 percent. Had Hyundai heeded market signals—low-priced imports and oversupply—it would have produced about half as

[62] *Id.* at 50.
[63] *Id.* at 51.
[64] *Id.* at 50-51.
[65] *See* U.S. Steel's Case Brief at 25-26.
[66] *Id.* (citing *Certain Cold Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017–2018*, 85 FR 41955 (*CRS from Korea*), and accompanying IDM).
[67] *Id.* at 27-28.
[68] *Id.* at 29-30.

much HRC as it did. If Commerce declines to uniformly adjust *all* of Hyundai's HRC costs using Domestic Producers' proposed benchmark adjustment or the alternative regression model, then Commerce should *at minimum* adjust the cost of HRC that Hyundai Ulsan purchased from Hyundai Dangjin to reflect a non-distorted, economic cost of producing HRC. The DIPs proffer the methodology that Commerce should use to adjust the distorted costs of self-producing HRC by the magnitude of that distortion.[69]

Overcapacity in Korea

- Overcapacity abroad has a domino effect that triggers additional market distortions: (1) imports enter Korea's market from third countries with overcapacity (*i.e.*, China and Japan) and drive down prices in Korea through price competition; (2) despite the negative price signals of No. 1, domestic steelmakers continue producing steel that cannot be sold for more than the cost of production. Consequently, imports and net domestic production have exceeded Korean flat product consumption, building up a massive, 27.7 million MT flat product surplus from 2015 through 2019. In other words, by the end of the POR, Korea could have ceased imports and domestic production altogether and have a volume of steel on hand equal to a year's worth of consumption. This is the result of Korean steelmakers' self-interest drowning out clear market signals.[70]
- Commerce should reevaluate the capacity utilization rate to ensure healthy capacity utilization levels. Independent analyses demonstrate that healthy capacity utilization is at least 85 percent, which is at near full capacity.[71]
- Should Commerce decline to apply a uniform adjustment to Hyundai's entire HRC costs, then it should increase the total cost of HRC produced by Hyundai Dangjin plant equal to the amount by which it reduced unit HRC costs through the uneconomic production of HRC in a market that was vastly oversupplied.[72]

Electricity Distortions

- In the previous segment of this proceeding, Commerce did not address distortions in the Korean electricity market. For the final results of review, Commerce should adjust the respondents' reported electricity costs to account for the fact that KEPCO sold (and respondents purchased) electricity for much less than the cost of production over the POR.[73]
- Hyundai Steel conflates the issue of electricity distortion in Korea, reasoning that distortion cannot exist when Commerce found that electricity was not provided at less than adequate remuneration. KEPCO's massive losses during this review period distinguish the electricity factor as a contributor to PMS from prior review periods.[74]
- Hyundai Steel's allegation that KEPCO has significant unrelated business lines is unfounded, as KEPCO's Form 20-F indicates that electricity transmission, generation, distribution, and related support functions in fact form nearly all (if not all) of KEPCO's

[69] *Id.* at 30-35.
[70] *Id.* at 31-34.
[71] *Id.* at 35-38 (citing various sources including Boston Consulting Group, McKinsey& Company, *MetalMiner*, and *Steel Technology*).
[72] *Id.* at 34.
[73] *Id.* at 45-48.
[74] *Id.* at 45-46.

business. The industrial tariff rate for electricity serves as an appropriate factor for Commerce to examine whether Korean OCTG producers are paying a fair price for the cost of electricity.[75]

Hyundai Steel's Comments:[76]

Empirical Analysis Should Be Used

- Commerce must empirically analyze the PMS allegation with respect to Hyundai Steel's actual costs.[77] Commerce's current practice emphasizes the application of market principles to PMS adjustments when it finds such an adjustment is necessary.
- In both *Biodiesel from Argentina* and *Biodiesel from Indonesia*, after conducting quantitative empirical analyses, Commerce made adjustments to costs using a market-determined source. In this review, Commerce made no attempt to quantify its analysis of prices to support its PMS determination, rendering its determination unreliable and unusable for the final results of review.[78]

Actual Costs Should be Utilized

- The application of a PMS to the respondents' costs, which effectively disregards a company's actual costs by applying an adjustment determined from external sources, is inconsistent with the United States' WTO obligations. In this case, U.S. Steel has not argued, much less shown, that Hyundai Steel did not negotiate and pay fair market prices for its HRC purchases. Thus, there is no basis to disregard respondents' actual costs in the manner that Commerce did in the *Preliminary Results*, given that Hyundai Steel has reported its cost data completely and accurately based on its accounting records.[79]
- For the *Preliminary Results*, Commerce improperly relied on the DIPs' information submitted in its PMS allegation to determine the "collective impact" of the PMS factors without conducting detailed analyses of how the PMS factors apply specifically to Hyundai's reported costs. Record evidence shows a lack of support for each of the factors that Commerce used in its preliminary PMS finding. Commerce should, therefore, reverse its preliminary affirmative PMS determination.[80]
    - Commerce undertook no analysis in its *Preliminary Results* to show that the prices that Hyundai Steel paid for HRC inputs, either from Korean or foreign suppliers, to manufacture OCTG were inconsistent with market prices or were below the suppliers' production costs. In fact, normal supply and demand factors dictate market prices and commercial activity in the Korean domestic market and globally.

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[75] *Id.* at 47-48.
[76] *See* Hyundai Steel's Case Brief at 19-44.
[77] *Id.* at 16.
[78] *Id.* at 16 (citing *Biodiesel from Argentina: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 50394 (October 31, 2017) (*Biodiesel from Argentina - Preliminary*), and accompanying PDM at 23; *Biodiesel from Argentina: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 8837 (March 1, 2018) (*Biodiesel from Argentina – Final*), and accompanying IDM at Comment 3; *Biodiesel from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 50379 (October 31, 2017) (*Biodiesel from Indonesia - Preliminary*), and accompanying PDM at 23; *Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018) (*Biodiesel from Indonesia – Final*), and accompanying IDM at Comment 3.
[79] *Id.* at 18-19.
[80] *Id.* at 19.

- By repeatedly stating that the alleged steel overcapacity is a global problem, Commerce undermines its conclusion that a "unique" or "particular" market situation had arisen in the Korean steel market by such global overcapacity.
- Contrary to Commerce's preliminary PMS decision, record evidence demonstrates unambiguously that the steel overcapacity situation has significantly improved globally in recent years, including in China and Korea, and especially during the POR. This is supported by the data reported by the World Steel Association Yearbook 2019 (Yearbook 2019) and the Organization for Economic Co-operation and Development (OECD) regarding steel capacity, production, apparent use, excess capacity and capacity utilization reported from the world as well as China and Korea, which negates the DIP's PMS allegation and Commerce's preliminary PMS determination.[81]
- For instance, the Yearbook 2019 and OECD data demonstrate a reduction in excess capacity, capacity utilization, and excess capacity as a percentage of production and China's share of global excess capacity. OECD data also reveal that the gap between global capacity and production has narrowed in recent years, reflecting the relatively strong growth in global steel production. OECD Quarterly Steel Market Development reports during 2017-2018 show that global steel PMI levels averaged above 50 points, which is a sign of revival, and indeed an expansion, of the steel market, establishing that steel overcapacity and its associated symptoms have receded, thus refuting the DIP's core argument that global overcapacity was the main driver of a PMS in the Korean steel market during the POR.[82]
- OECD Steel Market Reports also provide data that run counter to the DIP's argument that Chinese and Korean steel flooded the world market and that Korea experienced a surge in cheap steel imports. Data show that Korean steel exports remained relatively stable from 2016 through 2018, Korean steel imports have been decreasing since the 2016 peak, which not only suggests a robust performance for Korean domestic steel producers, but also demonstrates the insignificant impact that steel imports in Korea during the POR had on Korean steel pricing, including HRC prices. The combination of significant reductions in imports of steel flat products, coupled with significant increases in the AUVs of imported steel demonstrates that the import volumes into Korea did not have a downward impact on domestic steel flat product pricing during the POR, as corroborated by Commerce's own steel-related data.[83]
- Record evidence shows the rising prices of flat steel products around the world during 2018 and into 2019, which contradicts Commerce's preliminary finding that that unfairly traded HRC from China was flooding the Korean market, depressing the prices and causing a particular market situation. Even before the POR had commenced, the global, as well as the Korean, steel marketplace had sufficiently recovered and regained its pre-overcapacity era levels. Accordingly, during the POR

[81] *Id.* at 22-28.
[82] *Id.*
[83] *Id.* at 29-34 (citing "OECD Quarterly Steel Market Development, Q4 2018," at 13; "OECD Quarterly Steel Market Development, Q2 2019," at 21; Exhibit CAP-12 (U.S. Department of Commerce, *Global Steel Trade Monitor, Steel Imports Report: Korea* (Sept. 2019)).

there was no "particular" or abnormal market situation with regard to steel products trading in Korea.[84]

- The prices Hyundai Steel paid for HRC were not distorted, as Commerce's *Preliminary Results* indicated. Hyundai Steel's purchase prices for both domestic and imported HRC were consistent with, and higher than, the prevailing market prices in Korea and globally. The weighted-average capacity utilization rates of Chinese and Japanese steel producers – were 83.31 percent in 2017 and 89.67 percent in 2018. Record data show that the Korean HRC market all along has been and continues to be overwhelmingly dominated by domestically produced HRC. Conversely, HRC import volumes, which previously accounted for only a small share, continued to decline during the POR at the same time that import AUVs increased significantly.[85]
- Data on the record show that Hyundai Steel's domestic sales prices and Korean import prices for HRC trended in a virtually identical manner; they also demonstrate that prices for domestically produced and imported HRC move in tandem in the Korean market. This negates Commerce's determination that the marketplace was so distorted as to justify a finding that steel input transactions were outside the ordinary course of trade, or that a PMS existed.[86]

Subsidization of HRC Inputs

- Alleged subsidization of Korean HRC inputs does not support any adjustment to Hyundai Steel's reported costs. In its preliminary PMS finding, Commerce not only cited to programs that were not found to be countervailable, such as the One Shot Act and Special Act on Corporate Revitalization, in prior agency determinations, but also relied upon proposed restructuring efforts that had no impact on the costs to manufacture the subject merchandise during the POR.[87]
- Even if Commerce concludes for the final results that Korean government intervention in the domestic steel market contributed to a PMS, the *de minimis* subsidy rates relied upon by Commerce for Hyundai Steel (0.58) percent and POSCO (0.51) percent would have no impact on Hyundai Steel's HRC costs of production of subject merchandise.[88]

Distorted Electricity Costs

- There is no basis for Commerce to point to distorted electricity pricing in Korea, which Commerce has consistently relied upon as a factor contributing to a PMS in Korea. Commerce has repeatedly found in other CVD cases that electricity is not provided at less than adequate remuneration.[89]
- There is no information on the record of this review to indicate that electricity prices during the POR were aberrant or that any supposed Korean Government involvement in the domestic electricity market differs from any sovereign country's regulation of its

[84] *Id.* at 35-38.
[85] *Id.* at 38-40.
[86] *Id.* at 40-41.
[87] *Id.* at 41-42.
[88] *Id.*
[89] *Id.* at 42 (citing *Countervailing Duty Order on Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Amended Final Results of the First Administrative Review*, 84 FR 35604, 35605 (July 24, 2019); *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 2017, 85 FR 64122 (October 9, 2020).

own energy markets. Commerce incorrectly cites KEPCO's operating losses in 2018 and 2019 as a factor contributing to a PMS. However, this fact does not demonstrate an impact on prices or show that there was government intervention in the electricity market. On the contrary, electricity prices charged to HRC producers in Korea reasonably reflect the cost of production for electricity, so there can be no distorting effect impacting OCTG manufacturing costs.[90]

SeAH's Comments:[91]

There Is No Basis to Adjust SeAH's Costs in this Review to Compensate for an Alleged PMS, and the Evidence Does Not Support a Distorted Korean Market

- Commerce preliminarily determined that its affirmative finding of PMS was based on the collective impact of the continued distortive effects of global steel overcapacity, the unfairly traded Chinese hot-rolled coils contributing to it, and the resulting steel industry restructuring effort by the GOK; overcapacity in the Korean market; and the GOK's distortive involvement in the Korean electricity market, which is contrary to the evidence and fundamentally unreasonable.[92]
- While the DIPs attempted to alter their PMS allegation in this review by adding three additional factors, the DIPs' PMS allegation in this review is no different than in past reviews, which the CIT has rejected. The DIPs' attempt to add additional documents to the record, as acknowledged by the Courts, does not change the core allegation that the CIT has rejected in previous segments of this case.[93]
- The DIPs' PMS allegation is mostly based on secondary sources, such as newspaper articles and out-of-date reports. Commerce must therefore corroborate the secondary information that the DIPs rely on for purposes of its PMS determination. The statute makes clear that "when the administering authority...relies on secondary information rather than on information obtained in the course of an investigation or review, the administering authority...shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal." Commerce has failed to comply with this statutory requirement.[94]

Chinese Overcapacity

- Commerce's reliance on a purported failure of the Korean Government to impose trade remedy measures on imports from China as a basis for finding a PMS in this review is improper. There is nothing in the antidumping law that requires Korea or any other country to impose trade remedies based on the demands or preferences of the U.S. government.[95]
- Commerce improperly relies upon the proposition that Chinese imports had an economic impact on Korea steel producers because the Korean Government "provided subsidization to major producers of hot-rolled coils aimed at supporting domestic steel producers and their ambitions for capacity expansions" in order to respond to imports from China. The

[90] *Id.* at 42-45.
[91] *See* SeAH's Case Brief at 3-22.
[92] *Id.* at 3-4.
[93] *Id.* at 4-7.
[94] *Id.* at 7-9.
[95] *Id.* at 9-11.

impact of such Korean-government subsidies was less than one percent, negating the economic impact alleged by the DIPs and relied upon by Commerce in its *Preliminary Results*.[96]

Insignificant Subsidies to Korean Producers of HRC

- The subsidy rate on which Commerce based its PMS determination in previous reviews has changed from an AFA rate of 58.68. percent for POSCO in *Hot-Rolled Coil from Korea* to a calculated subsidy rate of 0.51 percent, negating Commerce's preliminary finding that there exists tremendous downward pressure on prices due to massive Chinese over-capacity.[97]

Korean Steel Overcapacity to Produce HRC

- While the DIPs' PMS allegation in this review includes an additional claim that excess *Korean* steel capacity contributed to the creation of a PMS involving hot-rolled coils in Korea during the review period, Commerce did not address the extent or nature of any overcapacity that might have existed in the Korean steel industry.
- The DIPs' argument of overcapacity in the Korean market is further weakened when considering the fact that the DIPs' complaints do not relate to the production of the types of steel coils used in the production of OCTG.[98]

Korean-Government Restructuring Efforts

- There is no evidence that the alleged GOK restructuring efforts impacted HRC prices. The newspaper reports relied upon in the *Preliminary Results* are highly unreliable.
- Concerning the "One Shot Act," Commerce has consistently found that Hyundai Steel and other Korean companies did not receive benefits under this program.
- There is no record evidence to support the assertion that a PMS exists in Korea because its government instituted a program to promote restructuring to address overcapacity. Any such restructuring that did take place to reduce excess capacity would remedy the situation, not make it worse. Further, there is no evidence on the record that any such government-restructuring program has had an impact on prices for HRC in Korea during the instant review period.[99]

Anti-Competitive Practices

- The DIPs' assertions that there have been illegal price-fixing agreements among Korean steel *bar* producers and also bid-rigging among Korean pipe producers for sales of offline pipe to a Korean gas company resulted from a misunderstanding by the Korean government.[100]
- The bids in question related to annual contracts for sales to KOGAS, the national Korean gas distribution company, prior to 2013. While KOGAS awarded the contracts to only a single bidder, the quantity ordered by KOGAS was too large for any one producer to satisfy. As a result, each bidding producer entered into agreements with other producers

[96] *Id.*
[97] *Id.* at 11-13.
[98] *Id.* at 14-15.
[99] *Id.* at 15-17.
[100] *Id.* at 18-19.

to share the responsibility to supply the contract quantities in the event that the bid was successful.[101]

Distorted Electricity Costs[102]

- While Commerce preliminarily determined that KEPCO, the Korean state-owned electricity supplier, experienced a loss in 2018, with a projected loss in 2019, record evidence shows that KEPCO earned profits from 2014–2017; it does not show that Korean HRC producers benefitted from uneconomically low electricity prices. This runs contrary to the allegation that the Korean government intended to subsidize the steel industry with subsidies to combat low prices.
- The *Preliminary Results* assert only that the alleged Korean government control of electricity prices "contributed to the distortion of the *cost of manufacturing*... for OCTG by placing continued downward pressure on the price of electricity in Korea and the COM of OCTG." Even if that assertion were correct, it would only be relevant to an allegation that *OCTG* costs and prices were distorted.
- Commerce has reviewed Korean electricity subsidies in numerous other cases finding that the Korean price-setting for electricity does not confer a subsidy on Korean electricity users.

Husteel's Comments:[103]

Global Steel Overcapacity and Chinese Steel Imports

- Commerce's preliminary finding that global steel overcapacity and Chinese steel imports into Korea contributed to a PMS in the Korean OCTG industry is unsupported by record evidence in the instant administrative review.
- Regarding the contention that Chinese steel exports distorted respondents' production costs, in *NEXTEEL I*, the CIT favorably relied upon Commerce's preliminary PMS determination in the 2014-15 administrative review, in which Commerce stated that the global effect of Chinese steel exports in and of itself means that no PMS exists.[104]
- In *Husteel*,[105] the CIT pointed out that Commerce's argument that Chinese overcapacity impacts the Korean market does not necessarily support the fact that there is distortion in the Korean market. The Court noted that a PMS determination need not be based on only one market, but evidence that is not at all particular to the Korean market is not sufficient.[106]
- Commerce's efforts to distinguish the effects of the global steel overcapacity on the Korean market from the rest of the global market are not based on substantial evidence. That is, there is nothing to demonstrate that that costs of the HRC used by the respondents are distorted and thus require remedy. Further, Commerce's citation in the *Preliminary Results* to the PMS determination in *Circular Welded Pipe from Turkey*

[101] *Id.*
[102] *Id.* at 19-22.
[103] *See* Husteel's Case Brief at 6-11.
[104] *Id*. at 6 (citing *NEXTEEL 1*, 355 F. Supp. 3d at 1351).
[105] *Id.* at 6-7 (citing *Husteel*, Consol. Ct. No 18-00169 at 24).
[106] *Id.*

Prelim[107] on this issue is misplaced because, in that case, there was actually some alleged evidence of HRC costs being distorted downward in comparison to benchmarks.

- While Commerce cites to various types of secondary materials to support its global steel overcapacity argument, it ignores the fact that in the CVD order, Commerce determined that even the major producers of OCTG received no significant subsidization from the Government of Korea.
- Commerce continues to cite to previous reviews of this proceeding as a basis for its PMS finding, which continue to be overturned by the CIT.[108]
- The mandatory respondents in this review have submitted substantial evidence to demonstrate that their costs were not distorted. It is these costs that Commerce is required to examine under the PMS statute.

Alleged Korean Subsidization of HRC

- Commerce's argument that alleges subsidization by the Government of Korea is baseless. The 2016 and 2017 *Hot-Rolled Steel from Korea* CVD administrative reviews show subsidization findings of 0.51 percent to 0.58 percent.[109]
- While the subsidization findings are above the *de minimis* level, they are not at a level that can reasonably be assessed as distortive. Furthermore, Commerce does not explain how GOK's subsidization of hot-rolled steel, which is already subject to countervailing duties, distorts HRC prices in a way to prevent proper comparison between NV and export price (or constructed export price).[110]
- Commerce also did not provide supporting evidence in its *Preliminary Results* showing that respondents used government programs, such as the "Special Act on the Corporate Revitalization" or the "One-Shot Act."[111] Alleging potential government interference does not equate to evidence of program usage or distorted HRC costs.

Electricity

- Commerce's determination that the Government of Korea intervenes in the electricity market as one of several PMS factors is merely speculative and not supported by substantial evidence,[112] such as demonstrating the effect on prices as a result of the alleged intervention in the electricity market.
- Commerce fails to acknowledge that in a number of CVD cases, Commerce has determined, and the CIT has upheld, that electricity in the Korean market is not being provided for less than adequate remuneration.[113]

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[107] *Id.* at 7 (citing *Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 39345 (July 18, 2019) (*Circular Welded Pipe from Turkey Prelim*), and accompanying PDM).
[108] *Id.* at 8 (citing NEXTEEL I, NEXTEEL II, and *Husteel Consolidated*).
[109] *Id.* at 8-9.
[110] *Id.*
[111] *Id.* at 9 (citing Preliminary PMS Memorandum at 16).
[112] *Id.* at 10.
[113] *Id.* at 10-11 (citing *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016), and accompanying IDM at 36-53; and *Maverick Tub Corp. v. United States*, 273 F. Supp. 3d 1293, 1312 (CIT 2017)).

Steel Industry Restructuring

- Commerce only cites to articles discussing restructuring, but no actual evidence of this restructuring taking place, of the OCTG industry being affected, or of the mandatory respondents' cost being distorted.[114]
- Commerce can only conclude that this evidence is "indicative of a PMS," because this allegation is based solely upon speculation.[115]

Hyundai Steel's Rebuttal:[116]

Adjusting for Distorted Electricity Costs

- Commerce has consistently and correctly declined to make any PMS adjustments related to electricity costs. In multiple CVD cases, Commerce has determined that electricity in Korea is not provided for less than adequate remuneration. The DIPs have provided no factual or legal basis for Commerce to reach a different outcome in this review regarding electricity costs in Korea. Any allegation of subsidization is properly addressed under CVD laws and not within the context of an antidumping duty case.[117]
- The DIPs have provided faulty assumptions related to their proposed electricity methodology. For instance, they attempt to construct a methodology by which to gauge the extent to which KEPCO's electricity tariffs reflects market principles, inclusive of a rate of return using abbreviated financial statements from an investor presentation that lacks necessary detail from which to extrapolate information. This approach is not only incorrect, it is completely unsound.[118]
- The DIPs also attempt to construct a COP for electricity by adding the cost of goods sold (COGS) for KEPCO's consolidated companies, including financial and other expenses for those companies from their financial statements. However, those financial statements show that they cross over multiple business lines and investments beyond the Korean market. Furthermore, the COGS and financial expenses do not serve as a fair approximation of KEPCO's costs of electricity generation in Korea. [119]
- Due to the DIPs' faulty assumptions and calculations related to the electricity component of the PMS allegation, there is no legitimate basis upon which Commerce should accept the DIPs' proposal regarding Hyundai Steel's electricity.[120]

Alleged GOK Intervention

- While the DIPs continue to advance the argument of alleged GOK intervention in the steel market, the calculated CVD rates (*i.e.*, 0.51 percent) are so low—slightly above the *de minimis* level for CVD administrative reviews and below the *de minimis* threshold for investigations—that there is no material impact on Hyundai Steel's costs to self-produce or purchase HRC that it used to manufacture the OCTG.[121]

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[114] *Id.* 11.
[115] *Id.* (citing Preliminary PMS Memorandum at 23).
[116] *See* Hyundai Steel's Rebuttal Brief at 34-49.
[117] *Id.* at 35-36.
[118] *Id.* at 36.
[119] *Id.* at 36-37.
[120] *Id.* at 38.
[121] *Id.* at 38-39.

- The DIPs have not provided substantial evidence to demonstrate that any subsidy benefits received by HRC producers actually resulted in a depression of Hyundai Steel's HRC purchase prices. In order to implement the suggested methodology, Commerce would need to conduct a double remedy pass through analysis based on the books and accounts of Hyundai Steel's HRC suppliers, *i.e.*, parties that are not subject to this proceeding.[122]
- Any alleged subsidies should be subject to a CVD proceeding and addressed under the CVD laws. Should Commerce still apply this aspect of the PMS adjustment, the adjustment should be limited to only HRC produced in Korea. However, applying such an adjustment to HRC purchases to non-Korean suppliers from which Hyundai Steel sourced the cost of materials, would be unreasonable and unlawful. Thus, should Commerce make a PMS adjustment for the final results of review, it should assign a subsidy rate of zero percent to the HRC quantities that Hyundai Steel purchased from non-Korean suppliers. [123]

Distortions in Iron Ore Costs

- In the *Preliminary Results*, Commerce properly rejected the DIPs' allegation regarding distortions arising from shipping rates for imports of raw materials and from iron ore prices, which are unsubstantiated by record evidence.[124] Similar to the record of the current review period, Commerce rejected this allegation in the previous administrative review finding that the record in that review, the DIPs did not provide sufficient evidence to establish a distortion in Australian iron ore prices and how such an alleged distortion has a direct adverse impact on HRC prices used in the production of OCTG within Korea.[125]
- The DIPs' claims that the Australian government subsidizes its iron ore industry and that a major Australian iron ore producer has evaded tax payment is not relevant to supply and demand mechanisms in the global iron ore market, especially considering that the two largest Australian-based iron ore producers are global companies with operations well beyond Australia. These arguments do not bear any links to the import of raw materials used in the production of subject merchandise. Further, there is no clear basis to forward this argument related to a country with a sovereign government with practices that are within the ordinary course of trade. Even if subsidization occurred within Australia, subsidization of a mining industry does not, in and of itself, create a particular market situation in Australia, let alone one that would transfer to Korea.[126]
- Commerce cannot rely on the distortive effects of iron ore subsidies absent an opportunity to examine the nature of the specificity of any alleged subsidies and whether they conferred above *de minimis* benefits on iron ore produced in Australia and exported to Korea. Consequently, the DIPs' arguments related to this aspect of their PMS allegation are merely speculative.[127]
- The DIPs have not demonstrated that the total amount of subsidies that BHP and Rio Tinto, the two global companies that have been actively participating in iron ore mining

[122] *Id.* at 39-40.
[123] *Id.* at 40-41.
[124] *Id.* at 41-42.
[125] *Id.* at 42-45.
[126] *Id.* at 45-46.
[127] *Id.* at 46.

worldwide, allegedly received and the amount of tax evaded had any measurable impact on the global iron ore market especially when considering the volume of global iron ore supply and demand. Given their global operations, any impact of subsidies received or tax evasion would have been spread over the volume of iron ore traded by these companies in the global market, negating the nature of the DIPs' arguments altogether.[128]

- The DIPs compare the average price of iron ore by origin regardless of the grade, physical shape, and market price fluctuations of the iron ore in order to support their claim that the Australian iron ore market is distorted. However, origin does not have the most material impact on iron ore price variations; rather, iron ore prices are dictated by the grade (purity, or iron content), the timing of purchase, and the physical shape of iron ore, such as fine, lump, or pellet. It is meaningless to compare the average unit prices of iron ore by origin, without any consideration of important price determining factors, including grade.[129]
- The DIPs' proposed adjustment of 14.24 percent to account for the difference in iron ore prices from Australia and Brazil is also a meaningless statistic that reflects product differences and has nothing to do with any alleged distortions of iron ore prices. Consequently, absent solid evidence from the DIPs that iron ore prices are distorted, Commerce should continue to reject this argument advanced by the DIPs for the final results of review.[130]

SeAH's Rebuttal:[131]

- While the DIPs' argue that Korean steel prices were distorted by the alleged purported subsidies on international shipping rates and Australian iron ore, Commerce has yet to conduct an investigation or review or to verify subsidies and any benefit arising to potential recipients of Korean government international shipping rates, let alone benefits related to Australia's iron ore exports. There is no basis to find that the alleged subsidies conferred any benefit on Korean producers of HRC. [132]

U.S. Steel's Rebuttal Comments:[133]

Chinese Overcapacity

- The respondents submit little evidence to overcome the argument of Chinese overcapacity in the Korean market. Further, Hyundai Steel attempts to refute price distortion despite the fact that even with inflation at nine percent between December 2011 and December 2017, during the POR, steel flat prices were actually *lower* in real terms. With Commerce's affirmative PMS determinations, Commerce has taken into account the absence of Korean trade measures to stem the tide of distortive steel imports.[134]
- Hyundai Steel's data is incorrect and unreliable to refute overcapacity by Hyundai Steel's KOSA HRC production. Hyundai Steel confuses the record, which indicates that Korean

[128] *Id.* at 46-47.
[129] *Id.* at 47-48.
[130] *Id.* at 48-49.
[131] *See* SeAH's Rebuttal Brief at 1-6.
[132] *Id.* at 5.
[133] *See* U.S Steel's Rebuttal Brief at 6-22.
[134] *Id.* at 11-12.

flat product (including HRC) import and consumption data show import penetration of 32.09 percent in 2018 and 34.57 percent in 2019, exceeding levels during the previous review period.[135]

- There is no reduction in Chinese overcapacity, as Hyundai Steel suggests. Data on this record show a further decline of Chinese steel prices during the POR, as China continues to account for more than 50 percent of global overcapacity.[136]
- SeAH misconstrues the preliminary affirmative PMS finding regarding price depression, which is based on the existence of distortion and not on whether a particular distortive subsidization program carries out a government's intent.[137]

Domestic Overcapacity

- SeAH does not dispute that the DIPs' data establish that HRC production far exceeds Korean consumption. Documentary evidence establishes that Korean producers persistently failed to export the excess, leaving a post-export 27.7 million MT domestic glut over the medium term (2015-2019) and a 4.5 million MT domestic glut in 2019 alone.[138]

Korean Government Intervention

- Commerce has recognized that countervailable HRC subsidization by the Korean government continued at above *de minimis* levels, and that subsidy programs have ranged in type, including tax and loan programs that Hyundai Steel itself has used.[139]
- Neither respondent has submitted meaningful arguments that counter evidence of Korean government restructuring programs or usage thereof.[140]
- Commerce rightly noted in its Preliminary PMS Memorandum[141] that the absence of a countervailability determination "does not negate the fact that these programs were established to counter the effects of global steel overcapacity and were made available to Korean steel producers by the GOK."[142] The respondents' sole criticism is that the restructuring efforts are proposed only and, as such, have no impact on POR costs. In fact, because of the success of the restructuring program, the GOK stated that it would continue offering it to companies, as cited by Commerce in its Preliminary PMS Memorandum. Also, neither respondent disputed that multiple companies applied for benefits under the GOK restructuring efforts to achieve country-wide external economies of scale.[143]

Korean Electricity Prices

- Similar to the previous segment of this proceeding, in its preliminary results, Commerce found the Korean government's control of KEPCO, KPX, and KEPCO's subsidiary GENCOs, remained the same. KEPCO has been on a lossmaking spiral ever since 2018,

[135] *Id.* at 12-13.
[136] *Id.* at 13-14.
[137] *Id.* at 14.
[138] *Id.* at 15-16.
[139] *Id.* at 16.
[140] *Id.* at 17.
[141] *Id.* (citing Preliminary PMS Memorandum at 21).
[142] *Id.*
[143] *Id.* at 17-19.

i.e., over the entire POR: 208 billion won in 2018, 1.36 trillion won in 2019. Hyundai Steel even offers up evidence that the GENCOs owned by KEPCO mostly operated at a loss over the POR.[144]

- Commerce has acknowledged that electricity constitutes a significant portion of the cost of manufacturing (COM) of OCTG and, as such, Commerce has determined that Korea's distorted electricity market "contributes to the distortion of the COM…" by placing continued downward pressure on the price of electricity in Korea *and the COM of OCTG*. This reasoning is supported by Section 773(e) of the Act which speaks to distortion to the cost of "materials and fabrication or other processing of any kind," and nowhere limits Commerce's PMS analysis to a single input. There is little question that for both OCTG processing and HRC production, costs are distorted by Korea's government-controlled electricity pricing.[145]

Commerce's Position: In the instant review period, the DIPs alleged that a PMS exists in Korea which distorts the COP of OCTG 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) Government of Korea (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.[146] 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 OCTG 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 and distorted iron ore costs contributed to a PMS within Korea.[147]

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 OCTG. With respect to which information Commerce may consider in its evaluation of whether a PMS exists within Korea, we disagree with Hyundai and SeAH 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 *vs*. 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 DIPs 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 taken into account all newspaper and other articles, as well as analyses and arguments presented by the DIPs in their PMS allegation, along with other information pertaining to this issue.

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[144] *Id.* at 20 (citing the PMS Memo at 22; Hyundai Steel's PMS comments at 42 (showing four out of six posting negative net income in 2018 and three out of six posting negative net income in 2019.)
[145] *Id.* at 20-22.
[146] *See* PMS Allegation at 5-6 and 7-8.
[147] *See* Memorandum, "Oil Country Tubular Goods from the Republic of Korea: Preliminary Particular Market Situation Memorandum," dated January 15, 2021 (Preliminary PMS Memorandum), at 24-25.

In addition, to date, the CIT has reversed Commerce's affirmative PMS findings in prior administrative reviews of this antidumping duty order in NEXTEEL I, NEXTEEL II, and SeAH related to each factor raised by the DIPs 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 DIPs' 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 DIPs 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 Court has found Commerce's conclusions that there is a PMS in Korea based on the factors alleged by the DIPs to be unreasonable and unsupported by substantial evidence. Accordingly, our analysis of each of the alleged factors takes into account the Courts' rulings specific to those factors and evidence relating to those factors, which are addressed below.

GOK Restructuring Initiative

Regarding the factor of intervention in the steel industry by the government of Korea, the DIPs point to GOK restructuring initiatives, which purportedly aim to aid the steel industry, and to GOK subsidization of the steel market. According to the DIPs, 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 DIPs point to several programs (*e.g.*, the OneShot Act and Special Act on Corporate Revitalization) that assist companies with subsidies, loans, tax support, research and development support, reducing regulatory burden and addressing oversupply. While the DIPs have identified restructuring initiatives by the GOK and provided evidence regarding the Korean government announcing 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 DIPs. The CIT has also pointed to the lack of evidence of the occurrence of any actual restructuring assistance or other government interference as a failing of this element of the DIPs' PMS allegation.[148] With regard to this factor, steel industry restructuring by the GOK, the CIT has pointed to the non-contemporaneity of the information used to support this alleged factor, finding that it is unsupported by substantial evidence.[149]

Furthermore, the DIPs suggest that Commerce adjust the cost of all HRC, a significant input of OCTG, using the most recent finalized CVD rate for each producer, *i.e.*, 0.51 percent for Hyundai, 0.54 percent for POSCO, and 0.56 percent for all other domestic and imported sources.[150] While the DIPs point out the need for Commerce to apply an adjustment to address the impact of distortive subsidization, we note that a CVD rate of just over 0.50 percent demonstrates that any subsidization in the Korean market was not only minimal but, barely above *de minimis*.[151] Thus, Commerce finds that subsidization at above *de minimis* levels exists in Korea, which is the same evidence regarding subsidization that existed on the record of prior

[148] *See* NEXTEEL III, Slip Op. 20-69, Court Case No. 18-00083 at 15-16.
[149] *See SeAH* at 37.
[150] *See* DIPs' Case Brief at 44.
[151] *See* HRS from Korea, 86 FR 10533 (February 22, 2021).

administrative reviews and the CIT found this evidence to be insufficient.[152] Specifically, the CIT stated that "Commerce's determination that 'heavily subsidized' hot-rolled coil 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 hot-rolled coil by the Korean Government."[153] Additionally, with regard to the information supporting the GOK's efforts to advance restructuring programs for the steel industry, as raised by the DIPs in their PMS allegation, the source information for specific programs (*e.g.*, the OneShot Act and Special Act on Corporate Revitalization) is not contemporaneous with the POR, further weakening this alleged PMS factor.[154]

In addition, the CIT has previously dismissed even evidence that was based on contemporaneous data.[155] As mentioned above, evidence on the record of this review period is largely non-contemporaneous. Based on our examination of this information, in light of prior judicial decisions regarding the restructuring/subsidization 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 this POR.

Chinese and Korean Overcapacity

The DIPs 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 DIPs argue that respondents have offered little evidence to overcome the issue of Chinese overcapacity in the

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[152] *See SeAH* at 43.

[153] *Id.*

[154] *See, e.g.*, PMS Allegation at 22 (citing, "China will cut, remove export tariffs on some steel, fertilizer," *Reuters* (Dec. 15, 2017) (Exhibit 64); "China to cancel steel products' export tax in 2018," *Kallanish Commodities* (Dec. 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* (Nov. 23, 2016) (Exhibit 137); "S. Korea Designates Two More Steel Firms for Fast-Track Corporate Restructuring," *Aju Business Daily* (Nov. 22, 2016) (Exhibit 138); "Gov't picks 3 firms for fast-track restructuring," *The Investor* (Nov. 22, 2016) (Exhibit 139); "Hyundai Steel, Dongkuk Steel become latest beneficiaries of fast-track restructuring program," *Pulse* (Nov. 23, 2016) (Exhibit 140); "Hyundai, Dongkuk win 'one shot' government approval," *Kallanish Commodities* (Nov. 23, 2016) (Exhibit 141); "5 more firms picked for fast-track restructuring program," *Yonhap* via *Korea Herald* (Feb. 28, 2017) (Exhibit 143); "POSCO to get government aid for BF No. 1," *Kallanish Commodities* (Jan. 23, 2017) (Exhibit 144); 127 *See, e.g.*, "13 Businesses' One-shot Law Enacted Now Golden Time" *KOSA* (Dec. 12, 2015) (Exhibit 145); "Corporate vitality law, some industries are not alone," *KOSA* (Dec. 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* (Aug. 26, 2016) (Exhibit 149); "Representative Chan-Yeol Lee Proposed 'Stale Steel Destruction Act'," *KOSA* (Sept. 13, 2016) (Exhibit 150); "Ministry expands total amount of trade insurance," *KOSA* (Sept. 19, 2016) (Exhibit 151); "Ministry Presents a Sk*etc*h of Strengthening Competitiveness," *KOSA* (Sept. 30, 2016) (Exhibit 152); "Ministry, Hyundai Steel and Dongkuk Steel Mill approved business," *KOSA* (Nov. 22, 2016) (Exhibit 153); "MOTIE Press Release: Vice Minister of Industry Dangjin Visit," *KOSA* (Dec. 7, 2016) (Exhibit 154); "Ministry encourages steel industry business reorganization and investment," *KOSA* (Dec. 7, 2016) (Exhibit 155)).

[155] *See, e.g.*, NEXTEEL II at 13-14 (the CIT upheld the determination in NEXTEEL I, finding that the information relied upon was largely unsubstantiated); *see also SeAH* at 41 (where the CIT cited to the need for reliance upon more contemporaneous subsidy rates).

Korean market, including oversupply of steel within Korea that has not been exported. We disagree with the DIPs' overcapacity arguments.

We have reexamined the record regarding this alleged factor as well as arguments presented by all parties and find that the data presented by the DIPs do not support the overall premise of the DIPs' overcapacity argument. As an initial matter, we note that the DIPs 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 seven- and eleven-year periods to demonstrate their overall premise of overcapacity. The inconsistency in selecting time periods for the data presented to support their argument of overcapacity yields unstable and questionable results. To ensure a logical argument based on consistent data within the same time period, we have reevaluated the data submitted by the DIPs, generally using a period of five years that covers this POR and the four years prior to the POR.

The DIPs 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.[156] Our examination of this data reveals otherwise. Using data provided in the DIPs' PMS allegation, we examined the data covering the time period 2015 through 2019, where possible.[157] We observed that the data demonstrate a drop of approximately 50 percent in the rate of Chinese imports in Korea during the relevant period.[158] Similarly, in their PMS allegation, as part of their overcapacity argument, the DIPs attempt to demonstrate HRS penetration in the Korean market, *i.e.*, HRS imports as a percentage of Korean domestic hot-rolled flat product production.[159] 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 current POR. For instance, according to the DIPs' table, Chinese HRS imports as a percentage 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.[160] Our examination of this data controverts the DIPs' 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 depend 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 DIPs' argument regarding Chinese overcapacity into Korea during this period of review. That is, in examining the average unit value (AUV) of Chinese imports into Korea, we find that the AUVs of HRC is $518.03/MT in 2019. When

[156] *See* PMS Allegation at 31.
[157] *See* PMS Allegation at 31 (in certain instances, the DIPs' data was not available for 2019; when this occurred, we adjusted our analysis by one year to cover the period from 2014 through 2018).
[158] *See* PMS Allegation at 31.
[159] *Id.* at 33.
[160] *Id.*

compared with the AUV of HRC and plate over a five-year period, the data demonstrate that the AUV has actually increased by approximately 30 percent.[161] 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.[162] 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 downward pressure 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 are specific to those periods of review. 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.

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 hot-rolled steel (Chinese imports of hot rolled steel as a percentage of Korean apparent consumption[163] of hot rolled steel). Neither the DIPs nor respondents have provided such information. Absent this information, we do not find the DIPs' overcapacity argument to be persuasive.

Further, the Courts have pointed out that while overcapacity impacts the global market, there is little information presented in the prior OCTG segments to demonstrate that oversupply of low-priced Chinese product is particular to the Korean market or that it causes price distortions specific to the Korean steel market.[164] As stated above, in the current review, having examined the evidence that is specific to Korean market, we find the record evidence contradicts the overcapacity argument as advanced by the DIPs.

Electricity

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

With regard to the DIPs' allegation of distortion present in the Korean electricity market, consistent with the 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. Commerce has previously found that electricity in Korea functions as a tool of the government's industrial policy.[165] 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

[161] *Id.* at Exhibit 118.
[162] *Id*.
[163] Apparent consumption is equal to domestic production plus imports minus exports.
[164] *See, e.g*., *SeAH* (remand order) at 36 (April 14, 2021) (Case 1:19-cv-00086-JCG Document 104 Filed 04/14/21).
[165] *See OCTG from Korea 2017-2018* IDM at Comment 3; *see also CWP from Korea* IDM at 14.

respondents received any electricity benefits from the GOK during this review period. Evidence of direct subsidization of the mandatory respondents or subsidization of the steel industry related to OCTG 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 from the provision of electricity. Thus, while an argument can be made as to whether KEPCO is a government-controlled entity that exerts influence on the rate of electricity charged to different categories of users, including industrial users, upon examination of electricity in CVD cases, Commerce has found no measurable benefit and thus, that electricity was not provided for less than adequate remuneration.[166] 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 the tool of Korea's industrial policy has caused distortions in the market that would render the costs of producing OCTG outside the ordinary course of trade. 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, because they are below the rates that would have been charged in the open market, that they require an upward adjustment to the COP. 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 DIPs challenged Commerce's *Preliminary Results* on the issue of inbound bulk shipping, arguing that Commerce erred in its understanding of fact 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 DIPs have not presented a logical argument regarding inbound bulk shipping, which they base on a decrease in global shipping rates and on HMM, one of the largest shipping companies in the world that, according to the DIPs, dominates the Australia-to-Korea bulk circuit, transporting iron ore and coking coal used by the Korean steel industry, and which, according to the DIPs is highly subsidized.

We find that the DIPs 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 OCTG inputs. Furthermore, the DIPs' 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 DIPs 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

[166] *See SeAH* (remand order) at 36 (April 14, 2021) (Case 1:19-cv-00086-JCG Document 104 Filed 04/14/21).

is allegedly distorted, while the DIPs 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 removed from freight rates associated with direct imports of raw materials, such as HRC, used in the production of OCTG. Accordingly, for these final results, we continue to find that the DIPs 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 DIPs 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 DIPs 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.[167] We disagree. As an initial matter, and contrary to the DIPs' comments that Commerce misunderstood the argument advanced by the DIPs with respect to iron ore, and that Commerce did not fully weigh the record information submitted by the DIPs, we examined all information submitted by the DIPs. The fact that we disagree with the DIPs does not translate into a misunderstanding of this alleged PMS factor. While the DIPs provided information on distorted iron ore shipping costs, we continue to find that the DIPs have not demonstrated how it allegedly distorts the cost of HRC used to produce OCTG.

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 OCTG. 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 OCTG. 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 necessarily indicate that they contribute to finding that a PMS exists within Korea.

Additionally, we note that much of the DIPs' 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.

[167] *See* U.S. Steel's Case Brief at 64-77.

Comment 1-C: Quantification of PMS Adjustment

U.S. Steel's Comments:[168]

Revision of Capacity Utilization Rate

- Commerce should reevaluate the threshold for the capacity utilization rate. For the preliminary results of review, Commerce used an 80 percent capacity utilization rate that is specific to the U.S. market and applied this rate directly to average global steel production ("GlobalProdsvearAvg") to supposedly generate a counterfactual healthy *global* capacity figure ("GlobalCapcl"), which is illogical. Commerce should therefore modify its capacity utilization threshold to reflect the global market.[169]
- Commerce's 80 percent capacity utilization rate is aligned with the Section 232 report, which is specific to the U.S. market. This capacity utilization rate, however, does not take into account the healthy capacity utilization levels of the global market.[170]
- Various studies, including by the Boston Consulting Group and McKinsey & Company, show that the proper measure of capacity utilization is at least 85 percent, which reflects the global steel industry. Commerce should therefore recalculate the capacity utilization rate to reflect the realities of the global market.[171] While Commerce should use an 85 percent utilization factor in its regression model, the DIPs request that for these final results of review, Commerce adjust its capacity utilization rate to a minimum of 83 percent capacity utilization threshold.[172]

***Hyundai Steel's Comments*:[173]**

Significantly Flawed Regression Analysis

- The DIPs' regression analysis that Commerce relied upon in the preliminary results is fraught with faulty logic, data errors, and unreasonable assumptions, which individually and collectively render their framework and the resulting adjustment an unusable and unacceptable basis for quantifying a PMS adjustment in this review.[174]
- Should Commerce continue to adopt a regression-based approach to quantify the PMS adjustment for the final results of review then, at a minimum, Commerce must correct the data errors and use more appropriate assumptions in the final margin calculations.[175]
    - The use of global overcapacity in the DIPs' regression analysis is illogical because it applies an alleged world-wide distortion to adjust for an alleged local market distortion, which does not apply a particular local market.[176]
    - The "ordinary least squares" regression model is structured to show that Korea's HRC import AUVs will vary based on the level of global excess steel capacity. But such analysis undermines the basic premise that a PMS exists within Korea.[177]

[168] *Id.* at 25-43.
[169] *Id.* at 35.
[170] *Id.* at 35-38.
[171] *Id.*
[172] *Id.* at 39-43.
[173] *See* Hyundai Steel's Case Brief at 45 -60.
[174] *Id.* at 45.
[175] *Id.* at 46-48.
[176] *Id.* at 46.
[177] *Id.* at 47.

- The DIPs' hypothesis underlying the PMS allegation is that there exists some equilibrium price at which the costs of manufacturing OCTG converge, and because of the alleged distortions, the costs are below the equilibrium is completely without merit and has not been legitimately supported quantitatively.[178]

- Commerce should not accept the Ordinary Least Squares (OLS) model in for determining the PMS adjustment, as it is mathematically unsound. The DIPs failed to cite any objective, third party, authoritative study establishing a definitive correlation between "excess capacity" or "uneconomic capacity" on one hand and "depressed prices" on the other. Record evidence does not show that a higher uneconomic capacity is inversely correlated with depressed prices. The DIPs' self-serving claim that there is a high negative coefficient for "uneconomic capacity" is unpersuasive, and the PMS adjustment resulting from such arguments is unsupportable.[179]
- The results from the DIPs' OLS model show a statistically insignificant negative correlation between gross fixed capital formation (GFCF) and HRC import AUVs. However, Commerce's reliance on the GFCF variable as a basis for accepting the regression-based PMS adjustment is unsupported by substantial evidence.[180]
  - Within any given market or country, steel prices are determined based on a combination of demand and supply side variables - current as well as forecasted. At any given point of time, different markets exhibit disparate trends regarding steel prices. Given the inherent complexities, it is misleading and incorrect to reduce the relationship between GFCF and steel prices to a convenient formula.[181]
  - Record evidence shows that GFCF is a broad basket category that contains assets unrelated to steel consumption, such as technology equipment and intellectual property products. Without taking demand variables into account, the DIPs' regression-based adjustment is unusable.[182]
- The record fails to support correlations of iron ore and steel scrap prices with Korean HRC values. Specifically, based on the results of the Domestic Producers' OLS model, global prices of iron ore and steel scrap should be positively correlated to the Korean HRC AUVs. Hyundai's proprietary data show that, contrary to the OLS model results, iron ore prices had both positive and negative correlations with the Korean HRC/flat steel product average import prices between 2008 and 2018. Likewise, the data show that contrary to a rigidly positive correlation suggested by OLS model results, steel scrap prices also failed to positively correlate with the Korean HRC/flat product import AUVs.[183]
- Commerce has previously determined that countervailable subsidies on domestic HRC can affect imports of HRC into Korea because domestic and imported prices of HRC converge to a lower market equilibrium price than if the domestically produced Korean HRC did not benefit from Korean government subsidies. However, the DIPs' failure to

[178] *Id.* at 47-48.
[179] *Id.* at 49-50.
[180] *Id.* at 50-53.
[181] *Id.*
[182] *Id.*
[183] *Id.* at 53-54.

incorporate each countries' company-specific subsidies as a variable in their OLS model further demonstrates the unreliability of their regression-based PMS methodology.[184]

- Commerce cannot legally justify a 16.67 percent PMS adjustment on an arbitrary set of assumptions that bear no relationship to the actual production and cost experience of the Korean manufacturers in this proceeding. There exist countless iterations of the regression analyses that can be performed, given the wide variety of variables inherent in the calculation. These assumptions include demand and supply-side variables, to uneconomic capacity, coefficients that do not cut across countries, and AUVs based on 4-digit HTS codes. Thus, the lack of consistency in the regression analysis results underscores the problematic nature of this statistical model for evaluating and quantifying a PMS adjustment because it allows for "cherry picking" a result based on the most favorable assumptions.[185]

SeAH's Comments:

Unreasonable and Inappropriate Regression-Based PMS Adjustment

- The DIPs' regression-based model is illogical and mathematically incorrect. Specifically, the model fails to satisfy the basic requirements for time-series analysis, that is invalidated by the usual statistical tests, and that generates results that fluctuate wildly over time.[186]
- The DIPs have treated the results of their model as generating a precise estimate of what the AUVs for imports of hot-rolled coils would be at the counter-factual 80-percent global uneconomic-capacity level. However, their model actually describes a range of possible values and the probability that the "true" value falls within those ranges. The actual AUV for imports of hot-rolled coils into Korea during 2018 was $624.19 per ton. This value falls within the 95-percent confidence interval around the DIPs' predicted range value of $600.421 and $867.827 per ton. Consequently, there is no basis for concluding that the AUV is distorted.[187]
- The DIPs' regression model fails to satisfy basic requirements of statistical analyses and cannot be relied upon to accurately predict pricing behavior for time-series analysis, is invalidated by the usual statistical tests, and generates results that fluctuate wildly over time, as supported by several experts on data analysis. Commerce should follow the experts' opinions and reject the DIPs' methodology for the final results of review.[188]
- Commerce should use the coefficients generated by an analysis of the more recent sub-periods within the 10-year period analyzed by the DIPs, rather than the coefficients generated by a single regression for the ten-year period.[189]
- The DIPs' logarithms specific to elasticity fail to recognize that, when logarithms are used in a multivariable regression, the model necessarily predicts the geometric mean of the dependent variable rather than predicating the arithmetic mean using separate additive

[184] *Id.* at 54.
[185] *Id.* at 55-60.
[186] *Id.* at 28-29.
[187] *Id.* at 29-30.
[188] *Id.* at 30-32 (citing Michael Northeim, "Investigating the Validity of OLS for Predicting AUV: 2008-2018 Korea Import AUV," at 16 (Northeim July 31 Report) and Dr. Rodney Ludema, a Professor of Economics at Georgetown University).
[189] *Id.* at 32.

effects of each individual variable. Thus, the model at issue is meaningless, as it does not consider the impact on AUVs of variables such as uneconomic capacity and iron ore.[190]

- The DIPs' regression analysis relied upon by Commerce also fails to account for intertemporal exogeneity in the explanatory variables of the static regression model:

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

Because the regression analysis at issue includes a data set that has both a time-series dimension and a cross-sectional dimension, additional refinements are necessary to ensure a proper analysis. However, such refinements would not otherwise be necessary if the regression model were based on a pure time-series dataset. Based on the DIPs' static regression model, there are a handful of variables (*e.g.*, uneconomic capacity and time-lag between price changes and production capacity) impacted by past, present and future values of HRC prices, but these factors are not taken into account in the model, thus rendering invalid the regression model proffered by the DIPs.[191]

- The DIPs' regression analysis has additional flaws, as it does not address distortions caused by multicollinearity and therefore, the model cannot be estimated using an Ordinary Least Squares (OLS) methodology.
- The DIPs' regression analysis fails to account for multicollinearity among the explanatory variables. That is, when one of the *independent* variables is a linear function of one or more of the other independent variables, the model suffers from multicollinearity, and it cannot be estimated by an OLS regression. It also fails to account for autocorrelation in the AUV data. In its current form, autocorrelation in the dependent variable violates the underlying mathematical assumptions of OLS and 2SLS analyses, and therefore prevents their application, leading to bias in the coefficient estimates and predictions.[192]
- The results of the DIPs' regression analysis are artificially high because their analysis does not consider correlation, or autocorrelation, of data. The Durbin-Watson test, for instance, which is a standard statistical test for establishing autocorrelation in data, indicates that there is less than one in 10,000 chance that the AUV data used in the petitioners' regression model is not autocorrelated, consequently yielding results of artificially high statistical significance.[193]
- While Commerce correctly noted in the preliminary results that a proper time-series analysis requires homoskedasticity, it failed to find complete evidence of heteroskedasticity, further invalidating the DIPs' proposed time-series regression model.[194]
- The DIPs' regression analysis also does not consider the direct effect of each explanatory variable. Instead, the model multiplies all the explanatory variables together, contradicting well-established statistical principles.[195]

[190] *Id.* at 33-34.
[191] *Id.* at 34-35.
[192] *Id.* at 36-37.
[193] *Id.* at 38-39.
[194] *Id.* at 39.
[195] *Id.* at 39-41.

Commerce Should Use A Period that Provides the Best Fit for the Data

- Commerce's use of a ten-year period for the estimation of a counterfactual for AUV for hot-rolled coils during the review period is fundamentally misguided.[196]
- In the preliminary results, Commerce incorrectly used data for the most recent ten-year time span (*i.e.*, 2009 to 2018) to estimate the coefficients used to quantify the PMS adjustment. Commerce claimed that data from 2008 and 2009 should be included in the regression analysis in that review because "the financial crisis of 2008-2009 is the main event of interest in the analysis, because the subsequent decline in global steel demand resulting from the crisis instigated the Chinese stimulus, and increased GOC investment and spending to boost the steel industry." [197]
- The evidence in this case shows that AUVs and noneconomic capacity had a very different relationship during the earlier period than they did during later periods. This time frame creates an unusual relationship between AUVs and uneconomic capacity during an earlier time period, which is irrelevant from a statistical perspective. For example, a closer look at the R-squared for shorter sub-periods shows a higher R-squared for the more recent periods (*e.g.*, 2014-2018), which demonstrates that the coefficients generated from the analysis of those shorter sub-periods periods fit the data better than the DIPs' proposed figures.[198]

Husteel's Comments:[199]

- The regression model used by Commerce to quantify the alleged PMS is fundamentally flawed and should not be used to adjust respondent's costs.[200]
- The regression model is based on global steel overcapacity and thus directly contradicts the allegation that there is market distortion particular to Korea. As observed by the CIT in NEXTEEL I, a global phenomenon is not a "particular" market situation.[201]
- Husteel agrees with the points made by the mandatory respondents on the issue of quantification of the alleged PMS distortion and incorporates those arguments by reference.

U.S. Steel's Rebuttal:

- Respondents' challenge to Commerce's use of the regression analysis has no merit, as they merely rehash a number of arguments rebutted both by Commerce in the last administrative review and in Commerce's preliminary PMS determination in this review.[202] The goal of the petitioners' regression analysis is to model a simple equation for which high-quality data are reasonably accessible that will include excess capacity (in one form or another) as an explanatory variable and the price of HRC (in one form or another) as the dependent variable.[203]

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[196] *Id.* at 44-45.
[197] *Id*.
[198] *Id.* at 45-47.
[199] *See* Husteel's Case Brief at 11.
[200] *Id.*
[201] *Id.* (citing *NEXTEEL I*, 335 F. Supp. 3d at 1350).
[202] *See* U.S. Steel's Rebuttal Comments at 22.
[203] *Id.* at 28.

- Commerce should reject untimely PMS arguments by SeAH that were submitted after the close of the factual record in SeAH's case brief. These include for example, the variance inflation factor and the modified Durbin-Watson test.[204]
- Commerce should continue to rely on the petitioners' regression analysis, given the remarkably high level of fits, as evidenced by an R2 of 0.8993, indicating a strong predictive value.[205]
- While Hyundai Steel attempts to discredit the regression model submitted by the petitioners and relied upon by Commerce, even in the previous review of this order, the regression model has a wide range of reliable applications, including the estimation of the price effect of distortive overcapacity in the steel industry.[206]
- SeAH is incorrect to state that no expert has endorsed the regression methodology.
- There is a statistically insignificant degree of endogeneity bias towards the OLS regression methodology when tested against the Woodbridge's empirical test for endogeneity bias. When both the OLS and 2SLS tests for excess capacity are run, the excess capacity is identical to the OLS coefficient up to the fifth digit, demonstrating the results of each regression are statistically consistent with one another.[207]
- While SeAH raises a variety of critiques informed by statisticians' approach to regression analyses, none of the issues raised undermine the validity of DIPs' *econometric* estimation of the relationship between uneconomic worldwide capacity and the unit value of imports into Korea for HRC in the 2009-2018 period.[208]
- A full-fledge structural model of the world economy, including explanatory variables that reflect the particular sectors, is unnecessary to develop useful estimates of the coefficients of variables that reflect pertinent aspects of HRC price determination, including global excess capacity as indicated by uneconomic capacity. the OLS equation neatly accounts for the variation of the dependent variable around its mean (*i.e.*, R2= 0.8993) for the 46 countries and 10 years.[209]
- SeAH's assertion that "heteroskedasticity in the data again confirms that the DIPs' proposed time-series regression is mathematically invalid" is unsupported and incorrect. At most, it affects the formula used to calculate standard errors, which is immaterial for the purpose for which the DIPs' regression model is used, *i.e.*, to provide a point estimate of the effect of excess capacity on the price of HRC.

Overcapacity Price Link

- Hyundai Steel's own report confirms the link between overcapacity with additional third-party evidence to corroborate the overcapacity-price relationship shown by the regression model, as acknowledged by Commerce in the prior administrative review.[210]

[204] *Id.* at 22-23.
[205] *Id.* at 24.
[206] *Id.* at 24-25.
[207] *Id.* at 26.
[208] *Id.*
[209] *Id.* at 26-27.
[210] *Id.* at 29-30.

Supply and Demand Side Explanatory Variables

- OLS-based model accounts for a variety of demand and supply side variables to account for the factors that determine HRC prices. For instance, on the supply side, the model includes excess capacity, exchange rates for each country and raw material prices, which cover iron ore and steel scrap. Hyundai Steel incorrectly calls for Commerce to add in the variable coke, as a significant raw material input but, provides no justification or economic rationale to include this input in the equation.[211]
- With respect to time-variant demand variables, U.S. Steel includes the variable, GFCF, reflecting investment in non-financial assets. Hyundai Steel argues that this variable should be more narrowly defined but provides no reliable or relevant data to demonstrate that GFCF is too broadly categorized.[212]
- Commerce should disregard Hyundai Steel's arguments regarding correlation. The calculations are steeped in mathematical fact and as such, they cannot be readily dismissed. When correlation assessments are properly conducted, they yield conclusions that are entirely consistent with U.S. Steel's regression model.[213]

Time Frame for Regression Analysis

- While Commerce's practice is to limit the time frame to 10 years for purposes of the regression analysis, Commerce should include 2008 data in its analysis, as that year fully reflects when the overcapacity crises began. Calendar year 2008 reflects a year of massive steel subsidization in China, which also saw a contemporaneous decline in global steel demand precluded much of the uneconomically produced steel from being absorbed by the Chinese market.[214]
- Respondents submit a variety of arguments, including examples provided below, regarding adjustments to the time frame of the data for the regression analysis that Commerce should reject.
    - Respondents have argued in this and the prior administrative review that the regression analysis should include the last year that extends into the POR, which would include calendar year 2019 for the instant review period.[215]
    - Respondents argue that 2009 data should be omitted without any justification other than the fact that it considers data from that year to be an econometric outlier.[216]
    - Commerce should refuse SeAH's proposal to adopt a truncated model for 2014-2018. Because the entire purpose of the regression analysis is to quantify the effect of the overcapacity crisis upon steel prices, and because SeAH's approach eliminates the formative years of the crisis from the analysis, SeAH's approach would render the entire exercise pointless. [217]

[211] *Id.* at 31.
[212] *Id.* at 32.
[213] *Id.* at 33.
[214] *Id.* at 34-36.
[215] *Id.* at 33-34.
[216] *Id.* at 36.
[217] *Id.* at 37-38.

- Despite suggestions by SeAH and Hyundai Steel to modify commerce's post-regression analysis, such as utilizing production figures for 2018, only, Commerce's analysis is reasonable and should be maintained for the final results of review.[218]

Hyundai Steel's Rebuttal:

- The PMS adjustment used by Commerce in the *Preliminary Results* contains substantial errors and inconsistencies and is methodologically unsound, rendering it inaccurate and unreliable.[219]
- To the extent that Commerce continues to make a PMS adjustment for the final results of review, it must limit the PMS adjustment to Hyundai Steel's HRC purchases and continue to exclude the costs of Hyundai Steel's self-produced HRC from any PMS-related adjustment. This approach is similar to other cases before Commerce where a PMS adjustment was made.[220]
- The petitioners' proposal that Commerce make an adjustment based on HRC market prices to Hyundai Steel's costs of materials to produce HRC is illogical. It is a longstanding Commerce principle in cost calculations that the denominator of a cost adjustment ratio and the costs to which the ratio is applied must be on the same basis to ensure consistency to avoid distortion and unreliable results.[221]
- The cost adjustment must be (1) based on finished HRC prices and (2) designed to be applied to finished HRC and cannot be applied to completely different self-produced HRC input materials that share none of the same market forces of supply and demand.[222]
- U.S. Steel mischaracterizes record evidence by arguing that Hyundai Steel's internal HRC transfer price from its Dangjin Integrated plant (where it produces HRC) to the Ulsan pipe plant (where it produces OCTG) is based on unaffiliated third-party transactions, thus indicating that Hyundai Steel's self-produced prices are subject to the same alleged market-wide overcapacity distortions.
- U.S. Steel focuses on the manner in which Hyundai Steel records the transfer prices in its accounting books and records, and purposefully ignores that Hyundai Steel reported its actual costs in this review. For the *Preliminary Results*, Commerce correctly relied upon Hyundai Steel's reported actual costs.[223] U.S. Steel characterizes the cost transfer as a sales activity, when in fact it is simply an inter-plant cost transfer within the same entity.[224]

SeAH's Rebuttal:

- The DIPs' request that Commerce treat imports from China and alleged Korean subsidization as entirely distinct and subsequently make an adjustment for each one

[218] *Id.* at 38-40.
[219] *See* Hyundai Steel's Rebuttal Brief at 20.
[220] *Id.* (citing *OCTG from Korea 2017-2018* IDM at 27, Comment 1-B; *see also Certain Corrosion-Resistant Steel Products from Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 15114 (March 17, 2020), and accompanying IDM at 33; *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), and accompanying IDM at Comment 3).
[221] *Id.* at 22-23.
[222] *Id.* at 23.
[223] *Id.* at 23-24.
[224] *Id.* at 24.

results in double-counting. Because the regression analysis fully accounts for the impact on prices of eliminating excess Chinese capacity, there is no basis for making an additional adjustment for Korean subsidies in response to excess Chinese capacity.[225]

- The DIPs' misrepresent the 80 percent capacity utilization benchmark rate, suggesting a higher rate be used, such as 85 percent. The DIPs falsely claim that the 80 percent rate is sourced from the Section 232 Report.
- Commerce has relied upon the 80 percent capacity utilization benchmark rate in previous segments of this proceeding, noting that the 80 percent is the appropriate benchmark for preserving healthy operation of the steel industry.[226]
- The DIPs' suggested rate of 85 percent or even higher as the threshold applicable to the global market is unpersuasive, misleading, and misinterpreted. For instance, the DIPs miscite a statement by an ArcelorMittal USA representative who stated his reference to 90 percent capacity utilization was not a claim about the level of capacity utilization needed to ensure the long-run health of the steel industry. It was simply a statement that running four mills at 90-percent utilization is more economical than running five mills at 70 percent. There is no reason or credible support offered by the DIPs for Commerce to artificially inflate the 80 percent threshold rate.[227]
- Because the DIPs' capacity utilization was less than 85 percent (and 83 percent) in every period considered by their regression model, their model cannot properly be used to extrapolate what AUVs would have been if that level of capacity utilization had been achieved.[228]
- A regression model cannot properly be used to extrapolate what might happen across new data sets or if other conditions that did not exist in the data used to develop the regression were to suddenly appear. Evidence indicates that the DIPs' assumption that the relationship between AUVs and uneconomic capacity is linear through all values of uneconomic capacity is simply wrong and inaccurate. This is further exacerbated where the DIPs run the regression analysis over multiple time periods with different AUVs and uneconomic capacity in an attempt to generate a specific outcome. Thus, the DIPs' regression model must be rejected by Commerce.[229]
- Hyundai Steel's basis of transferring costs from the Dangjin Integrated plant to the Ulsan pipe plant reflects Hyundai Steel's actual COM for the HRC, not actual marketplace transactions with specific unaffiliated customers for HRC, and the internal price guidelines are used to allocate the HRC costs to manufactured pipe products.[230]
- In the context of the PMS allegation considered for the *Preliminary Results*, Commerce accurately focused on the acquisition price of the OCTG manufactures and nothing else; that is, Commerce found that the alleged PMS exists with respect to the HRC component of cost, and not with respect to any other inputs of subject merchandise.[231]

[225] *See* SeAH's Rebuttal Brief at 7-8.
[226] *Id.* at 9-13 (citing *OCTG from Korea 2017-2018* IDM at Comment 1-C, at 52-53.)
[227] *Id.*
[228] *Id.* at 13-14.
[229] *Id.* at 14-17.
[230] *Id.* at 25.
[231] *Id.* at 25-27 (citing, *e.g.*, *Circular Welded Pipe from Turkey Prelim* PDM at 25.

HRC-Specific Ratio Calculation

- The DIPs argue that Commerce should use specific ratio calculation to define the proportion of Hyundai Steel's HRC that it purchased from sources other than the Dangjin Integrated plant for purposes of a PMS adjustment. The numerator of the ratio calculation does not represent the proportion of POR consumption that derives from purchased HRC, as U.S. Steel contends. Also, the denominator of this ratio calculation reflects POR consumption, whereas the numerator largely (but not entirely) reflects purchases, so the different bases lead to a meaningless statistic.[232]
- The DIPs have provided no reason for Commerce to deviate from its consistent past practice in this proceeding of applying the PMS adjustment ratio directly to the DIRMAT. As explained in Hyundai Steel's supplemental response, Hyundai Steel builds up actual costs from the first production process (iron making) to the final production process (OCTG pipe-making), and thus the DIRMAT accurately reflects the HRC costs. Therefore, Commerce should reject U.S. Steel's proposed ratio calculation related to the proportion of HRC purchased from outside suppliers.[233]

Capacity Utilization Benchmark

- It is unrealistic to presume that long-term sustainability and profitability in the steel industry requires a minimum capacity utilization rate of 83 percent. A regression analysis based on a minimum 83 percent global capacity utilization rate simply is not reasonable. U.S. Steel has provided no factual basis for Commerce to modify its established practice of abandoning the 80 percent capacity utilization threshold in favor of an 83 percent threshold. Commerce has determined in other cases that an 80 percent global steel capacity utilization rate is the appropriate threshold when evaluating a global steel capacity PMS allegation.[234]
- There is a plethora of evidence that supports a capacity utilization rate of 80 percent. According to Commerce's Steel Industry Report, U.S. domestic steel capacity utilization has been trending up in the last two years, and was above 80% throughout the POR, reaching 81.3% in February 2020.[235] In February 2019, statistics from the American Iron and Steel Institute showed U.S. capacity utilization levels had risen from 76 percent in April 2018 to above 80 percent, and it indicated that the 80 percent level was "what was needed to make the industry viable over the long term."[236] Similarly, the OECD had indicated that capacity utilization for 2018 was 81.0%.[237]
- At this capacity utilization rate of 80 percent, the U.S. steel industry has been extremely profitable, and in fact posted 15 straight quarters of net positive earnings between 2016 and 2019 - including all quarters covered by the POR - before experiencing a downturn in

[232] *Id.* at 27-29.
[233] *Id.*
[234] *Id.* at 29-31 (citing, *e.g.*, *Cold-Rolled Final 2017 /18*, supra, IDM at Comment 2; *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea*, 85 FR 41538 (July 10, 2020), and accompanying IDM at Comment 2; and *CORE from Korea Final 2017/18* IDM at Comment 3).
[235] *Id.* at 31-32 (citing Hyundai Steel's Letter, "Rebuttal Factual Information and Comments Relating to PMS Allegation," dated July 31, 2020 (Hyundai Steel's Rebuttal PMS Submission), at Exhibit REG-3, page 47).
[236] *Id.* at 31 (citing Hyundai Steel's Rebuttal PMS Submission at Exhibit REG-4, INSIDE U.S. TRADE, "U.S. Industry Exceeds Steel Capacity Utilization Level Outlined in Section 232 report" (Feb. 25, 2019)).
[237] *Id.* at 32 (citing Hyundai Steel's Rebuttal PMS Submission at Exhibit CAP-3, "OECD Latest Developments in Steelmaking Capacity, 2019," at 10, Table 7.

2020 during the start of the current global economic crisis. Thus, there is no reason to detract from the 80 percent utilization rate that Commerce has repeatedly used and that the domestic steel producers recognize as a healthy rate for the steel industry.

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

Comment 2: Differential Pricing

SeAH's Comments:[238]

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

- In the Preliminary Results, Commerce applied its differential pricing analysis to determine whether there was a pattern of prices for comparable merchandise that differed significantly among purchasers, regions, or time periods for SeAH's U.S. sales.[239] Commerce's use of the differential pricing analysis is both mathematically and legally improper.
- In order to adopt apparently arbitrary cut-offs (such as those used in the differential pricing analysis) Commerce must either follow the requirements of the Administrative Procedures Act (including its notice-and-comments requirements), or explain in each case why any of the numerical thresholds used in connection with the test are appropriate in the context of each specific case. Commerce has done neither of those things here.
    - This principle was recognized by the CIT and CAFC in cases addressing the *de minimis* standard applied by Commerce in investigations.[240] In the past, Commerce applied a 0.5 percent *de minimis* standard as a matter of policy, but without a specific provision in the regulations for it at the time. In litigation, the CIT and CAFC held that because the *de minimis* standard had not been promulgated as a regulation in accordance with the provisions of the APA, Commerce was not permitted to apply that rule automatically in every case.[241]
    - Thus, under the principles recognized in *Carlisle Tire* and *Washington Raspberries*, Commerce's use of the differential pricing analysis can be sustained only if it provides both evidence and analysis showing why the 0.8 cut-off used for the Cohen's *d* test and the 33- and 66-percent cut-offs used for the "ratio test" are appropriate.

[238] *See* SeAH's Case Brief at 47-61.
[239] *Id.* at 47 (citing *Preliminary Results* PDM at 9; and Preliminary Analysis Memorandum at 7-8).
[240] *Id*. at 48-49 (citing *Carlisle Tire v. United States*, 634 F. Supp. 419, 423 (CIT 1986) (*Carlisle Tire*); *Washington Red Raspberry Commission. v. United States*, 859 F.2d 898, 903 (Fed. Cir. 1988) (*Washington Raspberries*); *IPSCO v. United States*, 687 F.Supp. 614, 630-31 (CIT 1988) (*IPSCO*)).
[241] *Id*. at 50-51.

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

- When Commerce first applied its differential pricing analysis, it asserted that the reliance on the Cohen's *d* test (and, in particular, on the 0.8 cut-off for determining whether an effect size is large) is appropriate because the cut-offs proposed by Professor Cohen "have been widely adopted."[242] However, Professor Cohen himself made clear that his proposed cut-offs could only appropriately be applied in specific circumstances —where "samples, each of *n* cases, have been randomly and independently drawn from normal populations," and where the two samples do not have "substantially unequal variances" or "substantially unequal sample sizes (whether small or large)."[243]
- In past cases, Commerce admitted that Professor Cohen placed such limitations on his analysis, but maintained that those limitations applied only to the section describing the "Introduction and Use" of his chapter on the "The T Test for Means."[244] According to Commerce, the "The T Test for Means" is irrelevant to the differential pricing analysis, because "this concerns the statistical significance of the difference in the means for two sampled sets of data, and is not relevant when considering whether this difference has a practical difference."[245]
- While Commerce may consider the "The T Test for Means" to be irrelevant to its goal of identifying "targeted dumping," it was very much relevant to Professor Cohen's development and presentation of his *d* statistic, and the various cut-offs he proposed for determining whether *d* is small, medium, or large. While the title of Chapter 2 of *Statistical Power* is "The T Test for Means," Professor Cohen's entire explanation of the *d* statistic is found in Chapter 2 and is the only subject of that chapter.
- In past cases Commerce argued that its differential pricing analysis is not meant to be a "power analysis," and has claimed that the development and presentation of the *d* statistic was meant to establish a framework for something very different from the differential pricing analysis.[246] In other words, Commerce has taken a statistical tool that it claims was intended to provide a "T-Test for Means" in order to "guide researchers in their construction of a project in order to obtain a prescribed 'power,'" and used it for a purpose and in a situation that Professor Cohen never intended. As a result, nothing in *Statistical Power* supports Commerce's claim that the cut-offs used are "fixed thresholds" or can provide justification for Commerce's use of the *d* statistic in its differential pricing analysis in situations that are not consistent with the limitations that Professor Cohen described.

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[242] *Id*. at 51 (citing *Final Results of the Antidumping Duty Administrative Review: Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea; 2013-2014*, 81 FR 46647 (July 18, 2016), and accompanying IDM at 15).
[243] *Id*. at 55 (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 31750 (July 10, 2017); and *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 18105 (April 17, 2017) (*OCTG Korea AR1 Final*), and accompanying IDM at 22 (citing Cohen, *Statistical Power Analysis for the Behavioral Sciences* (2d ed. 1988) (*Statistical Power*) at 19-20)).
[244] *Id*. at 52 (citing *OCTG Korea AR1 Final* IDM at 22).
[245] *Id*.
[246] *Id*. at 53-54 (citing *OCTG Korea AR1 Final* IDM at 22, note 61; *Welded Line Pipe from Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015), and accompanying IDM at VI.B.1 and Comment 1).

- As noted above, the *d* statistic can only be used where "samples, each of *n* cases, have been randomly and independently drawn from normal populations," and where the two samples do not have substantially unequal variances or sample sizes.[247] Commerce made no such determination with respect to SeAH's U.S. sales data meeting those requirements. In such circumstances, the *d* statistic simply does not provide meaningful results.
- As a separate matter, Commerce has asserted in the past that the conditions laid out by Professor Cohen are irrelevant because it is analyzing the complete population of the respondent's U.S. sales, and not just a sample. Mathematically, that assertion is untenable. Normal distributions — whether consisting of a sample or the entire population — have mathematical characteristics that non-normal distributions do not have. Professor Cohen explicitly relied on the mathematical characteristics of normal distributions in the development and justification of his proposed cut-offs.[248]
- Commerce's assertion that Professor Cohen's proposed cutoffs can be used whenever a complete population is being analyzed is completely unsupported by any evidence on the record. A number of academic analyses demonstrate that, when the conditions set out by Professor Cohen are not met, the *d* statistic ceases to be a useful measure of effect sizes. Commerce has not cited to any evidence to support its novel assertion that a parametric test designed for the analysis of two normally-distributed data sets with roughly equal number of data points and roughly equal variance can be used when none of those conditions exist, as long as the entire population is being considered.

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

- Commerce has never explained why the thresholds used in the "ratio test" should be 33 and 66 percent, and not some other numbers (such as 40 and 80 percent, 50 and 90 percent, or any two other numbers between 0 and 100), nor has it explained why a ratio between 33 and 66 percent calls for consideration of the transaction-to-average methodology only for the sales that "pass" the Cohen's *d* test, while a ratio of 66 percent or more calls for the application of the transaction-to-average methodology for all sales.[249]
- Commerce's numerical thresholds have not been established through notice-and-comment rulemaking, then they can only be upheld if supported by substantial evidence on the record in each case in which they are applied.[250]

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

- The statute permits Commerce to depart from the normal A-to-A comparison to account for targeted dumping (in investigations) only if it "explains why such differences cannot

[247] *Id*. at 55 (citing *OCTG Korea AR1 Final* IDM at 22, note 61).
[248] *Id*. at 56 (citing *OCTG Korea AR1 Final* IDM at 22-23, note 62).
[249] *Id*. at 72 (citing, *e.g.*, *OCTG Korea AR1 Final* IDM at 25).
[250] *Id*. at 57-58 (citing *Carlisle Tire*, 634 F. Supp. at 423; *Washington Raspberries*, 859 F.2d at 903; and *IPSCO*, 687 F. Supp. at 630-1).

be taken into account using" an A-to-A or transaction-to-transaction (T-to-T) calculation methodology.[251]

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

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

- The Act normally requires Commerce to calculate dumping margins in investigations using one of two methodologies: by comparing an average NV to an average U.S. price, or by comparing the NVs for individual transactions to the U.S. prices for individual transactions.[252] As a general rule, the Act does not permit Commerce to compare an average NV to U.S. prices for individual transactions in an investigation.
- The statute provides an exception to this general rule when targeted dumping is found to exist, but that exception, which might permit Commerce to calculate dumping margins by comparing an average NV to U.S. prices for individual transactions, applies only when there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and if the administering authority explains why such differences cannot be taken into account using a method described in section 777A (d)(1)(A)(i) or (ii) of the Act.[253] If those conditions are not met, Commerce is not permitted to depart from the A-to-A (or T-to-T) methodology that is normally required in investigations.
- The conditions permitting the use of an average-to-transaction (A-to-T) comparison methodology are not satisfied in this case and the exception set forth in section 777A(d)(1)(B) of the Act does not apply, and Commerce is required by statute, to continue to calculate dumping margins using the A-to-A methodology for all of SeAH's U.S. sales in its final results.

Maverick's Rebuttal:[254]

- As in other proceedings, SeAH challenges Commerce's use of its differential pricing analysis to determine whether there was a pattern of prices for comparable merchandise

[251] *Id.* at 59 (citing section 777A(d)(1)(B) of the Act).
[252] *Id*. at 60 (citing Section 777A(d)(1)(A) of the Act).
[253] *Id*. at 60-61 (citing Section 777A(d)(1)(B) of the Act).
[254] *See* Maverick's Rebuttal Brief at 2-7.

that differs significantly among purchasers, regions, or time periods as mathematically and legally improper. More specifically, in this review, SeAH repeats the arguments it submitted most recently in *OCTG Korea AR4 Final*: (a) Commerce has not sufficiently explained or justified its analytical bases for the use of the certain cutoffs in the Cohen's *d* test (0.8 percent) and the ratio test (33 and 66 percent, respectively); (b) Commerce must explain its use of the methodology in every case; (c) that the differential pricing analysis must explain why an A-to-A or T-to-T methodology is insufficient to calculate a dumping margin; and (d) that Commerce's use of an A-to-T comparison methodology is contrary to the statute.[255]

- In the first four administrative reviews of the AD order on OCTG from Korea, Commerce specifically addressed and rejected these challenges.[256]
- The CIT and CAFC have also upheld Commerce's application of the differential pricing methodology.[257] In fact, the CIT recently upheld Commerce's differential pricing methodology in an appeal of *OCTG Korea AR2 Final*, in which SeAH likewise challenged the same aspects of the differential pricing methodology that it now raises before Commerce in its case brief.[258]

Commerce's Position: As an initial matter, there is nothing in section 777A(d) of the Act that mandates how Commerce measures whether there is a pattern of prices that differs significantly or explains why the average-to-average (A-to-A) method or the transaction-to-transaction (T-to-T) method cannot account for such differences. On the contrary, carrying out the purpose of the statute[259] here is a gap filling exercise properly conducted by Commerce.[260] As explained in the *Preliminary Results*, as well as in various other proceedings,[261] Commerce's differential pricing

[255] *Id*. at 5 (citing *NEXTEEL*, 392 F. Supp. 3d at 1295-97).
[256] *Id*. at 5-6 (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) (*OCTG Korea AR3 Final*), and accompanying IDM at 60-71).
[257] *Id*. at 6 (citing *Apex Frozen Foods Private Lt. v. United States*, 862 F. 3d 1337, 1344-51 (Fed. Cir. 2017) (*Apex IV*); *NEXTEEL I*, 355 F. Supp. 3d at 1354-57; *NEXTEEL II*, 392 F. Supp. 3d at 1294-97; and *APEX Frozen Foods Private Ltd. v. United States*, 144 F. Supp. 3d 1308, 1314-37 (CIT 2016) (*Apex II*)).
[258] *Id*. at 6 (citing *NEXTEEL II*, 392 F. Supp. 3d at 1294-1297).
[259] *See Koyo Seiko Co., Ltd. v. United States*, 20 F.3d 1156, 1159 (Fed. Cir. 1994) ("The purpose of the antidumping statute is to protect domestic manufacturing against foreign manufacturers who sell at less than fair market value. Averaging U.S. prices defeats this purpose by allowing foreign manufacturers to offset sales made at less-than-fair value with higher priced sales. Commerce refers to this practice as 'masked dumping.' By using individual U.S. prices in calculating dumping margins, Commerce is able to identify a merchant who dumps the product intermittently—sometimes selling below the foreign market value and sometimes selling above it. We cannot say that this is an unfair or unreasonable result." (internal citations omitted)).
[260] *See Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984) (*Chevron*) (recognizing deference where a statute is ambiguous and an agency's interpretation is reasonable); *see also Apex Frozen Foods Private Limited v. United States*, 37 F. Supp. 3d 1286, 1302 (*Apex I*) (applying *Chevron* deference in the context of Commerce's interpretation of section 777A(d)(1) of the Act).
[261] *See, e.g.*, *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015), and accompanying IDM at Comment 1; *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2012-2013, 80 FR 32937 (June 10, 2015), and accompanying IDM at Comments 1 and 2; *Welded ASTM A–312 Stainless Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2013–2014, 81 FR 46647 (July 18, 2016), and accompanying IDM at Comment 4; and *Certain Hot-Rolled Steel Flat Products from Japan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 53409 (August 12, 2016), and accompanying IDM at Comment 8.

analysis is reasonable, including the use of the Cohen's *d* test as a component in this analysis, and is not contrary to the law.

We disagree with SeAH that the differential pricing analysis, including the Cohen's *d* test, is unreasonable, unlawful, or arbitrary. To the contrary, we note that the CAFC has upheld key aspects of Commerce's differential pricing analysis, including the application of the "meaningful difference" standard, which compares the rate calculated using the A-to-A method not using zeroing and the rate calculated using an alternative comparison method based on the A-to-T method using zeroing; the reasonableness of Commerce's comparison method in fulfilling the relevant statute's aim; Commerce's use of a "benchmark" to illustrate a meaningful difference between the A-A and A-T rates; Commerce's justification for applying the A-to-T methodology to all sales instead of just those that pass the Cohen's *d* test; Commerce's use of zeroing in applying the A-to-T methodology to all transactions; that the statute does not directly apply to reviews; Congress did not dictate how Commerce should determine if the A-to-A method accounts for targeted or masked dumping; Commerce may consider all sales in its "meaningful difference" analysis and consider all sales when calculating a final rate using the A-to-T method; and it is acceptable to apply zeroing when using the A-to-T method.[262] In *NEXTEEL*, the CIT rejected SeAH's challenge to our differential pricing analysis and held that "the steps underlying the differential pricing analysis as applied by Commerce {are} reasonable."[263] As explained in the *Preliminary Results*, Commerce continues to develop its approach pursuant to its authority to address masked dumping.[264] In carrying out this statutory objective, Commerce determines whether "there is a *pattern of export prices* (or constructed export prices) for comparable merchandise *that differs significantly* among purchasers, regions, or periods of time, and…. why such differences cannot be taken into account using {the A-to-A or T-to-T comparison method}."[265] With the statutory language in mind, Commerce relied on the differential pricing analysis to determine whether these criteria are satisfied such that application of an alternative methodology may be appropriate.[266]

Because the statute does not explicitly discuss how Commerce should conduct its determination of less than NV in reviews,[267] carrying out the purpose of the statute, here, is a gap filling exercise properly conducted by Commerce.[268] Commerce finds that the purpose of section 777A(d)(1)(B) is to evaluate whether the A-to-A method is the appropriate measure to determine whether, and if so to what extent, a given respondent is dumping the merchandise at issue in the U.S. market.[269] While "targeting" and "targeted dumping" may be used as a general expression to denote this provision of the statute, these terms impose no additional requirements beyond those specified in the statute for Commerce to otherwise determine that the A-to-A method is not

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

appropriate based upon a finding that the two statutory requirements have been satisfied.[270] The CIT and the CAFC have upheld Commerce's application of its differential pricing analysis to evaluate the statutory requirements.[271]

SeAH presents several arguments regarding Commerce's differential pricing analysis in the *Preliminary Results*, the first of which is that Commerce should follow the APA to justify the numerical thresholds used in the differential pricing analysis, *i.e.*, the 0.8 cut-off used for the Cohen's *d* test and the 33- and 66-percent cut-offs used for the ratio test. As explained in past determinations, the notice and comment requirements of the APA do not apply "to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice."[272] Further, Commerce normally makes these types of changes in practice (*e.g.*, the change from the targeted dumping analysis to the current differential pricing analysis) in the context of our proceedings, on a case-by-case basis.[273] As the CAFC has recognized, Commerce is entitled to make changes and adopt a new approach in the context of its proceedings, provided it explains the basis for the change, and the change is a reasonable interpretation of the statute.[274] The CAFC has also held that Commerce's meaningful difference analysis was reasonable.[275] Moreover, the CIT in *Apex II* held that Commerce's change in practice (from targeted dumping to its differential pricing analysis) was exempt from the APA's rule making requirements, stating:

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

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

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

[272] *See*, *e.g.*, *Certain Oil Country Tubular Goods From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 17146 (April 18, 2018) (*OCTG Korea AR2 Final*), and accompanying IDM at Comment 8 (citing 5 U.S.C. 553(b)(3)(A)).

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

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

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

> Therefore, Commerce's adoption of the differential pricing analysis was not arbitrary.[276]

Moreover, the CIT acknowledged in *Apex III* that as Commerce "gains greater experience with addressing potentially hidden or masked dumping that can occur when {Commerce} determines weighted-average dumping margins using the {A-to-A} comparison method, {Commerce} expects to continue to develop its approach with respect to the use of an alternative comparison method."[277] Further developments and changes, along with further refinements, are expected in the context of our proceedings based upon an examination of the facts and the parties' comments in each case.

Regarding SeAH's arguments concerning our reliance on the Cohen's *d* test and on the 0.8 cut-off for determining whether an effect size is large, we disagree. As an initial matter, the CAFC upheld Commerce's threshold in *Mid-Continent*.[278] As stated in the *Preliminary Results*, the purpose of the Cohen's *d* test is to evaluate "the extent to which the prices to a particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise."[279] The Cohen's *d* coefficient is a recognized measure which gauges the extent (or "effect size") of the difference between the means of two groups. Commerce has previously noted that the Cohen's *d* coefficient provides "a simple way of quantifying the difference between two groups and has many advantages over the use of tests of statistical significance alone."[280] Commerce has also previously noted that Robert Coe, in *Effect Size*, has stated that "{e}ffect size quantifies the size of the difference between two groups, and may therefore be said to be a true measure of the significance of the difference."[281] Commerce has noted that *Effect Size* points out that the precise purpose for which Commerce relies on the Cohen's *d* test to satisfy the statutory language, to measure whether a difference is significant.[282] Moreover, the CAFC has affirmed this 0.8 threshold as reasonable.[283]

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

> Dr. Paul Ellis, in *Guide to Effect Sizes*, introduces effect size by asking a question: "So what? Why do this study? What does it mean for the man on the street?" Dr. Ellis continues:
>
> > A statistically significant result is one that is unlikely to be the result of chance. But a practically significant result is meaningful in the real world. It is quite possible, and unfortunately quite common, for a result to be

[276] *See Apex II*.
[277] *See Differential Pricing Comment Request*, 79 FR at 26722.
[278] *See Mid-Continent Steel and Wire, Inc. v. United States*, CAFC 18-1229 (October 3, 2019) (*Mid-Continental*).
[279] *See Preliminary Results* PDM.
[280] *See OCTG Korea AR3 Final* IDM at Comment 3 (citing Robert Coe, *It's the Effect Size, Stupid: What "Effect Size" Is and Why It Is Important*, 2002 Annual Conference of the British Educational Research Association, University of Exeter, Exeter, Devon, England, September 12–14, 2002 (*Effect Size*)).
[281] *Id.*
[282] *Id*.
[283] *See Mid Continent*.

> statistically significant and trivial. It is also possible for a result to be statistically nonsignificant and important. Yet scholars, from PhD candidates to old professors, rarely distinguish between the statistical and the practical significance of their results.

In order to evaluate whether such a practically significant result is meaningful, Dr. Ellis states that this "implies an estimation of one or more effect sizes."

> An effect size refers to the magnitude of the result as it occurs, or would be found, in the population. Although effects can be observed in the artificial setting of a laboratory or sample, effect sizes exist in the real world.[284]

Commerce further stated in *Shrimp from Vietnam*:

> As recognized by Dr. Ellis in the quotation above, the results of an analysis may have statistical and/or practical significance, and that these two distinct measures of significance are independent of one another. In its case brief, VASEP {Vietnam Association of Seafood Exporters} accedes to the distinction and meaning of "effect size" when it states "{w}hile application of the t-test {a measure of statistical significance} in addition to Cohen's *d* might at least provide the cover of statistical significance, it still would not ensure practical significance." {Commerce} agrees with this statement -- statistical significance is not relevant to {Commerce's} examination of an exporter's U.S. prices when examining whether such prices differ significantly. {Commerce's} differential pricing analysis, including the Cohen's *d* test, includes all U.S. sales which are used to calculate a respondent's weighted-average dumping margin; therefore, statistical significance, as discussed above, is inapposite. The question is whether there is a practical significance in the differences found to exist in the exporter's U.S. prices among purchasers, regions or time periods. Such practical significance is quantified by the measure of "effect size."[285]

Lastly, in *Shrimp from Vietnam*, Commerce again pointed to where Dr. Ellis addressed populations of data, stating that, "Dr. Ellis also states in his publication that the 'best way to measure an effect is to conduct a census of an entire population but this is seldom feasible in practice.'"[286]

There are two separate concepts and measurements when analyzing whether the means of two sets of data are different. The first measurement, when these two sets of data are samples of a larger population, is whether this difference is statistically significant, as measured by a t-test.

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

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

The second measurement is whether there is a practical significance of the difference between the means of the two sets of data, as measured by an "effect size" such as the Cohen's *d* coefficient. As noted above, this measures the real-world relevance of this difference "and may therefore be said to be a true measure of the significance of the difference."[287] This is the basis for Commerce's determination of whether prices in a test group differ significantly from prices in a comparison group.

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

> Professor Cohen himself made clear that his proposed cut-offs could only appropriately be applied in specific circumstances —where 'samples, each of *n* cases, have been randomly and independently drawn from normal populations,' and where the two samples do not have "substantially unequal variances" or 'substantially unequal sample sizes (whether small or large).'[288]

We find SeAH's claim to be misplaced. As an initial matter, discussions of sampling, sample size, and statistical inferences are irrelevant to the Cohen's *d* test as there is no sampling involved in it. There are no estimates of the means and variances of the test and comparison groups. Furthermore, as Commerce noted in *OCTG Korea Final*, SeAH's quotation is from section 2.1 of Dr. Cohen's text, "Introduction and Use" of "The T Test for Means."[289] As described above, this concerns the statistical significance of the difference in the means for two sampled sets of data and is not relevant when considering whether this difference has a practical difference. This is not to say that sample size and sample distribution have no impact on the description of "effect size" for sampled data,[290] but that is not the basis for Commerce's analysis of SeAH's U.S. sales price data.

Further, Commerce has noted that the subject of *Statistical Power* and the discussion therein is "statistical power analysis."[291] Power analysis involves the interrelationship between statistical and practical significance to attain a specified confidence or "power" in the results of one's analysis. Indeed, the beginning of the "Introduction and Use" of "The T Test for Means," including SeAH's first quotation, is:

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[287] *See OCTG Korea Final* IDM at Comment 3 (citing *Effect Size*).
[288] *See* SeAH Case Brief at 66 (citing *OCTG Korea AR1 Final* IDM at 22 (citing *Statistical Power* at 19-20)).
[289] *See OCTG Korea AR3 Final* IDM at Comment 3.
[290] *Id*. (citing *Statistical Power* at 21-23, section 2.2.1, where Dr. Cohen quantifies the "nonoverlap" of sampled sets of data. The calculation of the overlap must rely on certain assumptions, such as normal distributions and equal variances in order to determine the common or non-common overlap of the two datasets).
[291] *Id.*

> The arithmetic mean is by far the most frequently used measure of location by behavioral scientists, and hypotheses about means the most frequently tested. The tables have been designed to render very simple the procedure for *power analysis* in the case where two samples, each of *n* cases, have been randomly and independently drawn from normal populations, and the investigator wishes to test the null hypothesis that their respective population means are equal…[292]

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

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

> Deosen's claim that the Cohen's *d* test's thresholds of "small," "medium," and "large" are arbitrary is misplaced. In "Difference Between Two Means," the author states that "there is no objective answer" to the question of what constitutes a large effect. Although Deosen focuses on this excerpt for the proposition that the "guidelines are somewhat arbitrary," the author also notes that the guidelines suggested by Cohen as to what constitutes a small effect size, medium effect size, and large effect size "have been widely adopted." The author further explains that Cohen's *d* is a "commonly used measure" to "consider the difference between means in standardized units." At best, the article may indicate that although the Cohen's *d* test is not perfect, it has been widely adopted. And certainly, the article does not support a finding, as Deosen contends, that the Cohen's *d* test is not a reasonable tool for use as part of an analysis to determine whether a pattern of prices differ significantly.[293]

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

> … can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds,

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[292] *Id.* (citing *Statistical Power* at 19-20 (emphasis in italics, SeAH's quotation underlined)).
[293] *See Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013), and accompanying IDM at Comment 3 (*quoting* Dave Lane, *et al.*, "Effect Size," Section 2 "Difference Between Two Means"); *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013), and accompanying IDM at Comment 4 (*quoting* same); and *Certain Steel Nails from the People's Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014), and accompanying IDM at Comment 7 (*quoting* same).

> the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.[294]

Commerce has relied on the most conservative of these three thresholds to determine whether the difference in prices is significant. Dr. Cohen further provided examples which demonstrate the "real world" understanding of the small, medium and large thresholds, where a "large" difference "is represented by the mean IQ difference estimated between holders of the Ph.D. degree and typical college freshmen, or between college graduates and persons with only a 50-50 chance of passing an academic high school curriculum. These seem like grossly perceptible and therefore large differences, as does the mean difference in height between 13- and 18-year-old girls…"[295] In other words, Dr. Cohen was stating that it is obvious on its face that there are differences in intelligence between highly educated individuals and struggling high school students, and between the height of younger and older teenage girls. Likewise, the "large" threshold is a reasonable yardstick to determine whether prices differ significantly.

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

Finally, we note that, in the *Preliminary Results*, we requested that interested parties "present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results of review, including arguments for modifying the group definitions used in this proceeding."[296] SeAH submitted no factual evidence or argument that these thresholds should be modified or that any other aspects of the differential pricing analysis should be changed for SeAH in this review. Accordingly, SeAH's arguments at this late stage of the review are unsupported by the record and appear only to convey SeAH's disagreement with the results of Commerce's application of a differential pricing analysis in this review, rather than to truly identify some aspect of this approach which is unreasonable or inconsistent with the statute.

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

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[294] Nonetheless, these thresholds, as with the approach incorporated in the differential pricing analysis itself, may be modified given factual information and argument on the record of a proceeding. *See Preliminary Results* PDM.
[295] *See OCTG Korea AR3 Final* IDM at Comment 3 (citing *Statistical Power* at 27).
[296] *See Preliminary Results* PDM.

> In the differential pricing analysis, {Commerce} reasonably established a 33 percent threshold to establish whether there exists a pattern of prices that differ significantly. {Commerce} finds that when a third or less of a respondent's U.S. sales are not at prices that differ significantly, then these significantly different prices are not extensive enough to satisfy the first requirement of the statute…
>
> Likewise, {Commerce} finds reasonable, given its growing experience of applying section 777A(d)(1)(B) of the Act and the application of the A-to-T method as an alternative to the A-to-A method, that when two thirds or more of a respondent's sales are at prices that differ significantly, then the extent of these sales is so pervasive that it would not permit {Commerce} to separate the effect of the sales where prices differ significantly from those where prices do not differ significantly. Accordingly, {Commerce} considered whether, as an appropriate alternative comparison method, the A-to-T method should be applied to all U.S. sales. Finally, when {Commerce} finds that between one third and two thirds of U.S. sales are at prices that differ significantly, then there exists a pattern of prices that differ significantly, and that the effect of this pattern can reasonably be separated from the sales whose prices do not differ significantly. Accordingly, in this situation, {Commerce} finds that it is appropriate to address the concern of masked dumping by considering the application of the A-to-T method as an alternative to the A-to-A method for only those sales which constitute the pattern of prices that differ significantly.[297]

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

Commerce disagrees, in part, with SeAH that "the mere existence of different results is plainly insufficient, by itself, to satisfy the statutory requirements"[298] whether the A-to-A method can account for significant price differences which are imbedded in SeAH's pricing behavior in the U.S. market. Commerce does agree with SeAH that this difference is due to the offsetting of lower U.S. prices with higher U.S. prices. When using the A-to-A method, this offsetting occurs implicitly within the average U.S. prices which is compared with NV, and this offsetting occurs explicitly when offsets are granted for non-dumped, negative comparison results. The A-to-T method, with zeroing, eliminates the masking of dumping by each type of offsetting. When the

[297] *See Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods from India*, 79 FR 41981 (July 18, 2014), and accompanying IDM at Comment 1.
[298] *See* SeAH Case Brief at 74.

A-to-T method in not used in conjunction with zeroing, it will always yield identical results to the results under the A-to-A method.

The difference in the calculated results specifically reveals the extent of the masked, or "targeted," dumping which is being concealed when applying the A-to-A method.[299] The difference in these two results is caused by higher U.S. prices offsetting lower U.S. prices where the dumping, which may be found on lower priced U.S. sales, is hidden or masked by higher U.S. prices,[300] such that the A-to-A method would be unable to account for such differences.[301] Such masking or offsetting of lower prices with higher prices may occur implicitly within the averaging groups or explicitly when aggregating the A-to-A comparison results. Therefore, in order to understand the impact of the unmasked "targeted dumping," Commerce finds that the comparison of each of the calculated weighted-average dumping margins using the standard and alternative comparison methodologies exactly quantifies the extent of the unmasked "targeted dumping."

The simple comparison of the two calculated results belies the complexities in calculating and aggregating individual dumping margins (*i.e.*, individual results from comparing EP, or CEP, with NV). It is the interaction of these many comparisons of EP or CEP with NV, and the aggregation of these comparison results, which determines whether there is a meaningful difference in these two calculated weighted-average dumping margins. When using the A-to-A method, lower-priced U.S. sales (*i.e.*, sales which may be dumped) are offset by higher-priced U.S. sales. Congress was concerned about offsetting and that concern is reflected in the SAA, which states that "targeted dumping" is a situation where "an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions."[302] The comparison of a weighted-average dumping margin based on comparisons of weighted-average U.S. prices that also reflects offsets for non-dumped sales, with a weighted-average dumping margin based on comparisons of individual U.S. prices without such offsets (*i.e.*, with zeroing) precisely examines the impact on the amount of dumping which is hidden or masked by the A-to-A method. Both the weighted-average U.S. price and the individual U.S. prices are compared to an NV that is independent from the type of U.S. price used for comparison, and the basis for NV will be constant because the characteristics of the individual U.S. sales[303] remain constant, whether weighted-average U.S. prices or individual U.S. prices are used in the analysis.

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

[300] *See* SAA at 842.

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

[302] *See* SAA at 842.

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

Consider the simple situation where there is a single, weighted-average U.S. price, and this average is made up of a number of individual U.S. sales which exhibit different prices, and the two comparison methods under consideration are the A-to-A method with offsets (*i.e.*, without zeroing) and the A-to-T method with zeroing.[304] The NV used to calculate a weighted-average dumping margin for these sales will fall into one of five scenarios with respect to the range of these different, individual U.S. sale prices:

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

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

3) the NV is nominally greater than the lowest U.S. prices such that there is a minimal amount of dumping and a significant amount of offsets from non-dumped sales;[305]

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

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

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

[304] The calculated results using the A-to-A method with offsets (*i.e.*, no zeroing) and the calculated results using the A-to-T method with offsets (*i.e.*, no zeroing) will be identical. *See* Memorandum, "Analysis of Sales and Cost Data Submitted by SeAH Steel Corporation for the Preliminary Results of the 2018-2019 Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea," dated January 15, 2021 (SeAH's Final Analysis Memorandum), at Attachment 5, where the calculation results of the A-to-A method, the A-to-T method, and the "mixed" method are summarized (*e.g.*, pages 176-178 of SeAH's SAS output for the margin program). The sum of the "Positive Comparison Results" and the "Negative Comparison Results" for each of the three comparison methods are identical, *i.e.*, with offsets for all non-dumped sales (*i.e.*, negative comparison results); the amount of dumping is identical. As such, the difference between the calculated results of these comparison methods is whether negative comparison results are used as offsets or set to zero (*i.e.*, zeroing) when using the A-to-T method.

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

scenario (5), there is a significant, non-*de minimis* amount of dumping and a significant amount of offsets generated from non-dumped sales, such that there is a meaningful difference in the weighted-average dumping margins calculated using offsets or zeroing. Only under the fifth scenario can Commerce consider the use of an alternative comparison method.

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

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

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

Therefore, we find that the meaningful difference test reasonably fills the gap in the statute to consider why, or why not, the A-to-A method (or T-to-T method) cannot account for the significant price differences in SeAH's pricing behavior in the U.S. market. Congress's intent of addressing "targeted dumping," when the requirements of section 777A(d)(1)(B) of the Act are

satisfied,[306] would be thwarted if the A-to-T method without zeroing were applied since this will always produce the identical results when the standard A-to-A method without zeroing is applied. Under that scenario, both methods would inherently mask dumping. It is for this reason that we find that the A-to-A method cannot take into account the pattern of prices that differ significantly for SeAH, *i.e.*, Commerce identified conditions where "targeted" or masked dumping "may be occurring" in satisfying the pattern requirement, and Commerce demonstrated that the A-to-A method could not account for the significant price differences, as exemplified by the pattern of prices that differ significantly. Thus, we continue to find that application of the A-to-T method, with zeroing, is an appropriate tool to address masked "targeted dumping."[307]

We disagree with SeAH that Commerce has failed to satisfy the statutory requirements of section 777A(d)(1)(B) of the Act and consider the application of an alternative comparison method based on the A-to-T method. As set forth in the *Preliminary Results*[308] and as further discussed in these final results, Commerce's differential pricing analysis for SeAH in this administrative review is both lawful, reasonable, and completely within Commerce's discretion in executing the trade statute.

Comment 3: Calculation of CV Profit and Selling Expenses

Maverick's Comments:

- Commerce should not use SeAH's third country sales to Kuwait for calculating CV profit and selling expenses for Hyundai Steel, but rather should use the 2019 financial statements of Tenaris S.A. (Tenaris) to calculate CV profit and selling expenses for Hyundai Steel.[309]

SeAH's Comments:

- Tenaris' financial statements do not provide an appropriate basis for calculating CV profit for OCTG because: (a) Tenaris' financial data includes products that are not "in the same general category" as OCTG; (b) Tenaris' sales were predominantly made to the U.S. market; and (c) Tenaris' financial statements are infected with subsidies from the Canadian government.[310]
- SeAH placed financial statements on the record that are a more accurate basis for calculating CV profit and selling expenses than the Tenaris statements.[311]

Hyundai Steel's Comments:

- Commerce misapplied a figure for the CEP profit ratio and incorrectly calculated CEP profit by using a combined ratio that includes not only SeAH's profits, but also SeAH's selling expenses which overstated the CEP profit and consequently understated the net U.S. prices used in the AD duty calculations.[312]

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[306] *See* SAA at 842-843.
[307] *See Apex I*, 37 F. Supp. 3d at 1296.
[308] *See Preliminary Results* PDM.
[309] *See* Maverick's Case Brief at 4-5 and 10-11.
[310] *See* SeAH's Case Brief at 28-29.
[311] *Id.* at 30.
[312] *See* Hyundai Steel's Case Brief at 60-61.

- Commerce should calculate CEP profit by excluding the portion related to selling expenses from the ratio used as the CEP profit rate.[313]
- Commerce should not use Tenaris's financial data because: (a) Tenaris's profit and selling expense rates have nothing to do with the production and sale of OCTG in Korea; (b) Tenaris's products, operations, and customer base bear no similarity to those of Hyundai Steel; and (c) unlike Tenaris, Hyundai Steel is an integrated general steel maker and not predominantly a steel pipe producer.[314]

U.S. Steel's Comments:

- Commerce should rely on Tenaris' 2019 financial data to calculate CV profit (and thus CEP profit) for the final results.[315]
- Hyundai Steel's contention that the profit ratio calculated for the *Preliminary Results* is too high to be accurate negates its justification of the massive gap between its reported and calculated entered values on the basis of profit.[316]
- What Hyundai Steel appears to suggest was a mistake was in fact intentional since Commerce made an adjustment for CEP profit allocated to selling expenses deducted under sections 772(d)(1), (2), and (3) of the Act because these provisions require Commerce to reduce CEP by "total actual profit" and "any selling expenses not deducted under subparagraph (A), (B), or (C)" -- the "CV profit and CV selling {e}xpense rate" specified in Commerce's calculation memorandum both unambiguously fall within these categories, and Commerce was required to deduct both.[317]

Commerce's Position:

For these final results, we continue to calculate Hyundai Steel's CV profit and selling expenses under section 773(e)(2)(B)(iii) using SeAH's combined CV profit and selling expenses.[318] As explained below, in contrast to the alternative data sources submitted by interested parties, the combined CV profit and selling expenses for SeAH's third country market sales of OCTG during the POR represent the best source for valuing Hyundai Steel's CV profit and selling expenses in the instant review. SeAH's combined selling expense and profit experience reflects the profit and selling expenses of a Korean OCTG producer, are based on OCTG sales to a viable comparison market and are derived from sales made in the ordinary course of trade.

In this review, Hyundai Steel did not have viable home or third-country markets to serve as a basis for NV. Thus, we based NV on CV in accordance with section 773(a)(4) of the Act. Likewise, absent a viable home or third-country market, and absent any evidence of the actual amounts incurred or realized by Hyundai Steel for profits in connection with production and sale of a foreign like product, in the ordinary course of trade in Korea, we are unable to calculate CV profit and selling expenses using the preferred method under section 773(e)(2)(A) of the Act, *i.e.*, based on the respondent's own home market or third-country sales made in the ordinary course of trade. In situations where we cannot calculate CV profit and selling

[313] *See* Hyundai Steel's Case Brief at 61.
[314] *See* Hyundai Steel's Rebuttal Brief at 50-53.
[315] *See* U.S. Steel's Rebuttal Brief at 44.
[316] *Id.* at 44-45.
[317] *Id.*
[318] *See Preliminary Results* PDM at 17.

expenses under section 773(e)(2)(A) of the Act, section 773(e)(2)(B) of the Act establishes three alternatives:

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

The statute does not establish a hierarchy for selecting among the alternatives for calculating CV profit and selling expenses.[319] Moreover, as noted in the SAA, "the selection of an alternative will be made on a case-by-case basis, and will depend, to an extent, on available data."[320] Thus, Commerce has discretion to select from any of the three alternative methods, depending on the information available on the record. In this case, Commerce is faced with choosing among several alternatives for CV profit based on available data that reflect at least one of the criteria noted above. We must, therefore, weigh the value of the available data and, in particular, determine which requirement is more relevant for this case based upon the record data before us. With each of the statutory alternatives in mind, we have evaluated the data available in the record of this review and weighed each of the statutory alternatives to determine which surrogate data source most closely fulfills the aim of the statute. We continue to find that Commerce cannot rely on alternative (i) because the other steel products produced by Hyundai Steel, including Hyundai Steel's non-prime OCTG, are not in the same general category of merchandise as OCTG.[321] Further, Commerce cannot rely on alternative (ii) because Hyundai Steel did not make sales of OCTG in the home market (*i.e.*, Korea). Therefore, Commerce must resort to the alternative under subsection (iii) *i.e*., any other reasonable method.

In conducting this analysis, we note that the specific language of both the preferred and alternative methods appear to show a preference that the profit and selling expenses reflect: (1) production and sales in the foreign country; and (2) the foreign like product, *i.e.*, the merchandise under consideration. However, when selecting a profit rate from available record evidence, we

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[319] *See* SAA, as reprinted in 1994 U.S.C.C.A.N. at 840 ("At the outset, it should be emphasized, consistent with the Antidumping Agreement, new section 773(e)(2)(B) does not establish a hierarchy or preference among these alternative methods. Further, no one approach is necessarily appropriate for use in all cases.").
[320] *Id.* at 840.
[321] The CIT upheld this decision from *Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014) (*OCTG Korea Final Determination*). *See Husteel Co. v. United States*, 180 F. Supp. 3d 1330, 1338-39 (Ct. Int'l Trade 2016) (*Husteel*).

may not be able to find a source that perfectly reflects both factors. In addition, there may be varying degrees to which a potential profit source reflects the merchandise under consideration. Consequently, we must weigh the quality of the data against these factors. For example, we may have profit information that reflects production and sales in the foreign country of merchandise that is similar to the foreign like product, but also includes significant sales of completely different merchandise, or profit information that reflects production and sales of the merchandise under consideration but no sales in the foreign country. Determining how specialized the foreign like product is, what percentage of sales are of the foreign like product or general category of merchandise, what portion of sales are to which markets, *etc.*, judged against the above criteria, may help to determine which profit source to rely upon.

On the record of this proceeding, we are faced with numerous various alternative sources for calculating CV profit and selling expenses: (1) Hyundai Steel's home market sales of non-prime OCTG; (2) Hyundai Steel's home market sales of line pipe; (3) the audited 2019 and 2018 financial statements of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan); (4) the audited 2019 and 2018 financial statements of Chung Hung Steel Corp. (Chung Hung); (5) the audited 2020 and 2019 financial statements of Nippon Steel and Sumitomo Metal Corporation (Nippon); (6) the audited 2019 and 2018 financial statements of TMK IPSCO (TMK); (7) SeAH's third-country POR sales of OCTG; (8) the audited 2019 financial statements of Welspun Corp. Limited (Welspun); (9) the audited 2019 financial statements of Tenaris S.A. (Tenaris); and, (10) the audited 2019 financial statements of Maharashtra Seamless Limited (Maharashtra).[322]

In evaluating the different alternatives on the record, for the *Preliminary Results*, we found that the combined CV profit and selling expenses for SeAH's third country market sales of OCTG during the POR constitutes the best information available on the record for valuing Hyundai Steel's CV profit and selling expenses in the instant review.[323] SeAH's combined selling expense and profit experience reflects the profit of a Korean OCTG producer, on comparison market sales of the merchandise under consideration, in the ordinary course of trade. The profit is specific to OCTG. Moreover, it represents profit from OCTG produced by a Korean producer in Korea. This alternative closely simulates the statutory preference for calculating CV profit and selling expenses. Likewise, this alternative eliminates some of the inherent flaws that occur with using surrogate financial statements (*e.g.*, profits reflecting products that are not in the same general category of products as OCTG).

Maverick argues that, for the final results, the CV profit and selling expense rate for both SeAH and Hyundai Steel should be based on a surrogate source and Commerce should use Tenaris'

[322] Hyundai Steel submitted its own POR home market sales of non-prime OCTG and line pipe, the 2018 financial statements of Borusan, Chung Hung, and TMK, the 2019 financial statements of Borusan, Chung Hung, Nippon, and TMK, and the 2020 financial statements of Nippon. *See* Hyundai Steel's Letter, "Submission of Factual Information and Comments Concerning CV Profit and Selling Expenses," dated November 5, 2020 (Hyundai Steel's CV Submission). SeAH submitted its own POR third-country sales of OCTG, and the 2019 financial statements of Borusan, Chung Hung, TMK and Tenaris. *See* SeAH's Letter, "Request for CV Profit and Selling Expense Information," dated November 5, 2020 (SeAH's CV Submission). DIPs' submitted the 2019 financial statements of Tenaris and Maharashtra. *See* DIPs' Letter, "Constructed Value Profit and Selling Expense Comments and Information," dated November 5, 2020 (DIPs' CV Submission).
[323] *See Preliminary Results* PDM at 17.

2019 financial data for purposes of calculating CV profit and selling expenses.[324] Maverick asserts that because SeAH's third country market sales to Kuwait are not representative, SeAH's NV should be also based on CV.[325] As discussed in Comment 16, for the final results, we have continued to rely on SeAH's third country market sales to Kuwait as the basis for NV. Therefore, we do not need a surrogate source for CV profit and selling expenses for SeAH.

Regarding Maverick's argument for using Tenaris' 2019 financial data for purposes of calculating CV profit and selling expenses, we first note Tenaris' financial statements do predominantly reflect production and sales of OCTG.[326] However, SeAH's profit information is superior because it reflects exclusively the production and sale of OCTG. Second, we note that Tenaris' 2019 financial statements closely correspond to the POR. Again, SeAH's profit information is more closely related to the POR than the alternatives. Nevertheless, although both sources reflect the same general category of products as OCTG, SeAH's profit information is superior, because: (1) it is exclusive to OCTG; (2) specific to the POR; and, (3) directly represents the production experience of a Korean producer in Korea and is based on profit from sales of OCTG in a viable market. As noted above, SeAH's combined selling expense and profit experience reflects the profit of a Korean OCTG producer on comparison market sales of the merchandise under consideration that were made in the ordinary course of trade.

Maverick argues that in the prior segments of this proceeding, Commerce included Tenaris' audited financial statements in its CV profit calculation. This is true: in *OCTG from Korea LTFV* and *OCTG from Korea 2017-2018*, Commerce used the results from the financial statements of Tenaris (*i.e.*, 2012 and 2018 (together with TMK), respectively) to calculate CV profit and selling expenses.[327] However, in that investigation and review, neither respondent had viable home or third country markets to serve as a basis for NV. Consequently, Commerce relied on the profit and selling expenses from the Tenaris financial statements (together with TMK in the review) as the best source for valuing the respondents' CV profit and selling expenses on the record of the investigation and that review. In this review, SeAH has a viable third country market. As discussed above, SeAH's profit information is superior to Tenaris', because: (1) it is exclusive to OCTG; (2) specific to the POR; and, (3) directly represents the production experience of a Korean producer in Korea and is based on profit from sales of OCTG in a viable market.

However, as discussed above, when selecting a profit rate from available record evidence, we may not be able to find a source that perfectly reflects both (1) production and sales in the foreign country; and (2) the foreign like product, *i.e.*, the merchandise under consideration. In addition, there may be varying degrees to which a potential profit source reflects the merchandise under consideration. Consequently, we must weigh the quality of the data against these factors. Here, because SeAH has a viable third country market that can be used to

[324] *See* DIPs' CV Submission at 9-12 and Exhibits 8 and 9.
[325] *See* Maverick's Case Brief at 15 (citing 19 U.S.C. Section 1677b(a)(1)(B)(ii)).
[326] *See* DIPs' CV Submission at Exhibits 8 and 9.
[327] *See Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014) (*OCTG from Korea LTFV*), and accompanying IDM at Comment 1; *see also OCTG from Korea 2017-2018* IDM at Comment 3.

calculate CV profit and selling expenses for Hyundai Steel, we do not have to use Tenaris' financial statements a surrogate source.

We reviewed the alternative surrogate sources raised by Hyundai Steel and SeAH in their rebuttal briefs, but do not find them to be superior to the combined CV profit and selling expense for SeAH's third country market sales of OCTG during the POR. First, the Hyundai Steel home market data fails under section 772(e)(2)(A) of the Act since the nonprime sales are not OCTG and the sales were not made in the ordinary course of business (*i.e.*, transacted in a non-viable market at a net loss). With respect to TMK, Borusan, Chung Hung and Nippon Steel, we find that each of these data sources is less specific to OCTG than are the SeAH financial data. In particular, with the possible exception of TMK, the financial statements of these companies predominantly reflect sales of non-OCTG pipe products. Borusan's financial statements reflect production and sales of products other than OCTG (*e.g.*, line pipe, pressure/boiler tubes, water well casings, construction tubes, etc.) and lack sufficient detail to determine what portion of total sales revenues were OCTG products.[328] Chung Hung's financial statements reflect the results of operations for products other than OCTG (*e.g.*, hot-rolled steel coils, fine blanking and formability coils, cold-rolled full hard steel coils, carbon steel pipes, galvanized steel pipes, PE coated steel pipes, and API lines pipes, etc.) with only 9 percent of the company's sales pertaining to steel pipe, and an even smaller percentage than this amount would reflect sales of OCTG.[329] Nippon's financial statements reflect production and sales of products other than OCTG (*e.g.*, pipes and tubes for piping, mechanical structures, plants, shipbuilding, etc.); lack sufficient detail to determine what portion of total sales revenues were OCTG products; and, show a net loss for 2020.[330] Finally, while TMK's financial statements reflect significant production and sales of OCTG[331] and in *OCTG from Korea 2017-2018* Commerce used the results from TMK's financial statements (together with Tenaris) to calculate CV profit and selling expenses,[332] SeAH's profit is superior. If we did not have SeAH's data on the record of this case, we would analyze each financial statement in greater detail. However, in the instant case, because we have record information that most closely mirrors the preferred method and allows us to calculate CV profit and selling expenses using a Korean OCTG producer's comparison market sales of the merchandise under consideration that were made in the ordinary course of trade (*i.e.*, this is more precise information), we do not have to resort to TMK or the other alternatives.

In summary, after considering the record evidence and the arguments raised by the parties in the case and rebuttal briefs, we have continued to rely on the combined CV profit and selling expense for SeAH's third country market sales of OCTG during the POR to derive Hyundai Steel's CV profit and selling expenses in these final results.

Likewise, Commerce is still unable to calculate a profit cap based on the actual amounts reported in accordance with the statutory intent under section 773(e)(2)(B)(iii) of the Act, *i.e.*, "the amount normally realized by exporters or producers… in connection with the sale, for

[328] *See* Hyundai Steel's CV Submission at Exhibit 3; *see also* SeAH's CV Submission at Exhibit 4.
[329] *See* Hyundai Steel's CV Submission at Exhibit 4; *see also* SeAH's CV Submission at Exhibit 3.
[330] *See* Hyundai Steel's CV Submission at Exhibit 5.
[331] *Id.* at Exhibit 6.
[332] *See OCTG from Korea 2017-2018* IDM at Comment 3.

consumption in the foreign country, of the merchandise that is in the same general category of products as the subject merchandise." The SAA makes clear that Commerce might have to apply alternative (iii) on the basis of facts available.[333] There is no profit information for sales in Korea of OCTG and products in the same general category on the record and, thus, we are unable to calculate the profit cap based on the actual amounts under section 773(e)(2)(B)(iii) of the Act. However, the SeAH data meet the CV profit requirements for use with regard to SeAH under the preferred method of the law and is not in any way distorted by the production and sale of products not considered to be in the same general category of products as OCTG. SeAH's profit data from the sale of OCTG in its third country market is the best data to be used as the "facts available" profit cap, because it is specific to OCTG and represents the production experience of a Korean OCTG producer in Korea. There was no alternative profit cap calculation offered by the interested parties in this review. No party argues that the profit cap should be based on any other profit data source. As such, as facts available and consistent with the *Preliminary Results*, Commerce reasons that SeAH's profit data are the best suitable data to use as the basis for the calculation of the profit cap.

With regard to Hyundai Steel's contention that we misapplied a figure for the CEP profit ratio, we agree that the proper figure to apply was an 8.0612 percent ratio. Due to changes in methodology in other parts of the program, this ratio has been recalculated for these final results and no longer use either of these figures.[334]

Concerning Hyundai Steel's position that we overstated the CEP profit by the inclusion of SeAH's selling expenses, we disagree. The inclusion of SeAH's selling expenses was intentional rather than the result of an error and was performed in accordance with sections 772(d) and (f) of the Act:

> (d) ADDITIONAL ADJUSTMENTS TO CONSTRUCTED EXPORT PRICE.
> For purposes of this section, the price used to establish constructed export price shall also be reduced by --
>
> (1) the amount of any of the following expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise (or subject merchandise to which value has been added) --
>
> (A) commissions for selling the subject merchandise in the United States;
>
> (B) expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees and warranties;
>
> (C) any selling expenses that the seller pays on behalf of the purchaser; and
>
> (D) **any selling expenses not deducted under subparagraph (A), (B), or (C)**;
>
> (2) the cost of any further manufacture or assembly (including additional material and labor), except in circumstances described in subsection (e); and
>
> (3) the profit allocated to the expenses described in paragraphs (1) and (2).
>
> {…}

[333] *See* SAA at 841.

[334] *See* Memorandum, "Analysis of Data Submitted by Hyundai Steel Company for the Final Results of the 2018-2019 Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from the Republic of Korea," dated concurrently with this memorandum (Final Hyundai Analysis Memorandum).

(f) SPECIAL RULE FOR DETERMINING PROFIT.
(1) IN GENERAL.
For purposes of subsection (d)(3), profit shall be an amount determined by multiplying the **total actual profit** by the applicable percentage.[335]

Accordingly, we made an adjustment for CEP profit allocated to selling expenses deducted under these sections, reducing CEP by total actual profit and any selling expenses not deducted under subparagraph (A), (B), or (C) for the *Preliminary Results* and continue to do so for these final results.

Comment 4: Arm's Length Adjustment for Services from Affiliate

Hyundai Steel's Comments:

- Commerce should not have made an arm's-length adjustment related to processing services obtained from a certain affiliated party.[336] Because this affiliated party provided processing services only to Hyundai Steel, the total costs reported on its income statement necessarily reflect its cost incurred to provide processing services to Hyundai Steel. Consequently, Hyundai Steel did provide the affiliated party's cost incurred in providing the processing services to Hyundai Steel.[337]
- The analysis that Commerce used to calculate an arm's-length adjustment in the *Preliminary Results* is overstated because Commerce limited its analysis to 2019, and thus excluded the affiliated party's costs incurred during the 2018 portion of the POR while reflecting costs outside the POR. Further, because the resulting arm's-length adjustment ratio for the processing services is negligible, Commerce should not make an adjustment in the final results.[338]

U.S. Steel's Rebuttal:

- Hyundai Steel did not carry its burden to prove that it paid arm's length prices and did not provide the affiliated party's costs incurred in providing the processing services.[339]
- Hyundai Steel's proposed calculation is distortive, and adds in financial data primarily from outside the POR; Commerce should disregard transactions between affiliated parties if the transfer price "does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration," so even if Hyundai Steel paid market rates in one year, this does not render the rates paid in other years reflective of "usual" (*i.e.*, at minimum, profitable) amounts -- Commerce should not adjust its preliminary calculations.[340]

[335] Emphasis added.
[336] The name of this company is business proprietary; *see* Hyundai Steel's Case Brief at 62.
[337] *See* Hyundai Steel's Case Brief at 63.
[338] *Id*.
[339] *See* U.S. Steel's Rebuttal Brief at 46.
[340] *Id.* at 46-47.

Commerce's Position: We disagree with Hyundai Steel that Commerce should not adjust Hyundai Steel's reported COM for the affiliated processing services Hyundai Steel received from an affiliated party.

Section 773(f)(2) of the Act (*i.e.*, the transactions disregarded rule) addresses how Commerce will treat certain affiliated party transactions in its calculation of COP and CV. Specifically, a transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of the merchandise under consideration in the market under consideration.

During the POR, Hyundai Steel obtained certain processing services from a certain affiliated party.[341] In its SDQR, Hyundai Steel's analyzed the arm's-length nature of the services provided by this affiliated party using a COP ratio based on the affiliated party's FY 2018 financial statements.[342] In addition, Hyundai Steel explained that this analysis demonstrated that the services procured from its affiliate were at arm's length based on the affiliate's profitability during FY 2018.[343] Hyundai Steel did not, however, provide a market price for the processing services.

When analyzing affiliated party transactions in accordance with the transactions disregarded rule, Commerce normally compares the transfer price paid by the respondent to affiliated parties for production inputs or services to the price paid to unaffiliated suppliers, or, if this is unavailable, to the price at which the affiliated parties sold the input to unaffiliated purchasers in the market under consideration. If the affiliated supplier made no such sales during the POR, we may use the supplier's COP as a surrogate market price.[344] Therefore, the two primary ways to substantiate a transfer price is to either compare it to a market price or, if necessary, to compare it to the affiliated supplier's cost of production.

Thus, Commerce requested that Hyundai Steel "provide the purchase quantity and value from unaffiliated suppliers of the same services. If there are no purchases from an unaffiliated supplier for a given service, but your affiliated supplier provides the same service to unaffiliated customers, in the market under consideration, in a separate schedule provide a sample purchase quantity and value (and average per unit price) paid for the service by unaffiliated purchasers. If unaffiliated transactions are not available provide a cost build from each affiliated supplier specific to the services provided."[345] In its SSDEQR, Hyundai Steel explained that it did not procure the same services from unaffiliated companies and the certain affiliated party only provided these services to Hyundai Steel. [346] However, instead of providing the affiliate's cost

[341] *See* Hyundai Steel's "Section D Questionnaire Response and Section C U.S. Sales File," dated February 25, 2020 (SDQR), at 11, 12, and Exhibit D-5-3.
[342] *Id.*
[343] *See* Hyundai Steel's SDQR at 12.
[344] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 24471 (May 28, 2019), and accompanying IDM at Comment 7.
[345] *See* Hyundai Steel's "Supplemental Sections D and E Questionnaire Response – Part 1," dated December 8, 2020 (SSDEQR), at 2, question 1.b.
[346] *Id.* at 3.

of providing the processing services as requested by Commerce, Hyundai Steel provided the same arm's-length analysis, revised to use COP ratios based on the affiliate's FY 2019 and FY 2018 financial statements, which resulted in an adjustment which Hyundai Steel referred to as negligible.[347]

Hyundai Steel argues that, because the affiliate provided only processing services to Hyundai Steel, the total costs reported on the affiliate's income statement necessarily reflect the company's cost to provide processing services to Hyundai Steel. Therefore, Hyundai Steel alleges Commerce was incorrect in stating that Hyundai Steel did not provide the affiliate's cost incurred in providing the processing services. We disagree. The cost of the individual services provided by the affiliate to Hyundai Steel would vary significantly depending on type of service, product characteristics, processing times, cost of materials, etc. While the affiliate's income statement ratio does reflect the total costs incurred to provide processing services to Hyundai Steel generally, it does not provide the cost for each type of services or demonstrate that the transfer price for that service reflected a market price.

Further, Hyundai Steel argues that the analysis that Commerce used to calculate the arm's-length adjustment is overstated because Commerce limited its analysis to FY 2019, and thus excluded the affiliate's costs incurred during the 2018 portion of the POR while reflecting costs outside the POR. We also disagree. Hyundai Steel and its affiliate, the parties in possession of all relevant documents related to their own costs, had the opportunity to provide Commerce with the actual POR cost of providing the processing services and decided not to do so. When necessary information is not provided by the respondent, Commerce must use facts otherwise available, in accordance with section 776 of the Act. Consequently, because Hyundai Steel did not provide its affiliate's cost incurred in providing the processing services, we have continued to rely on the affiliate's FY 2019 costs as facts available in order to calculate a market price for the affiliated processing services.

Comment 5: Transportation of OCTG from Affiliate

U.S. Steel's Comments:

- Because the prices Hyundai Steel paid were depressed, Commerce should disregard Hyundai Steel's affiliate transaction and increase Hyundai Steel's reported ocean freight costs to reflect ordinary market rates consistent with the transactions disregarded rule in section 773(f)(2) of the Act.[348]
- Hyundai Steel has provided comparison contracts from Shipper 1 (Hyundai Steel's affiliate), Shipper 2, and Shipper 3;[349] U.S. Steel provided evidence that Shipper 2 was unprofitable over the relevant period.[350]
- Hyundai Steel's comparison to Shipper 3 relies upon a rate taken from a contract that was not fully translated; it is Hyundai Steel's statutory obligation to prepare an accurate and complete record and provide Commerce with the information requested to ensure an

[347] *Id.* at 3 and Exhibit SD-1-B.
[348] *See* U.S. Steel's Case Brief at 16.
[349] The shippers' names are business proprietary, *see* U.S. Steel's Case Brief at 16.
[350] *See* U.S. Steel's Case Brief at 16.

accurate dumping margin — Commerce cannot rely on this incomplete and otherwise suspect document.[351]

- The contract Hyundai Steel provided for comparison is incomplete, providing rates for products not shown to be the same as Hyundai Steel's and for a voyage of significantly less distance than the vessel carrying Hyundai Steel's product, producing a distorted result because basic logic dictates that (1) longer distances (*i.e.*, greater labor and fuel costs) drive up prices, and (2) more volume-per-MT drives up price-per-MT (*e.g.*, by occupying more of the vessel's finite space); thus, Hyundai Steel's comparison is neither logical nor useful, while U.S. Steel's comparison compared prices for pipe in the same dimensional range.[352]
- So that Hyundai Steel's reported ocean freight expenses might approximate an actual market-based rate, Commerce should adjust Hyundai Steel's expenses upward by the amount suggested by U.S. Steel.[353]

Hyundai Steel's Rebuttal:

- Commerce should reject U.S. Steel's argument, including the proposed adjustment, because substantial record evidence demonstrates conclusively that ocean freight expenses charged by Shipper 1 (Hyundai Steel's affiliate) were at arm's length.[354]
- During the POR, Hyundai Steel also used Shipper 2 to transport the subject merchandise from Korea to the United States with these transactions reflecting market prices consistent with Commerce's practice for which the contracted average unit charges for comparable products demonstrated that Shipper 1 provided international shipping services to Hyundai Steel on an arm's length basis.[355]
- U.S. Steel focuses incorrectly on Shipper 2's reported losses in its net income while the more relevant comparison is on its operating profits (which were positive), thus demonstrating that its revenues were sufficient to cover its "above-the-line" costs for the shipping operations.[356]
- Even if Commerce focuses on net income, the fees paid to Shipper 2 were market-based prices negotiated with an unaffiliated company, and are a suitable comparison for the affiliated transactions with Shipper 1 (Hyundai Steel's affiliate); an arm's-length analysis depends not upon whether an unaffiliated company reported net losses on its financial statements but instead upon whether Hyundai Steel contracted with and used the unaffiliated shipping carrier to transport pipe products along the same routes -- transactions with unaffiliated companies are market-based and thus serve as appropriate and reliable benchmarks to evaluate whether the prices charged by an affiliated company for freight services were at arm's length.[357]
- Freight rates for the various delivery areas in the United States are subject to different dynamics beyond simple nautical mileage.[358]

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[351] *Id.* at 16-17.
[352] *Id.* at 17-18.
[353] *Id.* at 20 (the amount is business proprietary and is found at the cited page).
[354] *See* Hyundai Steel's Rebuttal Brief at 12-13.
[355] *Id.* at 13.
[356] *Id.* at 13-14.
[357] *Id.*
[358] *Id.* at 14.

Commerce's Position: A majority of Hyundai' Steel's entries into the United States were transported across the ocean by Shipper 1, Hyundai Steel's affiliate. Hyundai seeks to demonstrate that the prices it paid to Shipper 1 were at arm's-length levels by providing comparison prices from Shipper 2 and Shipper 3. Shipper 3's sales may or may not have been of comparable products, routes, distances, or other dynamics.[359] U.S. Steel maintains that Shipper 2 was not profitable during the period of its comparison prices, and therefore ought to be discounted as a comparison shipper. Though both parties have raised multiple subordinate points, the crux of the issue is whether Shipper 2's lack of profitability makes it ineligible for comparison.

Hyundai points to the difference between Shipper 2's net income (which was negative) and its operating profits (which were positive). Hyundai Steel contends that this demonstrates that Shipper 2's revenues were sufficient to cover its "above-the-line" costs for the shipping operations, and that Shipper 2 is consequently a valid source of comparison prices. This reasoning is persuasive. Operating income is revenue less any operating expenses (including selling, general & administrative expenses (SG&A), and depreciation and amortization), while net income is operating income less any other non-operating expenses, such as interest and taxes. Large shipping companies can have multiple sources of negative net income while still charging market-comparable ocean freight rates; such a company might even attempt to cover its losses in other phases of its operations by charging higher ocean freight rates than its competitors. In any case, we see no evidence that Shipper 2 is not a valid source of comparison ocean freight prices, based on its positive operating profits. Consequently, we need not examine whether Shipper 3's prices were comparable, as we have found that Shipper 2's prices are a valid basis of comparison and represent considerably more of Hyundai Steel's shipments than Shipper 3; further, we discount Shipper 3's prices as a basis for comparison because we agree with U.S. Steel that the documents pertaining to it were not fully translated, which calls into question whether its prices relate to comparable products, routes, distances, or other dynamics. We therefore make no changes from the *Preliminary Results* and continue to find for these final results that Hyundai Steel's transactions with its affiliated shipper, Shipper 1, were made at arm's-length.

Comment 6: Cost of Prime Products Sold in the United States

Hyundai Steel's Comments:

- Hyundai Steel reported a small quantity of U.S. sales of non-prime merchandise, but these products were designated as non-prime after the subject merchandise had entered the United States when Hyundai Steel USA (HSU) (not Hyundai Steel) reclassified the subject merchandise as non-prime.[360]
- Hyundai Steel reported the same costs for prime and non-prime merchandise, consistent with the costs in its normal accounting books and records, because the merchandise was prime merchandise for purposes of Hyundai Steel's cost accounting, inventory records, and financial statements; Commerce incorrectly noted that Hyundai Steel "downgraded" prime merchandise to non-prime during the OCTG production process when in fact it is reasonable, accurate, and consistent with Hyundai Steel's normal accounting records to

[359] *See* U.S. Steel's Case Brief at 17.
[360] *See* Hyundai Steel's Case Brief at 64-65.

assign non-prime merchandise the full production costs as for prime merchandise because the subject merchandise was prime merchandise from Hyundai Steel's perspective and only became downgraded by HSU after entry into the United States -- Commerce should eliminate the cost increase to Hyundai Steel's reported costs of prime OCTG in the final margin calculations.[361]

U.S. Steel's Rebuttal:

- Hyundai Steel claims that, because its U.S. affiliate was in charge of downgrading OCTG after importation, such non-prime OCTG should be assigned full production costs, *i.e.*, Commerce's preliminary adjustment should be reversed; Hyundai Steel cites no agency practice in support of its suggestion, but Commerce considered this very issue in the fourth administrative review and persisted in making the adjustment.[362]
- It is irrelevant which entity in Hyundai Steel's corporate structure designated non-prime products as such, and the stage at which products were downgraded is just as much a part of OCTG production as is welding HRC in Korea, as Commerce correctly found; products "rejected by HSU's customers…due to some quality problems" are non-prime merchandise as Commerce reasoned because such pipes "cannot satisfy all aspects of a specification, and thus could not be used for the same specific oil and gas well applications…as prime OCTG" – therefore, Commerce should continue to adjust the cost allocated to Hyundai Steel's non-prime merchandise.[363]

Commerce's Position: For the *Preliminary Results*, Commerce adjusted Hyundai Steel's reported costs. We assigned to the downgraded non-prime products an amount equal to their sales price, while allocating the difference between the full production cost and sales price to the production costs of prime OCTG. Commerce explained that these non-prime products should not be assigned the same cost as prime OCTG because, according to Hyundai Steel, non-prime products are not capable of being used (*i.e.*, warranted) for the same applications as prime OCTG (*i.e.*, oil drilling applications).

Recently, the Court remanded *Husteel Co., Ltd. et al. v. United States*[364] to Commerce for the reallocation of costs pertaining to NEXTEEL Co. Ltd.'s non-prime merchandise based on the actual costs of non-prime products, consistent with *Dillinger France S.A. v. United States*.[365] In *Dillinger*, the Court of Appeals for the Federal Circuit (CAFC) remanded Commerce's adjustment of non-prime product costs, based on recorded projected sales prices, and directed Commerce to determine the actual costs of non-prime products. Therefore, for purposes of these final results and consistent with the CAFC decision in *Dillinger*, we have reversed the adjustment made in the *Preliminary Results* and have relied on the actual costs of prime and non-prime products as reported by Hyundai Steel.

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[361] *Id.* at 65.
[362] *See* U.S. Steel's Rebuttal Brief at 47-48.
[363] *Id.*
[364] *See Husteel Co. Ltd. et al. v. United States*, Court No. 19-00086, Slip Op. 21-43 (CIT April 14, 2021) at 58-61; *see also Husteel Co., Ltd. et al. v. United States*, Court No. 19-00112, Slip Op. 21-70 (CIT June 7, 2021) at 18-22.
[365] *See Dillinger France S.A. v. United States*, 981 F.3d 1318, 1324 (Fed. Cir. 2020) (*Dillinger*).

Comment 7: Transfer Price as an Indirect Selling Expense

Hyundai Steel's Comments:

- Commerce should not have included the "TRNSPRU" variable in the programming because it reflects a unit selling price, not a per-unit indirect selling expense; Commerce should correct this error in the final results.[366]

No other party commented on this issue.

Commerce's Position: We agree with Hyundai Steel and have removed this variable from the programming in these final results.

Comment 8: Correcting Drafting Errors

Hyundai Steel's Comments:

- While Commerce correctly relied on the dates of sale that Hyundai Steel reported in its programming for all three channels of distribution, Commerce misstated its analysis of Hyundai Steel's channels of distribution by describing only one channel of distribution. Commerce described Hyundai Steel's Channel 1 back-to-back sales, where Hyundai Steel reported the Korean shipment date as the date of sale, but omitted analysis of Hyundai Steel's Channel 2 inventory sales and Channel 3 further manufactured sales, for both of which Hyundai Steel reported HSU's invoice date as the date of sale, consistent with Commerce's practice and reflecting the date on which the material terms of sale for these two channels were established.[367]
- While Hyundai Steel acknowledged its affiliation with a certain affiliated company[368] and does not object to Commerce's determination of affiliation, the Preliminary Hyundai Affiliation Memorandum[369] misstates the ownership of this certain affiliate; during the POR, one of Hyundai Steel's shareholders[370] owned a specific percentage of a certain different affiliated company[371] -- this certain different affiliated company held the percentage of shares in the certain affiliated company which Commerce attributed to Hyundai Steel.[372]

No other party commented on this issue.

Commerce's Position: With regard to Hyundai Steel's channels of distribution, we agree that we inadvertently omitted discussion of Hyundai Steel's Channel 2 and Channel 3 sales in the *Preliminary Results*. We find that, for both Channel 2 inventory sales and Channel 3 further manufactured sales, Hyundai Steel reported HSU's invoice date as the date of sale, consistent

[366] *See* Hyundai Steel's Case Brief at 65-66.
[367] *Id.* at 66-67.
[368] The name of this company is business proprietary. *See* Hyundai Steel's Case Brief at 67.
[369] *See* Memorandum, "Oil Country Tubular Goods from the Republic of Korea, 2018-19: Preliminary Affiliation Memorandum for Hyundai Steel Company," dated January 15, 2021 (Preliminary Hyundai Affiliation Memorandum), at 3-4.
[370] *Id.*
[371] *Id.*
[372] *See* Hyundai Steel's Case Brief at 67.

with Commerce's practice and reflecting the date on which the material terms of sale for these two channels were established.

With regard to the Preliminary Hyundai Affiliation Memorandum, we agree with Hyundai Steel and have corrected the wording in the Final Hyundai Affiliation Memorandum.[373]

Comment 9: Hyundai Steel's Entered Value

U.S. Steel's Comments:

- There is an unexplained gap between Hyundai Steel's reported entered value and the entered value that Commerce's margin program calculates by backing out elements of value added in the United States from the sales price.[374]
- Hyundai Steel's reported entered value is aberrational, distorted, and full of extensive and unexplained reporting anomalies; coupled with constantly changing explanations, the application of adverse facts available (AFA) is warranted.[375]
- The issue is whether Hyundai Steel's reporting evidences anomalous gaps between Hyundai Steel's transfer values (*i.e.*, entered values) and sales values that Hyundai Steel has failed to explain, with such anomalies undermining the integrity of the data reflected in Hyundai Steel's business records.[376]
- Commerce should reject Hyundai Steel's reported entered value based on a comparison of calculated and reported entered values.[377]
- Commerce should apply the highest further manufacturing cost to all sequence numbers and apply the highest movement and selling expense for any control number to all control numbers.[378]
- Hyundai Steel's contention that the profit ratio calculated for the *Preliminary Results* is too high to be accurate flies in the face of its attempts to justify the massive gap between its reported and calculated entered values on the basis of profit.[379]

Hyundai Steel's Rebuttal:

- Hyundai Steel has documented that it reported the per-unit entered values in the ENTVALUE field consistent with the information contained on the U.S. Customs entry summaries and reported the gross unit prices to the unaffiliated U.S. customers consistent with the information on HSU's commercial invoices; U.S. Steel has put forth no legitimate argument that Hyundai Steel failed to report its entered values or gross unit selling prices consistent with the Hyundai Steel's and HSU's underlying business records.[380]

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[373] *See* Memorandum, "Oil Country Tubular Goods from the Republic of Korea, 2018-19: Final Affiliation Memorandum for Hyundai Steel Company," dated concurrently with this memorandum (Final Hyundai Affiliation Memorandum).
[374] *See* U.S. Steel's Case Brief at 7.
[375] *Id.* at 3, 6, and 7.
[376] *Id.* at 8.
[377] *Id.* at 5.
[378] *Id.* at 6.
[379] *See* U.S. Steel's Rebuttal Brief at 44.
[380] *See* Hyundai Steel's Rebuttal Brief at 6.

- U.S. Steel focuses in particular on a certain U.S. sequence number[381] which involves a Channel 2 inventory sale that sold a considerable time after it was shipped from Korea and sold to an unaffiliated U.S. customer at a significantly higher price than the transfer price between Hyundai Steel and HSU; the entered value derived from the transfer price between Hyundai Steel and HSU was based on prevailing market conditions at one period in time, but the gross unit price between HSU and the unaffiliated U.S. customer was based on prevailing market conditions at a considerably later time -- over the course of this time, record evidence shows that the average market price for OCTG increased significantly, and Hyundai Steel/HSU's price changes followed the overall market trends.[382]
- The gross unit selling price is stated on different delivery terms than those for the transfer price between Hyundai Steel and HSU; as the entered value is intended to represent an FOB port of exportation price, it is therefore necessary to deduct U.S. and international movement and selling expenses from the gross unit price, and to deduct international movement expenses from the transfer price, in order to state these prices on a comparable basis to entered value – which U.S. Steel has not done in making its comparison.[383]
- Hyundai Steel has shown that the difference between the computed net U.S. sales price and the actual entered value (and net transfer price) is indeed significant, but fully explained by the considerable gap between the time that Hyundai Steel set the sales price to HSU and when HSU set the price to its customer, during which time steel pipe prices (including for OCTG) skyrocketed in the United States.[384]
- When Hyundai Steel makes back-to-back sales, the transfer price between Hyundai Steel and HSU (which forms the basis of entered value) and the sales price between HSU and the U.S. customer are set around the same time, so significant gaps between the two prices are uncommon.[385]
- In contrast, when HSU purchases subject merchandise for its inventory sales (whether or not for further manufacturing), the transfer price is set based on the prevailing market conditions at around the time of shipment from Korea, the subject merchandise then remains in U.S. inventory for an indeterminate time until HSU receives an order for the merchandise, and HSU assumes the inherent risk of market fluctuations and production condition changes; HSU may make inventory sales at substantially higher prices if the market trends upward (as was the case in 2018) or bears the risk of losses if market conditions are such that steel pipe prices fall -- the record explains why prices changed during the course of the POR and Hyundai Steel has demonstrated that its reported prices and entered values tie to actual supporting documentation.[386]
- Commerce should reject U.S. Steel's comments concerning the Channel 3 further manufactured sales for the same reasoning, because significant time gaps existed between the time that Hyundai Steel and HSU set the transfer price (*i.e.*, at the time of shipment from Korea) and the date on which HSU invoiced the unaffiliated U.S. customer after

[381] The sequence number and fields reported under it are business proprietary. *See* Hyundai Steel's Rebuttal Brief at 6.
[382] *See* Hyundai Steel's Rebuttal Brief at 6-7.
[383] *Id.* at 7.
[384] *Id.*
[385] *Id.* at 8.
[386] *Id.* at 8-9.

value-added further manufacturing had been performed on the imported merchandise, and because the invoices were issued when steel pipe market prices were far higher than during the period when the transfer prices that formed the basis of entered value were established -- the record fully explains why a price differential logically exists between HSU's selling prices for further manufactured subject merchandise and the entered values reported for the green tubes.[387]

- U.S. Steel appears to posit that HSU should sell further manufactured merchandise at a break-even point by simply adding all the costs incurred after importation into the United States to the purchase price from Hyundai Steel; however, all rational, profit-maximizing entities seek to markup their total costs as much as feasible when negotiating prices with their customers, and the profit components of price inherently are intangible in nature; HSU is able to markup its prices (which becomes part of the profit that HSU earns on the sales) because its unaffiliated customers place value on the fact that they do not have to undertake the burdens of arranging for further manufacturing the subject merchandise after importation into the United States; Commerce must base its determinations on actual record evidence rather than conjecture or mischaracterizations of record evidence -- U.S. Steel's assertions and proposed facts available adjustments have no factual basis or legal justification and must be disregarded.[388]

Commerce's Position: For the purpose of this discussion, and as briefed by both parties, we will treat transfer value and entered value as the same and use the terms as interchangeable. The two terms are of course not necessarily the same, but no party has contended that there are significant gaps between Hyundai Steel's reported entered values and transfer values. Accordingly, the issue revolves around the allegation that there are gaps between the transfer/entered values and the sales values.

U.S. Steel identifies the issue as whether Hyundai Steel's reporting evidences anomalous gaps between Hyundai Steel's transfer values (which equate to its entered values) and sales values that Hyundai Steel has failed to explain. Within this characterization of the issue are two separate questions. The first question is whether gaps between the entered values and the sales values are anomalous. The second question is, if the gaps between the entered values and the sales values are indeed anomalous, whether Hyundai Steel has failed to explain them.

With regard to the first question, the dictionary defines the word 'anomalous' in this context as "inconsistent with or deviating from what is usual, normal, or expected."[389] Entered values as reported in antidumping proceedings do not have to be identical with the sales values, but they are generally comparable to the sales values of both EP and CEP sales. For the entries and sales under consideration here, it plainly is not the case. In fact, Hyundai Steel's case and rebuttal briefs do not appear to deny that there are very significant gaps between the entered values and the sales values. We conclude that the gaps exist, that they are inconsistent with or deviate from what is usual or normal or expected, and that they are therefore anomalous.

[387] *Id.* at 9.
[388] *Id.* at 8-10.
[389] *See* https://www.merriam-webster.com/dictionary/anomalous (last visited on July 19, 2021).

We turn, then, to the second question. As set out above in the preceding comment, Hyundai Steel explained that it has three channels of distribution:

Channel 1 Back-to-Back Sales
HSU and its unaffiliated U.S. customer negotiate the terms of sale. The customer then issues a purchase order to HSU, who then issues an order booking to Hyundai Steel. Hyundai Steel sends the offer and order confirmation to HSU, produces the merchandise, ships it to the United States, and issues the relevant sales documentation to HSU. While the merchandise is in transit to the U.S. port, HSU issues a delivery order to an unaffiliated U.S. transportation company, notifying it of the inland destination. HSU is the importer of record and incurs the corresponding importing and inland freight expenses.[390] In this type of sale, as Hyundai contends, the transfer price between Hyundai Steel and HSU and the sales price between HSU and the U.S. customer are set around the same time, so significant gaps between the two prices are uncommon.[391]

Channel 2 U.S. Inventory Sales
HSU makes a sale order to Hyundai Steel without reference to any specific customers, prices, or quantities for inventory sales in the U.S. market. HSU and its unaffiliated U.S. customer negotiate the terms of sale and the customer issues a purchase order to HSU. If HSU determines that it has sufficient inventory stock to fulfill the order, it finalizes the price terms with the customer, arranges for delivery of the merchandise, and issues the invoice to the customer. For these transactions, HSU is the importer of record and incurs the corresponding importing, inland freight, and transfer of ownership expenses.[392] Unlike with Channel 1 sales, when HSU purchases subject merchandise (which is not for further manufacturing) for its inventory sales, the transfer price is set based on the prevailing market conditions at around the time of shipment from Korea; this subject merchandise then remains in U.S. inventory for what may be a considerable length of time until HSU receives an order for that merchandise.[393]

Channel 3 U.S. Further Manufactured Sales
The sales process for further manufactured merchandise is similar to the process for U.S. inventory sales, but there are some key differences. First, when HSU and the customer negotiate the initial terms of sale, the customer also specifies heat treating, upsetting, threading, and/or coupling as part of the initial terms of sale. Second, HSU sometimes (a) further manufactures OCTG in response to a specific customer order, or (b) arranges for further manufacturing based on its own internal forecasts, selling the further manufactured merchandise from inventory. Third, HSU issued sales invoices based on the number and actual length notified by the processing company after the customer received the subject merchandise (significant because HSU sometimes issues sales invoices based on the *theoretical* length of OCTG pipes before the customer received the subject merchandise; when this happens, HSU issues additional reconciliation invoices). Fourth, when HSU handles further manufacture, HSU incurs the cost associated with the further processing, including logistical expenses.[394] As with Channel 2 sales,

[390] *See* Hyundai Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea: Section A Questionnaire Response," dated February 5, 2020, at 30-31 and Exhibit A-13-A.
[391] *See* Hyundai Steel's Rebuttal Brief at 8.
[392] *Id.* at 31-32 and Exhibit A-13-B.
[393] *See* Hyundai Steel's Rebuttal Brief at 8-9.
[394] *Id.* at 32-33 and Exhibit A-13-C.

when HSU purchases subject merchandise (which is for further manufacturing) for its non-inventory or especially inventory sales, the transfer price is set based on the prevailing market conditions at around the time of shipment from Korea; this subject merchandise then remains in U.S. inventory for an what may be a considerable length of time until HSU receives an order for that merchandise.[395]

We find that the delay in length of time between the time of the transfer price between Hyundai Steel and HSU on the one hand, and the time of the sales price set between HSU and the unaffiliated U.S. customer on the other hand, is a reasonable explanation of the reason behind the otherwise anomalous gap between entered value and sales price. As Hyundai Steel points out, this is the result of business risk which HSU has decided to accept; had fluctuations in the U.S. OCTG market gone in the opposite direction, duties would have been based on entered values significantly exceeding the sales value. We find that the timing delay resulting from the selling process described by Hyundai Steel could reasonably account for the differences between the entered values and sales values.

U.S. Steel cites *Jacobi Carbons AB v. United States*[396] for the proposition that Commerce has the authority to reject reported entered value based on a comparison of calculated and reported entered values, and the case indeed stands for that proposition; further, U.S Steel did not submit the case for consideration in any other light. Nevertheless, a short comparison between the facts of *Jacobi* and those of the instant review may serve to illustrate our consideration of the issue. In *Jacobi*, the prime issue was not the entered values *per se* but rather the deduction of irrecoverable value added tax (VAT) from the Jacobi Carbons AB (Jacobi) U.S. sales price, which necessarily had to be based upon entered value; all this was, importantly, in the context of a non-market economy calculation. Because Jacobi's entered values resulted in an inappropriately low VAT adjustment, Commerce relied on an estimated customs value as a substitute for the FOB China port value to calculate the irrecoverable VAT adjustment.[397] In a previous review, Commerce had concluded that Jacobi's entered values were unreliable because 58% of total sales had a reported entered value that was less than half of Jacobi's reported net unit price; Commerce relied on the same methodology it had used in that earlier review to assess the reliability of Jacobi's entered values for the purpose of determining the most reliable base values upon which to calculate the VAT adjustment. Commerce also applied per-unit assessments. Commerce analyzed the difference between Jacobi's entered values reported to CBP and the estimated customs values (*i.e.*, the sales values) and then derived the "final net unit prices" by applying the VAT rate to the estimated customs values.[398] The Court upheld both Commerce's authority to do so, and the reasonableness of doing so with regard to Jacobi's entries. Jacobi had argued that Commerce lacked authority to do so, and that Commerce's methodology in doing so was incorrect in several respects; most notably, we can find nowhere in the record of that administrative review or the subsequent litigation where Jacobi offered <u>any</u> explanation for the massive difference between its entered values and its sales values.

[395] *See* Hyundai Steel's Rebuttal Brief at 8-9.
[396] *See Jacobi Carbons AB v. United States*, 222 F. Supp. 3d 1159, 1187-92 (CIT 2017) (*Jacobi*).
[397] *Id.* at 1187.
[398] *Id.* at 1189.

In contrast, here, Hyundai Steel provided a cogent explanation of reasons for the differences in entered values and sales values, which, in the context of the facts of this administrative review, we find to be reasonable. Consequently, we find no basis to reject Hyundai Steel's reported entered value based on a comparison of calculated and reported entered values. We find no reason to apply facts available. We therefore make no changes from the *Preliminary Results* and continue to find for these Final Results that Hyundai Steel's reported entered values will be used for calculations of its weighted-average margins.

Comment 10: U.S. Warehousing Expense

U.S. Steel's Comments:

- Commerce repeatedly requested further information concerning warehousing expense, but Hyundai Steel withheld documentation in its possession without identifying any specific law preventing it from requesting or obtaining further documentation from its customers, and has provided no evidence that it ever made such an attempt; neither side of Hyundai Steel's proffered justification for reporting no warehousing expenses has been substantiated and Commerce should apply AFA.[399]
- Hyundai Steel reiterates its contention that customers pay warehousing fees for inventory sales, but then says that certain parties involved in the further manufacturing process do not impose any separate storage charges in the fees charged to HSU.[400]

Hyundai Steel's Rebuttal:

- U.S. Steel's entire argument comes down to the simple question of whether Hyundai Steel or HSU incurred separate warehousing expenses on U.S. sales of subject merchandise during the POR.[401]
- Hyundai Steel and HSU did not incur any separate U.S. warehousing expenses but rather only incurred the fees to certain parties involved in the further manufacturing process.[402]
- Those certain parties involved in the further manufacturing process do not impose any separate storage charge in the fees charged to HSU because they perform services to which storage of subject merchandise is incidental and for which they do not separately charge HSU for any U.S. warehousing.[403]
- U.S. Steel believes that Commerce should penalize Hyundai Steel by deducting expenses from HSU's prices to unaffiliated U.S. customers that were never incurred; but no basis in the record, the law, or Commerce's practice supports such an adjustment.[404]
- U.S. Steel alleges that Hyundai Steel failed to cooperate by not reporting the warehousing expenses, but of course no company is required to report expenses that it did not incur; its accusations are contradicted by substantial record evidence confirming that Hyundai Steel did not incur these expenses.[405]

[399] *See* U.S. Steel's Case Brief at 13.
[400] *Id.* at 14.
[401] *See* Hyundai Steel's Rebuttal Brief at 10.
[402] *Id.* at 11.
[403] *Id.* at 11-12.
[404] *Id.* at 12.
[405] *Id.*

Commerce's Position: The issue before us is whether Hyundai Steel or HSU incurred separate warehousing expenses on U.S. sales of subject merchandise during the POR. The standard AD questionnaire has a specific field directed at warehousing expenses.[406] We posed extensive questions concerning this particular issue to Hyundai Steel in our supplemental questionnaire.[407] Hyundai Steel fully responded in its initial questionnaire responses,[408] and again in its supplemental questionnaire response,[409] that neither Hyundai Steel nor its affiliate HSU incurs such expenses. We do not find that information is missing or has been withheld or that Hyundai Steel's reporting has been inconsistent or inaccurate. We cannot attribute to Hyundai Steel expenses which it did not incur. Hyundai Steel reported that neither Hyundai Steel nor its affiliate HSU incurred the expenses at issue. In light of the record before us, to resort to the application of facts available with respect to the warehousing expenses in question would be unwarranted. Accordingly, we will not apply facts available and will not make changes from the *Preliminary Results* for these final results.

Comment 11: Reallocating an Input as a Packing Expense

U.S. Steel's Comments:

- Commerce should use a sales database that reflects allocation of the cost of a certain surface treatment[410] as an element of packing rather than an element of cost of manufacturing (COM).[411]

Hyundai Steel's Rebuttal:

- The issue is whether Commerce considers this certain surface treatment to be integral to the finished product (in which case it is part of COM) or whether it views this step as relevant to preparing the finished subject merchandise for transportation to the United States (in which case it is part of PACKU); Hyundai Steel has provided the relevant costs both ways, so Commerce has all the information necessary to implement this decision either way.[412]

[406] *See* Commerce's Letter, "Initial Antidumping Questionnaire," dated January 8, 2020, at A-10 and C-23.
[407] *See* Commerce's Letter, "Oil Country Tubular Goods from the Republic of Korea: Hyundai Steel Company Second Supplemental Sections A and C Questionnaire," dated December 2, 2020, at 10-11 (where there are 11 separate questions pertaining to this issue).
[408] *See* Hyundai Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea: Section A Questionnaire Response," dated February 5, 2020, at 32; *see also* Hyundai Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea: Sections C and E Questionnaire Responses," dated February 21, 2020, at 47-48.
[409] *See* Hyundai Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea: Supplemental Sections A and C Questionnaire Response," dated May 26, 2020, at 24-25.
[410] The name and data pertaining to this certain surface treatment are business proprietary. *See* U.S. Steel's Case Brief at 24.
[411] *See* U.S. Steel's Case Brief at 24.
[412] *See* Hyundai Steel's Rebuttal Brief at 19-20.

Commerce's Position: In the Preliminary Hyundai Analysis Memorandum,[413] we stated:

> We used Hyundai's U.S. sales database submitted on December 16, 2020 (barcode 4065855-18, named US sales file (SAS)), Hyundai's cost of production database submitted on December 16, 2020 (barcode 4065855-16, named COP File-actual prime (SAS)), and Hyundai's further manufacturing database submitted on December 9, 2020 (barcode 4063479-19, named Rev FM cost file (SAS)).

We have reviewed the calculations and confirmed (a) that we did indeed use those databases for the *Preliminary Results*, (b) that they actually were the most recent databases submitted by Hyundai Steel, and (c) that they were in fact the databases in which Hyundai Steel allocated this certain surface treatment as an element of packing rather than as an element of COM. Consequently, we make no change from the *Preliminary Results* because we have already done what U.S. Steel requests.

Comment 12: PMS Adjustment in the Sales-Below-Cost Test

SeAH's Comments:[414]

- Commerce's preliminary sales-below-cost analysis did not rely on SeAH's *actual* costs of production for OCTG during the review period as the statute requires.[415]
- Commerce used highly distorted cost figures that reflected an improper and inaccurate adjustment to SeAH's cost of steel coils to account for an alleged "particular market situation" allegedly affecting steel coil prices in Korea.[416]
- The CIT has repeatedly held that the statute does not permit Commerce to make an adjustment to account for an alleged "particular market situation" when calculating cost of production for purposes of the statutory sales-below-cost test.[417]

Husteel's Comments:[418]

- In the final results, Commerce should determine that it is without legal authority to make any cost-based PMS adjustments to SeAH's reported COP for purposes of the below-cost test. The CIT has held in numerous decisions that the antidumping statute does not permit Commerce to make a PMS adjustment to COP for purposes of the below cost test.[419]

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[413] *See* Memorandum, "Analysis of Data Submitted by Hyundai Steel Company for the Preliminary Results of the 2018-2019 Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from the Republic of Korea," dated January 15, 2021 (Preliminary Hyundai Analysis Memorandum), at 2.
[414] *See* SeAH's Case Brief at 1-2.
[415] *Id.* at 2.
[416] *Id.*
[417] *Id.* (citing *Saha Thai Steel Pipe v. United States*, 422 F. Supp. 3d 1363, 1371 (CIT 2019); *Husteel v. United States*, 426 F. Supp. 3d 1376, 1383–89 (CIT 2020); *Borusan Mannesmann v. United States*, 426 F. Supp. 3d 1395, 1411 (CIT 2020); and *Dong-A Steel v. United States*, 475 F.Supp.3d 1317, 1340-41 (CIT 2020)).
[418] *See* Husteel's Case Brief at 12-14.
[419] *Id.* at 12 (citing *Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States*, 426 F. Supp. 3d 1395, 1413-15 (CIT 2020); *Husteel*, 426 F. Supp. 3d at 1388-94; *Saha Thai Steel Pipe Public Co. v. United States*, 422 F. Supp. 3d 1363, 1368-72 (CIT 2019).

- Congress did not authorize Commerce to modify the calculation of COP for its sales-below-cost test based on any PMS finding. The language of 19 U.S.C. §1677b(e)(3) expressly limits PMS cost adjustments to constructed value.[420]
- In *Saha Thai*, *Husteel*, *and Borusan Mannesmann*, the CIT reached the conclusion that "no adjustment for a PMS is permitted for the sales below cost test.[421]
- The CIT has made it abundantly clear that Commerce's practice of calculating a PMS adjustment to COP for purposes of the below-cost test is impermissible and is inconsistent with the statute.

***U.S. Steel's Rebuttal:*[422]**

- Failure to account for PMS-related distortion to SeAH's cost of production in determining NV would violate the statute.[423]
- SeAH relies exclusively on precedent that concerned sales of foreign like products in the respondent's *home market*, rather than sales in a third country market, and made no effort to explain how the CIT's analysis of a different statutory provision is applicable to SeAH's situation in this review.[424]
- The TPEA specifically eliminated the reference to "in such other country" from Subsection (1)(B)(ii)(III). It is plain as day that Commerce was required by the TPEA to consider PMS cost distortion affecting goods produced in the home country when assessing third country sales. Else, the removal of "in such other country" language would be meaningless.[425]
- Section 773(a)(1)(B)(ii) *requires* that Commerce make a determination if SeAH's production costs have derivatively affected the "propriety" of comparing the price of SeAH's OCTG sales to Kuwait with those of its OCTG sales to the United States. One reasonable way of making this determination is by assessing whether SeAH's OCTG sales prices in Kuwait exceed SeAH's production cost *after* accounting for PMS-related distortion.[426]
- Commerce is on sound statutory footing, and indeed is required by the statute to continue to consider for the final results the effect of the cost-based PMS upon SeAH's third country sales, if such sales continue to be used in calculating NV.[427]

Commerce's Position: For these final results, we did not find a particular market situation to exist in Korea, as explained in Comment 1, above. Accordingly, for these final results we have not made any cost-based PMS adjustments to SeAH's reported COP for purposes of the below-cost test. Accordingly, it is unnecessary for us to address arguments regarding lawfulness of making the cost-based PMS adjustment.

[420] *Id.* 13.
[421] *Id.* at 13-14.
[422] *See* U.S. Steel's Rebuttal Brief at 41-44.
[423] *Id.* at 41.
[424] *Id.* at 41-42.
[425] *Id.* at 42-43.
[426] *Id.* at 43.
[427] *Id.* at 44.

Comment 13: Freight Revenue Cap

SeAH's Comments:[428]

- Commerce "capped" SeAH's reported freight revenue for the *Preliminary Results*. In previous reviews, Commerce's capping of SeAH's freight revenue was based on the grounds that Commerce considers freight to be a service and not a part of the sale of the subject merchandise.[429]
- Neither SeAH nor its U.S. affiliates provides freight services. Instead, the additional amount charged to its customers for freight is merely an additional amount for freight, which is a disaggregation of a delivered price into arbitrary amounts for the merchandise and for freight.[430]
- While the courts have given Commerce the discretion to treat separately invoiced freight revenue as wholly apart from the U.S. price, Commerce did not reasonably conclude that freight services are included in the price of the merchandise.[431]
- If profits from the sale of services are disregarded, then negative profits on the sale of services must also be excluded. That is, Commerce must either ignore both profits and losses on separately invoiced freight revenue or it must include both in its calculations. To do otherwise is biased and unfair and cannot be reconciled with the statute.[432]

Maverick's Rebuttal:[433]

- SeAH's arguments have been rejected by Commerce and the courts. Commerce should continue to cap SeAH's freight revenue at the amount of freight expense incurred.[434]
- The statute requires Commerce to make certain adjustments to the starting U.S. price to bring it to the same level as NV so that a proper comparison can be made. Commerce's practice to cap freight revenue at the amount of freight charges incurred is consistent with U.S. statutory requirements and has been upheld by the CIT.[435]
- CIT precedent establishes that the "plain language of §1677a(c)(2) deals *exclusively* with downward adjustments to U.S. price."[436]

Commerce's Position: We disagree with SeAH and have continued to apply the freight revenue cap for its sales in these final results. This methodology for capping freight revenue was affirmed by the CIT in NEXTEEL I (2014-2015) and NEXTEEL II (2015-2016). Primarily, according to section 772(c)(2)(A) of the Act, "the price used to establish export price and constructed export price shall be… reduced by… the amount, if any, included in such price, attributable to any additional costs, charges, or expenses… which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States."[437] Section 772(c)(2)(A) of the Act requires Commerce to make

[428] *See* SeAH's Case Brief at 62-66.
[429] *Id.* at 62.
[430] *Id.* at 62-63.
[431] *Id.* at 63-66.
[432] *Id.* at 65-66.
[433] *See* Maverick's Rebuttal Brief at 7-11.
[434] *Id.* at 7.
[435] *Id.* at 10 -11.
[436] *Id.* at 11 (citing *Dongguan Sunrise Furniture*, 865 F. Supp. 2d at 1248 (CIT 2012)).
[437] *See Dongguan Sunrise Furniture*, 865 F. Supp. 2d at 1249-50.

certain adjustments to the starting U.S. price to bring it to the same level as NV, so that a proper comparison can be made with NV.

In this review, SeAH argues that Commerce's application of the freight revenue cap in the *Preliminary Results* was inappropriate because the additional charge for freight is a disaggregation of the delivered price into one amount for the goods and another for freight, not a charge for a service rendered by SeAH. However, we continue to find here, as in *Welded Steel Pipe from Thailand*,[438] that it is inappropriate to increase the gross unit selling price for subject merchandise as a result of any profit earned by SeAH on the sale of freight. It is Commerce's normal practice to cap freight revenue at the corresponding amount of freight charges incurred because it is inappropriate to increase the gross unit selling price for subject merchandise as a result of profit earned on the sale of services (*i.e.*, freight).[439] This methodology prevents an exporter from improperly inflating its export price or CEP of a good by charging a customer more for freight than the exporter's actual freight expenses.

Finally, we disagree with SeAH's assertion that Commerce must either include both profits and losses on separately invoiced freight revenue in its calculations or exclude both. Section 772(c)(2)(A) of the Act requires only that freight expenses be deducted from the price charged to the customer to establish the price of the subject merchandise. As the CIT held in *Dongguan Sunrise Furniture*, the "plain language of {section 772(c)(2) of the Act} deals exclusively with downward adjustments to U.S. price."[440] The CIT explained that "adjustments are necessary because the reported prices 'represent prices in different markets affected by a variety of differences in the chain of commerce' and must be adjusted 'to reconstruct the price at a specific 'common' point… so that value can be fairly compared on an equivalent basis.'"[441]

This allows Commerce to achieve an "apples-to-apples" comparison between the CEP (or EP) and NV. Commerce does not apply the freight revenue cap when the exporter pays for delivery; rather it deducts from the starting price the freight expenses that the exporter incurred in delivering goods to bring the price to the *ex-factory* level (*i.e.*, price of goods alone without any additional charges). Ultimately, the freight costs would not be included in the constructed export price. When a customer pays for delivery and the exporter charges more for freight services than the cost it incurred in delivering goods, the freight expense is likewise excluded from the constructed export price of the subject merchandise. In both scenarios, Commerce would bring the price to the *ex-factory* level (*i.e.*, the price of goods alone) and would not artificially inflate the price of subject merchandise (a good) by the profit from selling freight (a service).[442]

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[438] *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 64170 (October 28, 2014) (*Welded Steel Pipe from Thailand*), and accompanying IDM.
[439] *See*, *e.g.*, *Welded Steel Pipe from Thailand* IDM at Comment 12; *Wood Flooring from China LTFV Final Determination* IDM at Comment 39; *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying IDM at Comment 2.
[440] *See Dongguan Sunrise Furniture*, 865 F. Supp. 2d at 1249-50.
[441] *Id.* 865 F. Supp. 2d at 1249.
[442] *Id.* ("Thus, it was reasonable for Commerce not to consider freight revenue as part of the price of the subject merchandise.").

Accordingly, we continue to find for these final results that it is appropriate to apply the freight revenue cap to SeAH's sales in the instant review.

Comment 14: Calculation of G&A Expenses Incurred by SeAH's U.S. Affiliate

In the *Preliminary Results*, Commerce applied the G&A expense ratio of SeAH's U.S. affiliate, Pusan Pipe America, Inc. (PPA), to the total cost of further manufactured products, *i.e.*, the further manufacturing cost plus the cost of production of the imported oil country tubular goods.[443] Commerce applied the G&A ratio to the total cost of manufacturing because the denominator of the G&A ratio included these costs. Also, Commerce allocated PPA's G&A expense to the cost of all non-further manufactured subject products resold by PPA through inventory.

***SeAH's Comments:*[444]**

- PPA's administrative expenses are related to the overall activities of the company.[445]
- When a company is engaged only in sales activities, Commerce's long-standing practice is to treat all G&A expenses as selling expenses; inversely, when a company is engaged in both selling and manufacturing activities, Commerce only applies the company-wide G&A expense ratio to further manufacturing costs and does not classify any G&A expenses as selling expenses.[446]
- The statute does not direct Commerce to deduct all administrative expenses from CEP. Rather, the statute specifically limits CEP adjustments to selling expenses and further manufacturing costs; therefore, because G&A expenses are not selling expenses Commerce's decision to deduct from CEP the G&A expenses related to non-further manufactured products is contrary to the statute.[447]
- This treatment of PPA's G&A expenses as a selling expense creates an imbalance in Commerce's calculations since SeAH engages in both manufacturing and sales operations in Korea, yet, Commerce does not include any portion of SeAH's G&A expenses as a home market indirect selling expense for which a "CEP offset" might be allowed.[448]
- Commerce's preliminary treatment of PPA's G&A expenses was plainly unfair and unlawful.[449] Commerce should only deduct from CEP the G&A expenses attributable to PPA's further manufacturing activities.

[443] *See Preliminary Results* PDM at 18.
[444] *See* SeAH's Case Brief at 66-70.
[445] *Id.* at 66.
[446] *Id.* at 66-68 (citing Commerce Policy Paper #H "Definition of 'Selling Expenses' in the Context of the Exporter's Sales Price Provisions," Potts/Eiss (undated) (Policy Paper #H); *Calcium Aluminum Cement, Cement Clinker, and Flux from France*, 59 FR 14136, 14146-47 (March 25, 1994) (*Cement from France*); and *First Administrative Review of Certain Activated Carbon from the Peoples Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 57995 (November 10, 2009) (*Activated Carbon from the PRC*), and accompanying IDM at Comment 5(b)).
[447] *Id.* At 68-69 (citing 19 U.S.C. §1677a(d)).
[448] *Id.* at 69-70.
[449] *Id.* at 70.

***Maverick's Rebuttal:*[450]**

- Consistent with recent cases, Commerce should continue to apply PPA's G&A expense ratio to resold products.[451]
- The statute requires Commerce to make adjustments to the starting price for CEP including adjustments for selling expenses and further manufacturing.[452] SeAH's arguments were already rejected in previous reviews when Commerce found that PPA's G&A activities support both resold and further manufactured products, thus, the adjustments were required to properly capture the expenses associated with these activities[453]
- The undated policy memorandum and the prior Commerce decisions cited by SeAH fail to address the treatment of G&A expenses when a U.S. company engages in both selling and further manufacturing activities.[454]
- SeAH cites Commerce decisions that do not address the relevant issue because, "neither of these cases are representative of Commerce's practice nor address the issue of whether all products sold by a U.S. selling entity should be burdened with the company's G&A expense.[455]

Commerce's Position: For these final results, we have modified the manner in which we allocated PPA's G&A expense to the products sold in the U.S. market to be consistent with Commerce's July 16, 2021, final results of redetermination[456] concerning *OCTG Korea 2016-2017*.[457] In the *Preliminary Results*, we applied PPA's reported general expense ratio to the further manufacturing cost plus the cost of the imported OCTG that was further manufactured and included these general expenses as further manufacturing.[458] We also applied PPA's general expense ratio to the cost of the imported OCTG that was not further manufactured and included these expenses as indirect selling.[459] In these final results, for further manufactured products, we applied PPA's G&A expense ratio to the total cost of further manufacturing, and we included the amount as further manufacturing under section 772(d)(2) of the Act. Additionally, we applied PPA's G&A expense ratio to the COP of the imported OCTG, whether further manufactured or not, and included the amount as indirect selling expense under section 772(d)(1)(D) of the Act. This revised classification, satisfies the requirements of the statute, allows for a logical full accounting of the company's general expenses, and is consistent with Commerce's recent redetermination.

We disagree with SeAH that if an affiliated company engages in both further manufacturing and reselling activities, the statute prohibits the recognition of all G&A expenses. According to SeAH, had the affiliated company only imported and resold the product, the associated G&A

[450] *See* Maverick's Rebuttal Brief at 12-14.
[451] *Id.* at 12.
[452] *Id.*
[453] *Id.* at 13-14.
[454] *Id.* at 14.
[455] *Id.*
[456] *See SeAH Steel Co. v. United States*, Consolidated Court No. 19-00086, Slip. Op. 21-43 (CIT April 14, 2021): Final Results of Redetermination Pursuant to Court Remand, dated July 16, 2021.
[457] *See Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*; 84 FR 24085 (May 24, 2019).
[458] *See Preliminary Results* PDM at 18.
[459] *Id.*

expenses are properly recognized as indirect selling expenses, however, if the imported product is further manufactured in any way, Commerce is precluded from recognizing the portion of G&A expenses previously allocated to those imported products, *i.e.*, the amounts which were previously considered indirect selling expenses.

First, PPA is SeAH's U.S. affiliate responsible for all aspects of sales to U.S. customers.[460] SeAH's U.S. sales of OCTG were made by PPA through one channel of distribution, consisting of shipments from SeAH to PPA's OCTG division where the merchandise was stored in inventory and, in some instances, subjected to further processing by unaffiliated contractors, prior to sale to an unaffiliated customer.[461] SeAH also states that PPA performs negotiations with customers, processing sales documentation, invoicing customers, collecting payment, and maintaining contact with customers.[462] Thus, PPA's primary function is to facilitate SeAH's sales.

Further, SeAH explained in its further manufacturing response that "PPA did not have any production facilities in the United States" and all but a small portion of "U.S. processing was performed by outside processors who were paid a fee by PPA for the processing services provided."[463] Thus, the extent of PPA's further manufacturing costs is the fee it pays to outside processors. Apart from paying the processing fee, in terms of PPA's activities, there is little, if any, difference between the directly resold and the further manufactured sales.[464] Clearly, PPA's G&A expenses support the general operations of this selling entity and are recovered by PPA through both direct and further processed sales.

We find that it would distort the accuracy of the calculations if we were to allocate PPA's company-wide general expense ratio only to two of the three components of the company's activities, *i.e.*, the imported products that were not further manufactured and the further manufacturing fees, but not to the third component, *i.e.*, the imported products that were further manufactured, where in fact all three activities serve as the denominator for PPA's reported general expense ratio calculation.

The antidumping statute, section 772(d), provides that the price used to establish CEP must be reduced by certain expenses, such as direct selling expenses, indirect selling expenses, and costs of any further manufacture or assembly. The courts explained that, "in calculating U.S. prices using the {constructed export price} methodology, Commerce is to deduct any expenses generally incurred by or for the account of … the affiliated seller in the United States, in selling subject merchandise."[465] In other words, the statute *requires* that Commerce deduct both the selling expenses and costs of further manufacture from the price used to determine CEP. Accordingly, if all G&A expenses incurred by an affiliated U.S. reseller can be treated as indirect selling expenses when the affiliated U.S. reseller only performs reselling activities, and all G&A expenses incurred by an affiliated U.S. further-manufacturer/reseller can be treated as further

[460] *See* SeAH February 5, 2020 AQR at 24.
[461] *Id.* at 23-24.
[462] *Id.* at 22.
[463] *See* SeAH February 21, 2020 EQR at 1 and 3.
[464] *See* SeAH February 5, 2020 AQR at 25-26; *see* also SeAH February 21, 2020 EQR at 1-2.
[465] *See United States Steel Corp. v. United States*, 712 F. Supp. 2d 1330, 1336 (CIT 2010).

manufacturing expenses when the affiliated U.S. further manufacturer/reseller performs both further manufacturing and reselling activities, Commerce unquestionably has the authority to allocate G&A expenses to both types of activities when both activities occur and to make appropriate deductions.

SeAH's argument improperly asks Commerce to ignore a significant portion of G&A expenses. The statute directs Commerce to reduce the U.S. price by any selling expenses and further manufacturing costs. Further, it is significant that PPA is not performing further manufacturing on its own and does not maintain any production facilities for further manufacturing. Rather, these processes are performed by tollers, and SeAH's involvement in further manufacturing is perfunctory in nature and is limited to paying a processing fee, which we accounted for as a further manufacturing expense. Apart from paying the processing fee to the tollers, which we accounted for, SeAH is predominantly a selling entity, thus, it is reasonable to treat the portion of its G&A expenses that are related to the cost of the imported products as selling expenses.

Finally, SeAH argues that because it engages in both manufacturing and sales operations in Korea, "there is an imbalance in Commerce's calculations — since it deducts U.S. G&A expenses as an indirect selling expense but does not include Korean G&A expenses as a home-market (or third-country) indirect selling expense for which a 'CEP offset' might be allowed." Record evidence, however, does not support SeAH's position. SeAH's reported G&A expenses are included as part of the COP as directed under section 773(b)(3)(B) of the Act, and the calculation of that ratio used a denominator for the cost of goods sold (COGS) which included the cost of all products sold, whether or not they were simply purchased and resold or they were manufactured by SeAH. However, SeAH's purchased and resold products would likely not be considered reportable merchandise, since SeAH would not be the producer. Because it is likely that SeAH would not have been required to report or disclose purchased and directly resold products, there would have been no need to report the G&A expenses allocated to such products. In the U.S. market, however, the OCTG products that PPA purchased from SeAH and resold or further manufactured and then resold are reportable merchandise; therefore, we find it appropriate to consider all G&A and indirect selling expenses allocated to these products in our calculations.

We find that Commerce's alternative method for allocating the U.S. affiliated selling entity's G&A expenses as both further manufacturing and indirect selling expenses is based on a reasonable interpretation of sections 772(d)(1)(D) and 772(d)(2) of the Act. Thus, consistent with Commerce's recent redetermination, for these final results, we are allocating PPA's G&A expenses proportionately to all of the products PPA sold (*i.e.*, products which PPA directly resold and products which PPA further processed and then resold) as further manufacturing and indirect selling expenses under section 772(d)(1)(D) of the Act.

Comment 15: Correction of a Ministerial Error in SeAH's Preliminary Margin Program

SeAH's Comments:[466]

- Commerce incorrectly omitted U.S. sales that were matched to constructed value (CV) from its calculation of the dumping margin for SeAH's sales.
- Commerce should correct this error for the final results.

Commerce's Position: We agree with SeAH and, for the final results, we have corrected SeAH's margin program to no longer omit certain U.S. sales.[467]

Comment 16: SeAH's Kuwait Sales to Calculate Normal Value

Maverick's Comments:[468]

Statutory Requirements

- Pursuant to 19 U.S.C. § 1677(a)(1)(C), Commerce may calculate NV based on third country sales if those sales satisfy certain statutory requirements. 19 U.S.C. §1677b(a)(1)(B)(ii)(I) requires that third country sales have a price that is representative.[469]
- The U.S. Court of International Trade (CIT) has confirmed that "{t}he statute does not impose a time frame within which Commerce must make a market viability determination."[470]

SeAH's Kuwait Sales are Not Representative

- SeAH's sales to Kuwait cannot be considered "representative" within the meaning of the statute. Accordingly, Commerce should not use SeAH's third country sales either as a basis for NV for SeAH, or for calculating CV profit and selling expenses for Hyundai Steel.[471]
- In a recent expiry review proceeding that examined Korean OCTG export pricing in 2018, the Canadian trade authority considered that the prices of sales of Korean OCTG in the Kuwait market are at unusually low prices relative to other export markets for Korean OCTG.[472]
- Evidence on the record of this proceeding supports the finding of the Canadian Border Service Agency.[473]

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[466] *See* SeAH's Case Brief at 70.
[467] *See* Memorandum, "Analysis of Sales and Cost Data Submitted by SeAH Steel Corporation for the Final Results of the 2018-2019 Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea," dated concurrently with this memorandum.
[468] *See* Maverick's Case Brief at 2-12.
[469] *Id.* at 2-3.
[470] *Id.* at 3 (citing *Stupp Corp. v. United States*, 413 F. Supp. 3d 1326, 1332 (CIT 2019)).
[471] *Id.* at 4.
[472] *Id.* at 4-5.
[473] *Id.* at 5-6. Maverick designated the details of this argument as business proprietary information in its case brief. For a summary of this argument, *see* SeAH's Final Analysis Memorandum.

- Commerce previously has considered the findings of foreign tribunals as evidence in considering whether third country sales are representative for purposes of calculating NV.[474]
- In the fourth administrative review of the *Order*, Commerce rejected SeAH's OCTG sales to Kuwait as a source for CV because they "do not show a profit" and "reflect sales data from {a} non-viable market."[475] In this review, Commerce should make a similar decision.
- The record shows that the Kuwait sales are questionable in other respects.[476]
- SeAH channeled strategic sales to Kuwait market, with its unusually low-priced sales, and through this approach, SeAH avoided a calculation of NV based only on CV.[477]

U.S. Steel's Concurring Comments:[478]

- Maverick Tube Corporation, Tenaris Bay City, Inc. and IPSCO Tubulars Inc. explained at length in their case brief, SeAH's sales to Kuwait are not "representative" and thus unusable as NV.

SeAH's Rebuttal:[479]

The DIPs' Claim that SeAH's Sales to Kuwait were not "Representative" is Based on an Untimely Allegation that Is Not Properly Part of the Record of This Proceeding

- Both SeAH's January 22, 2020, letter and February 5, 2020, Section A response, informed Commerce that Korea was not a "viable" comparison market under the statutory standards, but that SeAH intended to provide sales information for its largest third-country market in the Section B Response.[480]
- SeAH's Section A response demonstrated that the quantity of SeAH's sales to Kuwait was more than 5 percent of its U.S. sales, and that Kuwait therefore constituted a "viable" comparison market under the statutory standards.[481]
- Under Commerce's regulations, allegations concerning "market viability and the basis for determining normal value" are due within 10 days after the respondent interested party files the response to the relevant section of the questionnaire.[482] Consequently, any allegation that SeAH's sales to Kuwait did not provide an appropriate basis for determining NV in this review were due by March 2.
- The DIPs first presented the claim that SeAH's sales to Kuwait were not "representative" in a submission dated November 5, 2020. Thus, none of the information relied upon by the DIPs is properly on the record.

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[474] *Id.* at 5 (citing *Certain Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review*, 68 FR 59366 (October 15, 2003) (*Certain Polyester Staple Fiber from Korea*), accompanying IDM at Comment 9.
[475] *Id.* at 7 (citing *OCTG from Korea 2017-2018* IDM at 70).
[476] *Id.* at 8. Maverick designated the details of this argument as business proprietary information in its case brief. For a summary of this argument, *see* SeAH's Final Analysis Memorandum.
[477] *Id.* At 10-11.
[478] *See* U.S. Steel's Rebuttal Brief at 41.
[479] *See* SeAH's Rebuttal Brief at 18-26.
[480] *Id.* At 18.
[481] *Id.*
[482] *Id.* At 19 (citing 19 CFR § 351.301I(2)(i).

Canadian Government Findings Regarding Differences for Korean Export Prices to Kuwait and Other Export Markets Are Irrelevant as a Matter of Logic and Law, and Baseless as a Matter of Fact

- The DIPs have not explained why a decision by the Canada Border Service Agency (CBSA), which found (based on Canadian law and procedures), that the average unit price of Korean OCTG exported to Kuwait was lower than that of Korean OCTG exported to Canada and other markets in 2018, has any relevance to this case.[483]
- Information submitted by SeAH demonstrates that its sales of OCTG to third-country markets other than Kuwait were much too small to be used for Commerce's analysis. Therefore, it makes no sense to consider prices in a non-viable market as a benchmark for determining if sales in a viable market were representative[484]
- The prices for individual OCTG products may vary significantly based on differences in grade, heat treatment, type of coupling, and the other factors identified in the product-matching characteristics. The DIPs have not submitted any information on the prices charged by SeAH for identical or similar CONNUMs in Kuwait and other markets.[485]
- The CBSA's report is based on calendar year 2018. Two thirds of the POR of this proceeding fall outside of the period considered by the CBSA.[486]
- U.S. law designates Commerce as the investigating authority in antidumping investigations and reviews and requires Commerce to make its determinations based on facts found and conclusions reached by that agency.[487]
- The evidence relied upon by the CBSA is not part of Commerce's record, so it would preclude judicial review under the statutory "substantial evidence" standard if Commerce relied on this finding.[488]

The DIPs' Claim that Some of SeAH's Sales to Kuwait Were Made at Below-Cost Prices Is Factually Incorrect and Legally Irrelevant

- The DIPs argument that SeAH's sales to Kuwait are not "representative" is based on a comparison of prices for sales to Kuwait with an inflated cost figure that includes a massive adjustment for the alleged "particular market situation."[489]
- When the prices for SeAH's sales to Kuwait are compared to SeAH's actual costs, none of the sales to Kuwait were below cost.[490]
- The statute provides that the sales-below cost test should be applied to all sales in a viable market, and that below-cost sales may be disregarded as outside the ordinary course of trade if certain conditions are met. The statute does not envision that market viability might be determined after the sales-below cost test has been applied.[491]
- Commerce's long-standing practice is to use constructed value as the basis for NV *only when there are no above-cost sales.*[492]

[483] *Id.* at 20.
[484] *Id.* at 20-21.
[485] *Id.* at 21.
[486] *Id.* at 21-22.
[487] *Id.* at 22 (citing 19 U.S.C. § 1677(1) and 19 U.S.C. § 1673d(d)).
[488] *Id.* at 22.
[489] *Id.* at 23.
[490] *Id.* at 24.
[491] *Id.*
[492] *Id.* (citing Policy Bulletin 98.1 (February 23, 1998)).

The DIPs' Claim that SeAH's Sales to Kuwait Reflected a "Strategic Approach" to Manipulate the Dumping Comparisons is Unsupported by Evidence and Logically Absurd.

- The documents the DIPs cite do not support their argument that SeAH's sales to Kuwait were not *bona fide* transactions.[493]
- It is not unlawful or unusual for companies to seek to increase sales in markets where they have been unsuccessful in the past.[494]
- None of the DIPs' proposed findings lead to the conclusion that SeAH's sales to Kuwait were not *bona fide* transactions.[495]
- Kuwait and other countries targeted by Team 3 do permit welded OCTG to be used in oil wells. As long as SeAH's products meet the requirements for the intended use in a particular market, SeAH has an absolute right to try to sell its products there. Tenaris asserting that markets that it dominates should be off limits to SeAH is self-interested twaddle that should be summarily rejected.[496]

Commerce's Position: For the final results, we continue to base NV on SeAH's sales in Kuwait. In the *Preliminary Results*, we found that the aggregate quantity for the like product sold by SeAH in Kuwait was greater than five percent of the aggregate quantity of SeAH's U.S. sales, and, therefore Kuwait is a viable third-country market in this review.[497] Accordingly, for SeAH, we used third-country sales to Kuwait as the basis for NV, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404. Also, because more than 20 percent of SeAH's Kuwait sales were at prices less than the cost of production, we disregarded the below-cost sales when: (1) they were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted average of the COPs, the sales were made at prices which would not permit the recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Thus, we excluded these below-cost sales from our analysis and used the remaining above-cost sales to determine NV.[498]

We disagree with the DIPs that Commerce should not use SeAH's Kuwait sales as a basis for calculating NV. The DIPs offer three reasons Commerce should not consider SeAH's Kuwait sales for the basis of NV: (1) the prices are not representative and, thus, Kuwait does not meet the statutory requirements as set out in 19 U.S.C. § 1677b (a)(1)(B)(ii)(I); (2) the facts of this case are similar to the fourth administrative review, where Commerce determined SeAH's sales to Kuwait could not be as a source for CV because they "do not show a profit" and "reflect sales data from {a} non-viable market;" and (3) the record shows that the Kuwait sales are questionable in other respects.[499]

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[493] *Id.* at 25.
[494] *Id.* at 26.
[495] *Id.*
[496] *Id.*
[497] *See Preliminary Results* PDM at 11.
[498] *Id.* at 19.
[499] Maverick designated the details of this argument as business proprietary information in its case brief. For a summary of this argument, *see* SeAH's Final Analysis Memorandum.

The CIT found in *Alloy Piping Products, Inc v. United States*, that "neither the statute, legislative history, nor regulations define 'representative'."[500] Therefore, its within Commerce's discretion to develop reasonable interpretations of this term. Commerce, for example, in a past case has determined "representative" to mean "determined on market principles."[501] Moreover, the fact that the statutory requirement for prices to be "representative" applies only to third-country sales and not to home-market sales is an indication that there were concerns about using third-country sales prices as the basis for NV that went beyond the concerns that could be addressed through the "particular market situation" analysis which applies to both third-country and home-market sales. The DIPs argue that SeAH's third-country sales cannot be considered "representative" within the meaning of the statute, but it is not clear how the DIPs believe "representative" should be interpreted.

The DIPs' "representative" argument relies on a CBSA finding that the prices of sales of Korean OCTG in the Kuwait market were unusually low relative to Canada and other export markets. The DIPs also argue that evidence on the record of this case supports the finding of the CBSA, *i.e.*, the DIPs claim that sales in Kuwait's market were made at below cost prices. As an initial matter, we are not bound by findings of foreign government authorities. However, we have considered the finding by CBSA with respect to the Kuwait market. CBSA's analysis was based on Canadian law and procedures and, thus, did not address whether Kuwait was "representative" in accordance with section 773(a)(1)(B)(ii)(I) of the Act. We are not persuaded that CBSA's finding that the average unit price of Korean OCTG exported to Kuwait was lower than that of Korean OCTG exported to Canada and other markets in 2018, on its own, is sufficient to demonstrate that the prices in Kuwait market are not representative for purposes of calculating NV. The average unit prices may differ among markets and some market will be naturally at the low or high end of the pricing spectrum. This non-uniform pricing among the markets merely demonstrates that Korean OCTG producers sold OCTG at different prices to different markets with Kuwait having the lowest prices, but, in our view, it does not demonstrate that prices in any of these markets are not representative. Evidence on the record of this proceeding must demonstrate Kuwait is not "representative," in order for Commerce to reach this conclusion and dismiss sales to Kuwait as a basis for NV. We disagree that the case cited by the DIPs warrants a different outcome in our analysis. The DIPs cite *Certain Polyester Staple Fiber from Korea*, but in that case, Commerce was not determining if a third-country was representative, but determining which third-country among multiple viable options should be selected.[502] The third criteria of 19 CFR 351.404(e) allows the Secretary to select a third-country based on "such other factors as the Secretary considers appropriate," if more than one third-country satisfies the criteria of section 773(a)(1)(B)(ii) of the Act. In this proceeding, Commerce is not selecting between multiple viable third countries, but determining if the one viable third country is "representative." We have examined the findings by CBSA and we find that CBSA's finding that the average unit price of Korean OCTG exported to Kuwait was lower than that of Korean OCTG exported to Canada and other markets in 2018, on its own, is insufficient to demonstrate that the prices in the Kuwait market are not representative for purposes of calculating NV.

[500] *See Alloy Piping Products, Inc. v. United States*, 26 CIT 330, 339, 201 F.Supp.2d 1267 (2002).
[501] *See Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Final Results of Antidumping Duty Administrative Review*, 71 FR 13091-02 (March 14, 2006), and accompanying IDM.
[502] *See Certain Polyester Staple Fiber from Korea* IDM at Comment 9.

Further, the record evidence does not support the CBSA's finding that the prices of sales of Korean OCTG in the Kuwait market were unusually low relative to other export markets. The DIPs rely on a comparison of SeAH's sales to Kuwait and SeAH's sales to non-viable third-country markets. However, it is within Commerce's discretion to develop reasonable interpretations of "representative," and we do not find the DIPs analysis of benchmarking SeAH's Kuwait sales to their sales to non-viable third-countries to be a reasonable interpretation of "representative," for the purposes of this review. In our view, pricing in non-viable markets does not constitute an appropriate benchmark for evaluating pricing in a viable market. Moreover, the DIPs have not explored alternative explanations between price differentials such as differences in product-matching characteristics. The DIPs claim that Kuwait is not "representative" because there were sales made at less than cost. In the *Preliminary Results*, we determined more than 20 percent of SeAH's Kuwait sales were at prices less than the cost of production.[503] However, Commerce excluded these sales for the purposes of calculating NV. The DIPs' argument fails to explain why relying on above-cost sales to Kuwait would not be "representative." The methodology used in this review, *i.e.*, relying on SeAH's above-cost sales to Kuwait, is consistent with the SAA, "{o}nly if there are ***no*** above-cost sales in the ordinary course of trade in the foreign market under consideration will Commerce resort to constructed value," (original emphasis)[504] and policy bulletin 98.1, "we will use constructed value only when there are no above-cost sales that are otherwise suitable for comparison," The emphasis that there must be "*no* above-cost sales*"* in the SAA demonstrates that a low number (other than zero) of above-cost sales is not a sufficient reason to use CV for the purposes of calculating NV. We disagree with the DIPs that the information on this record is comparable to the fourth administrative review of the *Order*, where Commerce rejected SeAH's OCTG sales to Kuwait as a source for CV because Kuwait did not have a viable market during that period of review. Unlike in the fourth administrative review, in this review Commerce determined Kuwait is a viable third-country, and Commerce excluded sales that were made at prices below cost.

Finally, we find the DIPs' argument that the record shows that the Kuwait sales are questionable in other respects to be unpersuasive. Section 773(a)(2) of the Act states, "no sale or offer for sale intended to establish a fictitious market, shall be taken into account in determining normal value." However, the DIPs' allegation comes short of a "fictitious market" allegation because the DIPs never use the term "fictitious market" and it would have been untimely if they did, as the allegation was not advanced until late in the review.[505] Because no "fictitious market" allegation was made, Commerce did not analyze if SeAH channeled strategic sales to the Kuwait market to avoid a calculation of NV based only on CV. Short of making a timely "fictitious

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[503] *See Preliminary Results* PDM at 19.

[504] *See* SAA at 833.

[505] *See Notice of Final Results of Antidumping Duty Administrative Review and Determination not to Revoke Order in Part: Dynamic Random Access Memory Semiconductors of One Megabyte or Above from the Republic of Korea*, 62 FR 39809 (July 24, 1997), at Comment 8 ("The petitioner failed to raise its fictitious market allegation until filing its case brief following the preliminary results of review. Therefore, the petitioner's allegation was untimely filed and not adequate to warrant determining that Hyundai's home market sales constitute a fictitious market."); *see also Lightweight Thermal Paper from Germany: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 34719-02 (June 18, 2014), and accompanying IDM at Comment 1B ("The petitioner dismisses the importance of using the term "fictitious market" in order to make such an allegation. However, the specific use of that term, along with a fully substantiated allegation, is necessary before {Commerce} undertakes this type of extraordinary analysis.").

market" allegation, which the DIP's failed to make here, the DIPs' claims of strategic sales do not speak to if the Kuwait market is appropriate to use for the calculation of NV.

Finally, the DIPs' argument is limited to claiming that SeAH's sales to Kuwait are not "representative." The DIPs do not argue that specific sales SeAH made to Kuwait were excludable as non-*bona fide* transactions. In administrative reviews, Commerce has previously explained that if a producer's or exporter's transactions involve price, quantities, and overall circumstances that do not call into question the commercial viability of those sales, generally, it will not analyze in great detail the *bona fides* of those sales.[506] The number of sales SeAH made to Kuwait including the number of sales that pass the below-cost test does not call into question if these sales are representative. Based on record information, sales were made in commercial quantities under normal business practices and were made at arms-length. The DIPs have not provided evidence that calls into question the commercial viability of SeAH's sales to Kuwait, so Commerce has not analyzed in great detail the *bona fides* of those sales.

For the above reasons, we continue to rely on SeAH's sales to Kuwait for the purposes of calculating NV for SeAH.

Comment 17: CEP Offset

Maverick's Comments:[507]

- In the *Preliminary Results*, Commerce granted a CEP offset based on its finding that SeAH's sales to Kuwait were at a more advanced level of trade than its CEP sales to its affiliate PPA.[508]
- SeAH failed to provide the quantitative analysis that is required to support its eligibility for CEP offset. Commerce should not grant SeAH a CEP offset in the final results.[509]

Statutory Requirements

- The statute provides at 19 U.S.C. §1677b(a)(7) for Commerce to make an adjustment for differences between the LOT, provided that the difference in LOTs has an effect on price compatibility. Moreover, a CEP offset will be granted, rather than an LOT adjustment, if NV is stablished at a more advanced LOT than CEP, but the data do not provide an appropriate basis to determine a LOT adjustment.[510]
- The record evidence does not meet the statutory requirement in the SAA that a foreign producer or exporter must supply evidence that "the functions performed by the sellers at the same {LOT} in the U.S. and foreign markets are similar, and that different selling activities are actually performed at the allegedly different levels of trade."[511]

[506] *See Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 58642 (October 16, 2007), and accompanying IDM at Comment 4a.
[507] *See* Maverick's Case Brief at 17-26.
[508] *Id.* at 17.
[509] *Id.* at 17-18.
[510] *Id.* at 18-19.
[511] *Id.* at 19 (citing SAA at 829).

Commerce Should not Grant SeAH a CEP Offset in the Final Results

- In *Polyethylene Terephthalate Sheet from Korea*, Commerce explains it introduced a requirement for quantitative analysis to its level of trade analysis to reduce subjectivity and inconsistency.[512]
- Despite Commerce's request for both quantitative and qualitative information, SeAH only provided qualitative information.[513]
- SeAH did not provide a quantitative analysis showing how the expenses assigned to POI/POR sales made at different claimed levels of trade impact price comparability, nor did it provide quantitative analysis to support its assigned numbers in the selling activity table.[514]
- SeAH's failure to cooperate with Commerce's request should not be rewarded with a CEP offset.[515]
- In *Polyethylene Terephthalate Sheet from Korea*, Commerce denied the respondent a CEP offset when it did not provide the requested quantitative analysis and only submitted the type of support that SeAH has provided. Commerce determined that the respondent's assignment of ranking on a 10-point scale in its selling functions table was not a substitute for quantitative analysis. Next Commerce rejected that the respondent's documentation without explanation supported the claimed levels of intensity.[516] The type of support SeAH provides is akin to that in *Polyethylene Terephthalate Sheet from Korea*, therefore Commerce should similarly deny a CEP offset.[517]
- The cases SeAH cites to claim it is entitled to a CEP offset are all prior to 2018, before Commerce's requirement for quantitative analysis, and therefore are not relevant.[518]

SeAH's Rebuttal:[519]

- The DIPs argument is made at the expense of record evidence.[520]
- The cases that the DIPs cited involve very different factual situations than this case. In *Polyethylene Terephthalate Sheet from Korea*, Commerce determined the respondent reported "minor differences" in its selling functions performed in the home market and in the U.S. market. In *Seamless Carbon Alloy Steel Standard Line, and Pressure Pipe from Ukraine*, the respondent reported two sales channels for its home-market sales, but failed to separately report the selling functions and the levels at which it performed those functions for each home-market channel of distribution.[521]
- SeAH's case is different than the cases cited by the DIPs because SeAH provided the requested information using Commerce's selling function chart template and provided documentation supporting the differences in sales forecasting activity performed by

[512] *Id.* at 21-22 (citing *Polyethylene Terephthalate Sheet from Korea: Final Determination of Sales at Less Than Fair Value*, 85 FR 44276 (July 22, 2020) (*Polyethylene Terephthalate Sheet from Korea*).
[513] *Id.* at 22.
[514] *Id.* at 23.
[515] *Id.* at 24.
[516] *Id.* at 24-25 (citing *Polyethylene Terephthalate Sheet from Korea* IDM at Comment 4).
[517] *Id.* at 25.
[518] *Id.* at 24.
[519] *See* SeAH's Rebuttal Brief at 34-36.
[520] *Id.* at 34.
[521] *Id.* at 34-35.

SeAH on its U.S. sales to U.S. affiliate and on its third-country market sales during the period of review.[522]

- SeAH undertakes an extensive analysis in order to forecast third-country sales. By contrast, SeAH's forecast of U.S. market sales is based on information supplied by its U.S. affiliate.[523]
- The activities performed by SeAH in connection with its third-country market sales are greater in scope and intensity than the activities it performed in connection with U.S. sales of OCTG. Therefore, a level of trade adjustment is appropriate under the CEP offset provision of the statute.[524]

Commerce's Position: We continue to find that a CEP offset is warranted for SeAH for the final results. Section 773(a)(7)(B) of the Act requires an adjustment to NV in the form of a CEP offset if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability. Under 19 CFR 351.412(c)(2), Commerce's policy regarding differences in the LOTs is as follows:

> The Secretary will determine that sales are made at different levels of trade if they are made at a different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing.

In the *Preliminary Results*, we analyzed SeAH's third-country and U.S. selling functions. For SeAH's U.S. sales, we found that:

> With respect to the U.S. market, SeAH reported that it made sales through one channel of distribution, reflecting sales made from its Pohang plant in Korea to PPA, only.[525] In its selling- functions chart for U.S. sales, SeAH listed selling activities under two columns: (1) those performed for sales from SeAH to PPA, and (2) those performed by PPA on sales from inventory to the unaffiliated U.S. customer.[526]
>
> While SeAH's sales to the U.S. were made through SeAH's affiliated reseller, we find that SeAH's U.S. sales were made under two, rather than one, channels of distribution: SeAH sales to PPA (Channel 1) and PPA sales to the unaffiliated customer (Channel 2). SeAH reported the following selling activities performed through Channel 1: packing, inventory maintenance, order/input processing and freight and delivery services. SeAH reported the following selling activities under Channel 2: sales forecasting, strategic/economic planning, sales negotiation, invoicing, receipt of customer payment, personnel training/exchange,

[522] *Id.* at 35.
[523] *Id.*
[524] *Id.* at 35-36.
[525] *See* SeAH's Letter, "Oil Country Tubular Goods from the Republic of Korea – Response to Section A of the Department's January 8 Questionnaire," dated February 5, 2020 (SeAH's AQR), at 23.
[526] *Id.* at Exhibit Appendix A-5-A.

> sales promotion, inventory maintenance, warehouse operation, order input/processing, sales/marketing support, market research, warranty service, provide guarantees to customer, freight and delivery services.[527] We find that there exist significant differences in the level of selling activities between Channels 1 and 2, both with regard to the number of selling functions performed and in the level of intensity with respect to those selling functions between the two channels of distribution.
>
> However, in the case of CEP, we identify the level of trade based on the price after the deduction of expenses and profit under section 772(d) of the Tariff Act. Therefore, while SeAH reported significant differences between U.S. sales under Channel 1 and Channel 2, we determine there exists only one level of trade in the U.S. market (U.S. LOT), *i.e.*, sales from SeAH's Pohang plant in Korea to PPA in the United States (Channel 1).

In addition, with respect to the third-country, we preliminarily found that:

> In the third-country market, Kuwait, SeAH reported that it made sales through one channel of distribution (*i.e.*, direct sales of OCTG to an unaffiliated trading company that were shipped from SeAH's factory to Kuwait).[528] SeAH reported that it performed the following selling functions for sales to Kuwait: sales forecasting, strategic/economic planning, sales negotiation, invoicing, receipt of customer payment, personnel training/exchange; sales promotion, packing, inventory maintenance; order input/processing, direct sales personnel, sales/marketing support, market research, providing guarantees to customers, and freight and delivery arrangements.[529] Based on our analysis of the distribution channel for sales made by SeAH's Pohang plant to Kuwait and the overall selling activities associated with those sales, we find that the third-country channel constitutes on level of trade (TC LOT).

As we explained in the *Preliminary Results:*

> In comparing the U.S. LOT to the TC LOT, we find that there are significant differences between the selling activities associated with these two levels of trade. For instance, significant differences exist with respect to the sales-support category. In this category, SeAH performed selling functions such as sales forecasting, sales promotion, sales/marketing support, and sales negotiation for its TC LOT but, it did not perform any such selling activities in this category for its CEP LOT. Similarly, for the category of sales-related administrative activities, SeAH engaged in selling functions such as invoicing, receipt of customer payment, and direct sales personnel for the TC LOT; SeAH did not perform these activities in this category for the U.S. LOT. In comparing these two levels of trade, we find that SeAH performed only four selling functions for the U.S. LOT,

[527] *Id.*
[528] *See* SeAH's AQR at 21 and 24.
[529] *Id.* at Exhibit Appendix A-5-B.

> *i.e.*, packing, inventory maintenance, order/input processing, and providing freight and delivery services. This differs significantly from selling functions performed for the TC LOT in which SeAH reported performing 15 selling functions.[530] For the reasons listed above, we find that the U.S. LOT differs significantly from the TC LOT. Consequently, we could not match sales at the same level of trade in the third-country market nor could we determine a level-of-trade adjustment in the TC based on SeAH's sales to Kuwait, as SeAH could not directly trace those selling functions to specific sales activities in either market for the merchandise under review.[531] Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. Therefore, for these preliminary results of review, we have granted a CEP offset for comparison between the calculated NV and the CEP sales.

The DIPs disagree with the preliminary decision to grant SeAH a CEP offset. The DIPs argue that SeAH did not provide quantitative analysis to support its claimed level of intensity for its reported selling activities. The DIPs also argue that Commerce declined to grant a CEP offset for the respondent in *Polyethylene Terephthalate Sheet from Korea*, when it failed to provide quantitative analysis to support its claimed selling activity levels.

The facts in this case are differentiated from those in *Polyethylene Terephthalate Sheet from Korea*. In conducting an analysis as to whether a CEP offset is warranted, Commerce has a well-established practice to base its decisions on the facts of the specific case at issue.[532] In the investigation of *Polyethylene Terephthalate Sheet from Korea*, Commerce determined that the record did not contain evidence of the respondent performing substantially more selling functions in the home market than it does in support of its CEP sales.[533] In contrast, record evidence on this case shows that the U.S. LOT differs significantly from the comparison market LOT. In the U.S. market, SeAH only performed the selling activities of packing, inventory maintenance, order input/processing, and provide freight and delivery; whereas in the third-country market, SeAH performed those same selling functions and performed many selling functions that PPA was responsible for performing in the U.S. market (*e.g.*, sales forecasting, strategic/economic planning, sales negotiation, invoicing, receipt of customer payment, personnel training/exchange, sales promotion, sales/marketing support, market research, and provide guarantees to customer).[534] SeAH provided qualitative evidence in the form of

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[530] *Id.* at Appendix A-5-A and A-5-B.
[531] *See, e.g.*, SeAH's AQR at 22 and Appendixes A-5-A and A-5-B.
[532] *See Certain Hot-Rolled Steel Flat Products from Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 53419 (August 12, 2016) (HRS from Korea LTFV), and accompanying IDM at Comment 3 ("As an initial matter, POSCO's references to other cases in which {Commerce} granted it a CEP offset are inapposite. Given that each segment of an antidumping duty case contains its own independent record and constitutes a separate, distinct proceeding, this same principle is even more true when applied across entirely separate antidumping duty cases"); and *Stainless Steel Bar from India: Final Results of Administrative Review of the Antidumping Duty Order; 2017-2018*, 84 FR 56179 (October 21, 2019) (*SS Bar from India 17-18 AR*), and accompanying IDM at Comment 1 ("…we find that we must base our determination on the facts of the present case, not on prior proceedings; each segment of a proceeding has its own record and stands on its own.").
[533] *See Polyethylene Terephthalate Sheet from Korea: Final Determination of Sales at Less Than Fair Value*, 85 FR 44276 (July 22, 2020), accompanying IDM at Comment 4.
[534] *See* SeAH's Letter, "Response of SeAH Steel Corporation to the Department's May 1 Supplemental Questionnaire," dated May 29, 2020 (SeAH's SQR), at Appendix SA-2.

narratives, flow charts, and planning and forecast models.[535] SeAH also provided quantitative evidence through tying its reported activity levels to expenses in the U.S. and third-country sales databases.[536] For example, all the indirect selling expenses reported in the U.S. sales database were linked to selling activities performed by SeAH's U.S. affiliate PPA, while all the indirect selling expenses reported in the third-country sales database were linked to selling activities performed by SeAH.[537]

The respondent bears the burden of demonstrating its entitlement to a CEP offset,[538] and SeAH provided sufficient information on the record to support granting it a CEP offset. We analyzed SeAH's claim for a CEP offset in the preliminary stage of this review and requested additional information from SeAH to support its claim.[539] SeAH provided information both in responses to the initial questionnaire and to the supplemental questionnaire. We disagree with the DIPs that the information provided is insufficient to demonstrate SeAH's entitlement to a CEP offset during this review. The decision whether to grant a CEP offset encompasses a comprehensive review of the entirety of the record — no single aspect can either deny or allow a CEP offset on its own. We examine the extent of the selling activities performed and their significance to the company's selling operations. As no new evidence has been placed on the record since the *Preliminary Results*, we have no new information to consider in our analysis of SeAH's selling functions. Similarly, we disagree with the arguments presented by the DIPs regarding the information on the record. In this review, SeAH's description of its selling functions, channels of sale, customer base, affiliate information, and recorded costs in the U.S. and third-country databases, formed a cohesive picture of different levels of trade between the third-country and U.S. markets. As a result, we continue to find that both the qualitative and quantitative information on the record of this administrative review supports SeAH's CEP offset claim.

[535] *See* SeAH's AQR at 21-25 at Appendixes A-5-A, A-5-B, and A-6.
[536] *See* SeAH's SQR at Appendix SA-2.
[537] *Id.*
[538] *See Ad Hoc Shrimp Trade Action Comm. v. United States*, 616 F. Supp. 2d 1354, 1374 (CIT 2009) ("{I}t is the responsibility of the respondent requesting the CEP offset to procure and present the relevant evidence to Commerce."); *see also Corus Eng'g Steels, Ltd. v. United States*, 27 CIT 1286, 1290 (CIT August 27, 2003) ("Burden of proof is upon the claimant to prove entitlement {to a CEP offset}."); *Pakfood Pub. Co. v. United States*, 724 F. Supp. 2d 1327 (CIT 2010) ("to show entitlement to a CEP offset, "{a} respondent must first demonstrate that substantial differences in selling functions exits").
[539] *See* Commerce's Letter, "Oil Country Tubular Goods from the Republic of Korea: SeAH Steel Corporation Supplemental Section A-E Questionnaire," dated May 1, 2020.

VII. RECOMMENDATION

We recommend following the above methodology for these final results.

☒	☐
Agree	Disagree

7/23/2021

X _____

Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

Appendix

List of Companies Not Individually Examined

AJU Besteel Co., Ltd.
Blue Sea Precision Tube Co., Ltd.
Bo Myung Metal Co., Ltd.
BUMA CE Co., Ltd.
Busung Steel Co., Ltd.
Chang Won Bending Co., Ltd.
Daeho P&C Co., Ltd.
Daou Precision Ind. Co.
Dongyang Steel Pipe Co., Ltd.
Dongbu Incheon Steel Co., Ltd.
Dongkuk Steel Mill Co., Ltd.
EEW Korea Co., Ltd.
Global Solutions Co., Ltd.
Hansol Metal Co., Ltd.
HiSteel Co., Ltd.
HPP Co., Ltd.
Husteel Co., Ltd.
Hyundai Group
Hyundai Corporation
Hyundai HYSCO
Hyundai RB Co., Ltd.
ILJIN Steel Corporation
Keonwoo Metals Co., Ltd.
K Steel Corporation
KF UBIS Co., Ltd.
Korea Steel Co., Ltd.
Kukje Steel Co., Ltd.
KPF Co., Ltd.
Kumkang Kind Co., Ltd.
Kumsoo Connecting Co., Ltd.
Master Steel Corporation
MCK Co., Ltd.
MS Pipe Co., Ltd.
Msteel Co., Ltd.
Nexen Corporation
NEXTEEL Co., Ltd.
Pneumatic Plus Korea Co., Ltd.
POSCO International Corporation
PSG Co., Ltd.
Pusan Fitting Corporation
SeAH FS Co., Ltd.

Sejong Ind. Co., Ltd.
Seokyoung Steel & Technology Co., Ltd.
SIC Tube Co., Ltd.
ST Tubular Inc.
Sungkwang Bend Co., Ltd.
TGS Pipe Co., Ltd.
TJ Glovsteel Co., Ltd.
TSP Corporation
Union Pipe MFG Co., Ltd.
WSG Co., Ltd.