



A-580-809
Administrative Review
POR: 11/1/18-10/31/2019
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September 21, 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 Circular Welded Non-Alloy Steel Pipe from the Republic of
Korea

I. SUMMARY

The Department of Commerce (Commerce) analyzed the comments submitted by the interested parties in the administrative review of the antidumping duty (AD) order on circular welded non-alloy steel pipe (CWP) from the Republic of Korea (Korea) covering the period of review (POR), November 1, 2018, through October 31, 2019.

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

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

General Issues

Comment 1: Existence of Particular Market Situation (PMS)

¹ See *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018–2019*, 86 FR 15912 (March 25, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).



Hyundai Steel Issues

Comment 2: Hyundai Steel's R&D Expenses

Husteel Issues

Comment 3: Husteel's CEP Offset

II. BACKGROUND

On March 25, 2021, Commerce published the *Preliminary Results* of this administrative review.² This review covers 24 producers and exporters. We invited interested parties to comment on the *Preliminary Results*.³ On May 6, 2021, the following parties submitted case briefs: (1) Wheatland Tube and Nucor Tubular Products Inc. (collectively, the petitioners);⁴ (2) Husteel;⁵ and (3) Hyundai Steel;⁶ On May 21, 2021, the following parties submitted rebuttal briefs: (1) the petitioners;⁷ (2) Husteel;⁸ (3) Hyundai Steel;⁹ (4) NEXTEEL;¹⁰ and (5) SeAH Steel Corporation (SeAH).¹¹

On April 26, 2021, Hyundai Steel filed a request for a hearing.¹² On August 20, 2021, Hyundai Steel withdrew its hearing request,¹³ and, thus, no hearing was held.

On June 25, 2021, Commerce extended the deadline for issuing these final results of this administrative review until September 21, 2021.¹⁴ Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

² See *Preliminary Results*.

³ *Id.*

⁴ See Petitioners' Letter, "Circular Welded Pipe from Korea: Case Brief," dated May 6, 2021 (Petitioners' Case Brief).

⁵ See Husteel's Letter, "Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, Case No. A-580-809: Letter in Lieu of Case Brief," dated May 6, 2021 (Husteel's Case Brief).

⁶ See Hyundai Steel's Letter, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Case Brief," dated May 6, 2021.

⁷ See Petitioners' Letter, "Circular Welded Pipe from Korea – Rebuttal Brief," dated May 21, 2021 (Petitioners' Rebuttal Brief).

⁸ See Husteel's Letter, "Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea. Case No. A-580-809: Husteel Rebuttal Brief," dated May 21, 2021 (Husteel's Rebuttal Brief).

⁹ See Hyundai Steel's Letter, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Rebuttal Brief," dated May 21, 2021.

¹⁰ See NEXTEEL's Letter, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: NEXTEEL's Letter in Support of Respondents' Rebuttal Briefs," dated May 21, 2021.

¹¹ See SeAH's Letter, "Rebuttal Brief of SeAH Steel Corporation," dated May 21, 2021.

¹² See Hyundai Steel's Letter, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Request for Public Hearing," dated April 26, 2021.

¹³ See Hyundai Steel's Letter, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Withdrawal of Request for Public Hearing," dated August 20, 2021.

¹⁴ See Memorandum, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Extension of Deadline for Final Results of Antidumping Administrative Review; 2018-2019," dated June 25, 2021.

III. SCOPE OF THE ORDER

The merchandise subject to the order is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in the order.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of the order except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit.¹⁵

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

IV. CHANGES SINCE THE *PRELIMINARY RESULTS*

For the final results of review, Commerce based the margin calculations for each mandatory respondent on CEP, export price (EP), and constructed value (CV), where appropriate. We used the same methodology as stated in the *Preliminary Results*, with the exception of removing the R&D adjustment variable from Hyundai Steel's G&A expenses and granting Husteel's CEP offset request.

V. NO SHIPMENTS

In the *Preliminary Results*, Commerce determined that HiSteel had no shipments of subject merchandise during the POR.¹⁶ We received no comments from interested parties and have not received any information to contradict our preliminary finding. Therefore, we continue to find that HiSteel did not have any shipments of subject merchandise during the POR.

¹⁵ See *Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the Republic of Korea, Mexico, and Venezuela*, 61 FR 11608 (March 21, 1996). In accordance with this determination, pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A-53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines, is outside of the scope of the AD order.

¹⁶ See *Preliminary Results* PDM at 3-4.

VI. DISCUSSION OF THE ISSUES

General Issues

Comment 1: Existence of Particular Market Situation (PMS)

Petitioners' Comments:

- Congress expected Commerce to use the new flexibility provided in the cost-based PMS provisions to strengthen remedies against unfairly traded imports, citing imports of tubular products from Korea as a specific example.¹⁷
- Commerce's prior PMS determinations and the allegation in this review each provide a separate and sufficient basis to believe a PMS exists in this review.¹⁸
- Commerce failed to explain how the factors of subsidies, overcapacity-driven Chinese exports, strategic alliances, and government involvement in the electricity market changed so significantly from the prior review periods.¹⁹
- Commerce also failed to mention Wheatland's submitted regression model which demonstrated that global overcapacity depressed the average unit value (AUV) of hot-rolled coil (HRC) in Korea during the POR, despite having accepted similar analyses in prior reviews.²⁰
- Commerce focused on each PMS allegation individually rather than considering their collective impact on the market, and this methodology fails to recognize the intertwined nature of the factors and minimizes their cumulative distortions.²¹
- Wheatland's submitted econometric model quantifies and measures the cumulative effects of various factors that contribute to the overall PMS which shows why a cumulative analysis is appropriate.²²
- Commerce cited to the most recent, at the time, Korean HRC countervailing duty (CVD) rate, 0.51 percent, as its justification for a negative PMS determination, but Commerce used the same CVD rate in *Welded Line Pipe from Korea* to make an affirmative PMS determination.²³
- Commerce failed to address contemporaneous evidence, submitted by Wheatland, with respect to continued subsidization to Korean steel producers during the POR. This evidence supports a determination that subsidies to Korean HRC producers continue to contribute to the existence of PMS in Korea during the POR.²⁴

¹⁷ See Petitioners' Case Brief at 4.

¹⁸ *Id.* at 7.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 9.

²² *Id.* at 10.

²³ *Id.* at 11 (citing *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 76517 (November 30, 2020) (*Welded Line Pipe from Korea*) and accompanying Issues and Decision Memorandum (IDM) at Comment 2).

²⁴ *Id.* at 12-13.

- There is no evidence that China’s policies and the resulting global overcapacity crisis and negative impacts on markets such as Korea suddenly ended because the absolute level of Chinese exports to Korea declined or their AUVs rose from 2017-2018.²⁵
- The record shows that: (1) Chinese producers increased steel production and continued to dominate the global steel market during the POR; (2) Chinese steel overcapacity is a persistent distortionary problem for global steel markets; (3) the Chinese government further incentivized its producers to offload excess production on global export markets during the POR; (4) China raised alarms in the U.S. government, international organizations, and industry groups by continuing to drive a global excess capacity crisis in the steel market during the POR; (5) the Korean market was especially burdened by large volumes of Chinese imports during the POR; and (6) Korea has been particularly vulnerable to downward pressure from China’s steel exports because of the Korean government’s hesitancy to impose any trade measures on Chinese steel imports.²⁶
- Commerce must consider Wheatland’s regression analysis especially since Commerce accepted similar analyses in *CWP from India* and the *2017-2018 Final Results* of the prior review.²⁷
- Although affirmative findings for shipping and iron ore are not necessary to reach a PMS determination, Commerce must consider the contemporaneous evidence submitted in support of the electricity, shipping, and iron ore PMS allegations.²⁸

Hyundai Steel’s Rebuttal Comments:

- The petitioners failed to establish that the Korean marketplace was so distorted that steel input transactions were outside of the ordinary course of trade or that a PMS existed in Korea during the POR.²⁹
- Record evidence establishes that the Korean steel market generally functions just as the steel markets do in the rest of the world, and it has not been in a uniquely distressed situation in the years preceding the POR and during the POR.³⁰
- The CIT has repeatedly rejected Commerce’s PMS determinations in past Korean steel cases finding that: (1) Commerce’s PMS determination based on the cumulative effect of underlying allegations was unreasonable; (2) Commerce’s analysis and explanation of the five factors supporting a PMS in Korea are unsupported by substantial record evidence when viewing the factors both individually and collectively; (3) record evidence does not support a conclusion that the global glut of Chinese HRC imports caused price distortions specific to the Korean steel market; and (4) Commerce did not demonstrate how these

²⁵ *Id.* at 16.

²⁶ *Id.* at 16-20.

²⁷ *Id.* at 22-23 (citing *Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2715 (January 16, 2020) (*CWP from India*) and accompanying IDM at Comment 7 and *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 71055 (November 6, 2020) (*2017-2018 Final Results*), and accompanying IDM at Comment 1-C).

²⁸ *Id.* at 26-27.

²⁹ See Hyundai Steel’s Rebuttal Case Brief at 6.

³⁰ *Id.*

factors, even if supported, would prevent a proper comparison between U.S. price and normal value.³¹

- The CIT's rationale in past Korean steel cases applies to this review because the record does not establish that allegedly dumped Chinese steel imports and the subsidies provided to Korean steel producers were unique factors, nor does the record establish that any alleged resulting price distortion was a unique phenomenon to the Korean market.³²
- If Commerce reverses its PMS determination, it is concluding that a PMS has existed in Korea for, at minimum, 64 months which no longer represents a particular market situation and, instead, represents a normal commercial state of affairs in Korea.³³
- It is unreasonable to claim that temporal thresholds do not exist in the PMS context and that the conditions that give rise to PMS can effectively last forever.³⁴
- A significant portion of the information submitted by the petitioners is outside the POR and is not contemporaneous with the status of the Korean hot-rolled steel market and the market for other material inputs. Thus, it is irrelevant in finding a PMS in this review.³⁵
- Much of the contemporaneous evidence consists of news articles that are speculative in nature and fail to support Commerce's high threshold for finding a PMS.³⁶
- The courts have repeatedly overturned Commerce's decisions that conflate affirmative subsidy determinations at rates higher than the cited 0.51 percent with a PMS determination, and the petitioners failed to demonstrate that the Government of Korea (GOK)'s subsidization of HRC was such that Hyundai Steel's cost of production of subject merchandise was outside the ordinary course of trade.³⁷
- The petitioners cite to contemporaneous news articles about government programs that do not provide any proof that these programs: (1) took place and distributed funding during the POR; (2) were specific to the steel industry; (3) impact the costs of production of subject merchandise; and (4) benefitted Hyundai Steel.³⁸
- These documents show that even if the government funding had passed, it either was not applicable to Hyundai Steel or was non-specific to an industry.³⁹
- With regard to the petitioners' argument that global and Chinese steel overcapacity caused a PMS in Korea during the POR, Hyundai Steel states that: (1) global excess capacity decreased significantly over recent years; (2) Chinese overcapacity declined significantly during the POR, and domestic demand and consumption increased in tandem with declining steel exports; and (3) the Korean HRC market was not distorted and Chinese HRC imports have declined substantially to only comprise a minor portion of the Korean HRC market during the POR.⁴⁰
- The petitioners' regression analysis contain substantial flaws that render it unusable such as: (1) only using a subset of OECD countries without explanation; (2) using an arbitrary time period that excludes the POR and takes place during a recession; (3) using AUVs

³¹ *Id.* at 7-10.

³² *Id.* at 10.

³³ *Id.* at 11.

³⁴ *Id.* at 12.

³⁵ *Id.* at 12-13.

³⁶ *Id.* at 13.

³⁷ *Id.* at 15.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 17-24.

that include inputs not used to manufacture subject merchandise; (4) using a U.S. CPI deflator to remove inflation in the United States but not applying a matching global concept; and (5) using exchange rates that are incorrectly indexed to the year 2009 for the years 2016 through 2018.⁴¹

- For electricity, the petitioners ignore that KEPCO was profitable for the five years preceding the POR, the reason for their unprofitability during the POR was due to the rise in fuel prices and reduced residential rates rather than GOK intervention, and Commerce has repeatedly found in its CVD cases regarding Korean steel products that electricity in Korea is not provided for less than adequate remuneration.⁴²
- Commerce should maintain its reasoning in rejecting the global bulk shipping and iron ore allegations especially when the petitioners have not provided proof that either of these allegations distort Hyundai Steel's shipping or input costs.⁴³
- The event that the petitioners cite to as their reason for a strategic alliance between Korean pipe producers and their input suppliers preceded the POR by nearly five years, and there is no other record evidence that shows any strategic alliances that directly influence or distort the Korean HRC market.⁴⁴
- The Trade Preferences Extension Act of 2015 (TPEA) amendment to the statutory CV provisions is not applicable because Hyundai Steel has a viable home market, and the petitioners did not file a timely allegation that Hyundai Steel's home market sales should not be used.⁴⁵
- Congress indicated that it did not intend for Commerce to modify its sales-below-cost analysis or cost of production approach based on any PMS finding, and therefore, any reliance on a PMS finding to adjust Hyundai Steel's cost of production would be contrary to the statute.⁴⁶
- The CIT has repeatedly concluded that Commerce is statutorily permitted to modify a respondent's reported costs because of PMS only when calculating normal value using CV and not when normal value is calculated using selling prices or for purposes of the cost test.⁴⁷
- If Commerce was to reverse its PMS determination, Commerce must limit such adjustment to the costs of Hyundai Steel's purchased HRC and exclude the costs of Hyundai Steel's self-produced HRC.⁴⁸

Husteel's Rebuttal Comments:

- Although Commerce may rely on the cumulative effect of multiple distortions to arrive at a PMS determination, it cannot use that phrase to circumvent a meaningful review of the sufficiency of the record.⁴⁹

⁴¹ *Id.* at 25.

⁴² *Id.* at 26-28.

⁴³ *Id.* at 28-30.

⁴⁴ *Id.* at 31.

⁴⁵ *Id.* at 34 (citing Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA)).

⁴⁶ *Id.* at 34.

⁴⁷ *Id.* at 36.

⁴⁸ *Id.* at 40.

⁴⁹ See Husteel's Rebuttal Brief at 2.

- Wheatland’s reliance on its regression analysis as evidence of a PMS is misplaced because Commerce will use the regression analysis to quantify impact once it determines that the record evidence supports a PMS adjustment but will not find the regression analysis as evidence of a PMS.⁵⁰
- The petitioners concede that their overcapacity allegation is a global problem which cannot be particular to any one market such that it would warrant an adjustment to the CV for a certain product.⁵¹
- The petitioners’ regression analysis has substantial flaws: (1) the model includes the year 2009 which was a year of financial turmoil that skews the data; (2) the analysis examines a broad range of irrelevant hot-rolled steel products that are not specific to CWP production; (3) relevant variables like those related to energy prices are omitted; and (4) capacity utilization is overstated at 85 percent when Commerce has confirmed in multiple cases that an 80 percent threshold is more appropriate.⁵²
- The petitioners appear to reference programs in their allegations that Commerce explicitly found to be not utilized by Korean steel producers.⁵³
- Commerce has consistently determined that generalized allegations regarding steel overcapacity and Chinese exports are not sufficient to support a PMS determination without evidence of the distortion to the price of the input at issue, and the petitioners’ allegations do not provide such evidence.⁵⁴
- Even if evidence of distortions in the electricity market was supported, the petitioners do not demonstrate how these distortions would prevent a proper comparison of normal value with EP or CEP.⁵⁵
- Commerce should continue to find that strategic alliances do not provide a basis for finding a PMS in this review.⁵⁶

Nexteel’s Rebuttal Comments:

- Nexteel disagrees with the petitioners’ comments arguing against Commerce’s negative PMS determination, and Commerce should not modify its analysis.⁵⁷
- Nexteel supports and incorporates by reference the arguments presented by the mandatory respondents’ rebuttal briefs.⁵⁸

SeAH’s Rebuttal Comments:

- The petitioners failed to demonstrate the specific impact of each of the alleged factors that purportedly creates a PMS.⁵⁹

⁵⁰ *Id.* at 3.

⁵¹ *Id.* at 4-5.

⁵² *Id.* at 5-7.

⁵³ *Id.* at 8.

⁵⁴ *Id.* at 10-11.

⁵⁵ *Id.* at 12.

⁵⁶ *Id.*

⁵⁷ *See* Nexteel’s Rebuttal Brief at 3.

⁵⁸ *Id.*

⁵⁹ *See* SeAH’s Rebuttal Brief at 2.

- Commerce should continue to find that: (1) the evidence does not support a PMS finding in Korea; (2) adjustments to respondents' costs for a PMS are not warranted; and (3) *de minimis* dumping margins for mandatory and non-examined respondents are appropriate.⁶⁰
- SeAH agrees with the mandatory respondents that Commerce should correct its margin calculation to reflect the changes identified in the briefs, and, if these changes to the margin calculation reduce the mandatory respondents' assigned rates, Commerce should also reduce the rate assigned to the non-examined respondents.⁶¹

Commerce Position: Section 504 of the TPEA⁶² added the concept of a “particular market situation” in the definition of the term “ordinary course of trade” for purposes of CV under section 773(e) of the Act, and through these provisions for purposes of the COP under section 773(b)(3) of the Act, added the concept of the term “particular market situation” to the definition of “ordinary course of trade,” under 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 ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.” Thus, we find together, section 504 of the TPEA and section 773(e) of the Act provide Commerce with the means to determine whether a PMS exists during the POR and allow 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.⁶³

In the instant review, the petitioners alleged that a PMS existed in Korea during the POR which distorted the COP for CWP based on the following six factors: (1) subsidization of Korean HRC producers (HRC is a major input into the production of CWP); (2) distortive pricing of unfairly traded Chinese HRC; (3) strategic alliances between Korean HRC suppliers and CWP producers; (4) distortive government control in the Korean electricity market; (5) distortive shipping rates for inbound iron ore and coal; and (6) distortive costs of iron ore used to produce Korean HRC.⁶⁴ Section 504 of the TPEA does not specify whether to consider these factors individually or based on a totality of the circumstances, although it is Commerce's practice to consider all alleged factors collectively in its PMS analysis. In the *Preliminary Results*, we found that a PMS did not exist in Korea during the POR based on the cumulative effect of these six factors. After considering the parties' comments and reexamining the information on the record, we continue to find that the petitioners have not supported their claims that these six factors have distorted prices in the Korean steel market such that a PMS exists with respect to the COP of CWP in Korea during the POR.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015).

⁶³ See section 773(e) of the Act.

⁶⁴ See Wheatland's Letter, “Circular Welded Pipe from the Republic of Korea: Particular Market Situation Allegation and Supporting Factual Information – Qualitative Submission,” dated July 23, 2020 (PMS Allegation).

Subsidization of Korean HRC Producers

In their comments, the petitioners ask Commerce to justify how it could use the 0.51 percent CVD rate calculated in the most recent final (at the time) for Korean HRC producers as evidence for an affirmative PMS determination of CWP from Korea in the prior administrative review and as evidence for a negative PMS determination of CWP from Korea in this review.⁶⁵ The petitioners then highlight contemporaneous pieces of evidence on the record that they argue shows that the Korean government provided subsidies during the POR to the Korean steel industry and intervened on behalf of Hyundai Steel to prevent it from incurring costly environmental penalties.⁶⁶

In both the *2017-2018 Final Results* and the *Preliminary Results* of this administrative review, we acknowledged that there is subsidization of HRC in Korea.⁶⁷ However, it is our practice to consider the totality of the circumstances, and we find that the low level of subsidization combined with the contemporaneous evidence on the record is not sufficient to support the existence of a PMS during the POR. Out of all the cited contemporaneous evidence, only one press release specifically mentions the GOK's planned subsidies to the steel industry while the rest mention general plans to assist export and R&D industries.⁶⁸ The petitioners did not provide evidence that these subsidies have gone into effect. Additionally, the petitioners claim that the GOK intervened on behalf of Hyundai Steel to spare them from environmental violations,⁶⁹ but the GOK only delayed the penalties pending a report from a panel consisting of government, steel, and environmental representatives that will assess the types of pollutants released and consider an alternative penalty depending on the panel's findings.⁷⁰ In total, we do not find this evidence sufficient to justify the existence of a PMS in Korea during the POR.

Distortive Pricing of Unfairly Traded Chinese HRC

The petitioners further argue that the record contains substantial evidence that Chinese excess steel overcapacity and Chinese HRC imports have contributed to the PMS in Korea by driving down Korean prices for HRC.⁷¹ Additionally, the petitioners claim that Commerce used declining import volumes and rising import AUVs to justify a negative PMS determination in the *Preliminary Results* of this review, but in the prior administrative review, stated that declining import volumes and rising import AUVs were not sufficient evidence to determine that the Korean steel market was no longer distorted.⁷²

⁶⁵ *Id.* at 11.

⁶⁶ *Id.* at 12-13.

⁶⁷ See *2017-2018 Final Results*, and accompanying IDM at Comment 1-B; see also *Preliminary Results* PDM at 13.

⁶⁸ See PMS Allegation at Exhibit 34 at Sub-Exhibits 123-129.

⁶⁹ The expense would have been \$630 million in environmental costs. If they hadn't paid those costs, or the government hadn't intervened, the blast furnace would have been shut down at least temporarily. The panel was created in June 2019 with an expected report coming out 2-3 months after its formation; however, the petitioners did not submit the report's findings.

⁷⁰ See PMS Allegation at Exhibit 34 at Sub-Exhibits 332 and 333.

⁷¹ See Petitioners' Case Brief at 16.

⁷² *Id.* at 14.

While Commerce acknowledges that Chinese steel overcapacity is still a concern for the global steel market, there is little information presented to demonstrate that the oversupply of low-priced Chinese products is particular to Korea or that it causes price distortions specific to the Korean steel market. While we acknowledge our reasoning in the previous administrative review that declining import volumes and rising import AUVs of Chinese HRC was not sufficient evidence to determine that the Korean steel market was no longer distorted, we again emphasize that our PMS determination is based on the cumulative consideration of the factors, and we find that, in this review, the import and price trends of Chinese HRC coupled with the lack of contemporaneous data showing how overcapacity in China is distorting prices in Korea, do not provide strong evidence supporting an affirmative PMS determination. The data presented by the petitioners do not provide sufficient support for the overall premise of the petitioners' overcapacity argument.

The petitioners utilize data over inconsistent time frames to demonstrate overcapacity. In some instances, they relied on data covering a five-year time period, while in other instances, they relied on data covering seven- or ten-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 questionable results. To ensure a logical argument based on consistent data within the same time period, we reevaluated the data submitted by the petitioners, generally using a period of five years that covers this POR and the four years prior to the POR.

The contemporaneous data that the petitioners cite to in their comments do not substantiate the assertion that imports of Chinese HRC in Korea have depressed the Korean prices of HRC during the POR. As we stated in *Wind Towers from Korea*,⁷³ “while economic indicators of an increasing global capacity crisis may have leveled off in the period prior to the POI, this does not demonstrate that the effects of two decades of price suppression have been ameliorated.” However, the petitioners provided insufficient evidence to demonstrate that prices for HRC in Korea have been negatively impacted during this POR. Regarding the quantity of Chinese HRC in the Korean market, the evidence provided by the petitioners shows an overall decline of Korean imports of HRC from China and Chinese exports of HRC to Korea during the POR.⁷⁴ In particular, the record data indicate that the volume of HRC imports from China into Korea was trending downward by about 64 percent from 2015 to 2018, with only a slight increase from 2018 to 2019 that is still far below the volume of imports in 2017, the year prior to start of the POR.⁷⁵ Regarding pricing, both Korean import data and Chinese export data show that, from 2015 to 2018, the AUVs of Korean imports of Chinese HRC generally increased by about 55 percent, albeit with a slight drop from 2018 to 2019 where the import AUV in 2019 was approximately equivalent to the import AUV in 2017.⁷⁶ Finally, in their comments, the petitioners make the argument that AUVs for Chinese HRC exports to Korea were well below

⁷³ See *Utility Scale Wind Towers from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances*, 85 FR 8560 (February 14, 2020), and accompanying PDM at 15, unchanged in *Utility Scale Wind Towers from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 85 FR 40243 (July 6, 2020) (*Wind Towers from Korea*).

⁷⁴ See PMS Allegation at Exhibit 56 Sub-Exhibits 147-151.

⁷⁵ *Id.*

⁷⁶ *Id.*

the AUVs of Chinese HRC exports to other top destinations.⁷⁷ Upon examination, the referenced exhibit shows that despite being below the mean and median AUV prices for all destinations in 2018 and 2019, the AUV of Chinese HRC exports to Korea was within one standard deviation from the mean and median AUVs in 2018 and 2019.⁷⁸ Thus, based on these analyses, the 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 of downward pressure Korean HRC prices from Chinese HRC imports over time, which is consistent with other pieces of record evidence.⁷⁹

The petitioners attempt to demonstrate that imports from China, 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.⁸⁰ As part of their overcapacity argument, the petitioners attempt to demonstrate HRC penetration in the Korean market, *i.e.*, HRC imports as a percentage of Korean domestic net HRC production.⁸¹ Our examination of these data reveals otherwise. Using the data that the petitioners cited to in their comments, we examined the data covering the time period 2014 through 2018 because the data do not include information for 2019.⁸² We observed that the data demonstrate a drop of approximately 51 percent in the rate of Chinese imports into Korea during the relevant period.⁸³ According to the petitioners' table, Chinese HRC imports as a percentage of Korean HRC net production showed a significant decline of nearly 54 percent, from 29.50 percent in 2014 to 13.65 percent in 2018.⁸⁴ Our examination of these data controverts the petitioners' argument of a steady deluge of excess Chinese steel supply targeting Korea during the POR.

With respect to the issue of whether a PMS exists, we believe that it is useful to look at import penetration. 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 HRC as a percentage of Korean apparent consumption⁸⁵ of HRC). In fact, the petitioners' table which was used to show Chinese imports of HRC as a percentage of Korean net HRC production contains the components necessary to conduct this analysis. An examination of Chinese imports of HRC as a percentage of Korean apparent consumption of HRC shows that from 2014 to 2018, the percentage of apparent consumption has steadily decreased from about 20 percent in 2014 to about 10 percent in 2018.⁸⁶ We find that 10 percent import penetration at the start of the POR is not persuasive in determining that Chinese steel overcapacity alone specifically distorts prices in the Korean steel market.

⁷⁷ See Petitioners' Case Brief at 19.

⁷⁸ See PMS Allegation at Exhibit 56 Sub-Exhibit 153.

⁷⁹ *Id.* at Exhibit 5; see also Husteel's Letter, "Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, Case No. A580-809: Particular Market Situation Allegation Rebuttal Comments," dated September 17, 2020 at 14-21 and Exhibits 2 and 6A.

⁸⁰ See Petitioners' Case Brief at 20.

⁸¹ See PMS Allegation at Exhibit 37 Sub-Exhibit 1.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Apparent consumption is equal to domestic production plus imports minus exports.

⁸⁶ See PMS Allegation at Exhibit 37 Sub-Exhibit 1.

Strategic Alliances

With regard to strategic alliances between Korean HRC suppliers and CWP producers, as we stated in the *Preliminary Results*, we recognize that alliances between suppliers and producers that predate the POR can be relevant to our PMS analysis because such previous alliances could create distortions in the market that continue through the POR.⁸⁷ However, this factor was analyzed under the totality of the circumstances and, because of the lack of more contemporaneous evidence in support of all the factors generally, we do not find this factor presented strong evidence that would warrant a PMS determination during the POR.

Government Control of Korean Electricity Market

The petitioners allege that their contemporaneous evidence regarding the Korean electricity market demonstrates that the GOK intervened in the Korean electricity market and that KEPCO, the largest Korean electricity provider, suffered huge losses during the POR.⁸⁸ We agree that Commerce may find a PMS to exist where there is government control over prices to such an extent that home market prices cannot be considered to be competitively set.⁸⁹ Commerce previously found that electricity in Korea functions as a tool of the government's industrial policy,⁹⁰ and we acknowledge that KEPCO is a government-controlled entity.⁹¹ While the record indicates that KEPCO had an operating loss in 2019, the petitioners failed to provide any evidence of how those losses affected electricity rates during the POR.⁹² Additionally, there is no evidence of direct subsidization of the mandatory respondents or subsidization of the steel industry related to CWP which would result in finding electricity a contributing factor of an alleged PMS within Korea. Thus, while we have included KEPCO's involvement in the electricity sector as one factor among others that created a PMS in prior reviews, the petitioners have not supported their claim that KEPCO's involvement distorted electricity prices such that the government's involvement created a PMS with respect to the COP of CWP during this POR.

Distortive Shipping Rates and Distortive Costs of Iron Ore

The petitioners assert that although these additional elements are not necessary for Commerce to reach an affirmative PMS determination, there is sufficient contemporaneous evidence regarding distortive shipping rates and costs of iron ore to support these allegations.⁹³ With regard to shipping rates, the petitioners argue that subsidization of the Korean shipbuilding industry, particularly the largest Korean shipping company, Hyundai Merchant Marine (HMM), during the POR along with global bulk shipping overcapacity, distorted the cost of shipping rates for the Korean steel industry.⁹⁴ We find that the evidence does not demonstrate that global bulk shipping overcapacity distorted the costs of shipping rates for the Korean steel industry during

⁸⁷ See *Preliminary Results* PDM at 14.

⁸⁸ See Petitioners' Case Brief at 26.

⁸⁹ See H.R. Doc. 103-316, vol 1 (1994) at 822.

⁹⁰ See *2017-2018 Final Results* and accompanying IDM at Comment 1-B.

⁹¹ See *Large Diameter Welded Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 84 FR 6374 (February 27, 2019) (*LDWP from Korea*), and accompanying IDM at Comment 1.

⁹² See PMS Allegation at Exhibit 48 Sub-Exhibits 9-12.

⁹³ See Petitioners' Case Brief at 27.

⁹⁴ See PMS Allegation at 37.

the POR. The contemporaneous evidence to which the petitioners cite in their comments barely mentions the existence of global bulk shipping overcapacity and does not at all address how these alleged distortions specifically affected the Korean steel market. Additionally, the remaining contemporaneous evidence does not support the allegation that the mandatory respondents or the HRC producers widely 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 CWP inputs. Accordingly, for these final results, we continue to find that the petitioners did not provide 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.

With regard to the cost of iron ore, the petitioners argue that a large majority of iron ore used in Korean steel production is imported from Australia and that Australian subsidization of its iron ore industry leads to cost distortions in the Korean iron ore market.⁹⁵ While the petitioners have provided evidence of subsidization of the Australian iron ore industry, we continue to find that the evidence does not demonstrate how the subsidization allegedly distorts the cost of HRC used to produce CWP. Absent an investigation of whether HRC is being subsidized in Australia, or elsewhere for that matter, we cannot apply a subsidy rate or make an adjustment for subsidization for an input used in the production of CWP in this case. Accordingly, we do not consider the subsidization of that input among the contributing factors for determining the existence of a PMS within Korea. Additionally, much of the petitioners' evidence 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 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.

Regression Analysis

The petitioners argue that Commerce's finding of a lack of connection between uneconomic excess steel capacity and distortions in HRC prices specific to the Korean market overlooks the regression analysis, and the petitioners point to the regression analysis to confirm and quantify the particular way global price distortions spill over into national markets. However, Commerce's practice is first to determine whether a PMS exists before looking to a regression analysis to quantify the impact of the distortion on costs.⁹⁶ We must first evaluate the qualitative analysis, which grounds the model in reality by providing a reasonable rationale for the relationships between the variables introduced into the regression model. Once such a foundation is established, the regression model is used to determine a PMS adjustment based on the statistical significance of the considered variables.

⁹⁵ *Id.* at 40.

⁹⁶ See, e.g., *Common Alloy Aluminum Sheet from the Sultanate of Oman: Final Affirmative Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances*, 86 FR 13328 (March 8, 2021), and accompanying IDM at Comment 1.

We disagree that the regression analysis submitted by the petitioners “demonstrated” the relationship between global excess steel capacity and prices for HRC. As stated above, our practice is first to determine whether a PMS exists. Therefore, it is imperative that Commerce establish the presence of market distortions outside of the normal course of business, as required by the statute, based on an empirical, qualitative analysis. Only then would we seek to quantify these established and distortions using a quantitative regression analysis. The petitioners mention *CWP from India* and the previous administrative review as evidence that we have used the regression analysis as a basis to find PMS, but this is a misinterpretation.⁹⁷ In the aforementioned cases, we made our PMS determination based on the qualitative evidence before using the regression analysis to quantify the impact of uneconomic capacity. However, as the preceding sections elaborate, the petitioners failed to demonstrate that the cumulative effect of the six PMS allegations contribute to price distortions specific to the Korean market such that a PMS exists, and therefore, we do not need to address the validity of the quantitative analysis.

Hyundai Steel Issues

Comment 2: Hyundai Steel’s R&D Expenses

Hyundai Steel’s Comments:

- Commerce increased Hyundai Steel’s reported per-unit G&A expenses by an amount for general R&D expenses. This methodology was in error because Hyundai Steel already increased its G&A expense ratio, and the corresponding per-unit G&A cost reported in the cost data, to reflect the R&D adjustment.⁹⁸
- Hyundai Steel increased the numerator of the G&A expense ratio to include the R&D cost transferred from COM, thus ensuring that the reported per-unit G&A expenses already included the general R&D expenses.⁹⁹
- The purpose of reporting the RDADJ variable was to show the amount of the per-unit expenses that Hyundai Steel already deducted from the fixed overhead variable (FOH) before recalculating the total cost of manufacturing (TOTCOM) exclusive of the general R&D expenses.¹⁰⁰
- Commerce double-counted the R&D expenses in the G&A ratio by adding the RDADJ variable to the per-unit G&A expenses that already included R&D expenses and therefore should revise the SAS programming language to: $GNACOP = GNA$.¹⁰¹

⁹⁷ See Petitioners’ Case Brief at 23.

⁹⁸ See Hyundai Steel Case Brief at 2.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 2-3.

¹⁰¹ *Id.* at 3.

Petitioners' Rebuttal Comments:

- An examination of Hyundai Steel's Exhibit SD-2 (revised D-10-C) which forms the basis of RDADJ and Hyundai Steel's Exhibit SD-1-1 which shows R&D cost transferred from COM display negligible double-counting.¹⁰²
- Commerce can recalculate GNA by removing part 6 (cell H27) of the GNA calculation in Hyundai Steel's Exhibit SD-1-1 and retain its formula: $GNACOP = GNA + RDADJ$.¹⁰³

Commerce Position: We agree with Hyundai Steel and are removing this variable from the programming in these final results. Commerce erred when it added the R&D adjustment variable to Hyundai Steel's G&A expenses because the GNA variable already included the R&D adjustment, which Hyundai Steel substantiated on the record in Exhibit SD-1.¹⁰⁴

Husteel Issues

Comment 3: Husteel's CEP Offset

Husteel's Comments:

- Commerce's denial of Husteel's CEP offset is contrary to the statute and inconsistent with precedent, therefore, Commerce should grant Husteel a CEP offset in the final results.¹⁰⁵
- Husteel did not claim that it is entitled to a CEP offset because it had CEP sales, but rather, it claimed that it is entitled to the CEP offset based on its reporting of the different levels of intensity in the selling activities related to normal value sales versus the selling activities related to CEP sales.¹⁰⁶
- Commerce did not express any concerns regarding the accuracy of Husteel's selling functions table and attendant support and did not follow up when it deemed the evidence to be insufficient.¹⁰⁷
- Commerce did not notify Husteel that the evidence for the CEP offset was deficient, and it broke the precedent of granting this offset in previous reviews with virtually the same evidence.¹⁰⁸

Petitioners' Rebuttal Comments:

- Husteel's selling function activity chart does not attempt to quantify selling functions and their impact on price or to even provide a "level of intensity" of the selling function.¹⁰⁹

¹⁰² See Petitioners' Rebuttal Case Brief at 3-4.

¹⁰³ *Id.* at 4.

¹⁰⁴ See Hyundai Steel's Letter, "Circular Welded Non-Alloy Steel pipe from the Republic of Korea – Supplemental Section D Questionnaire Response," dated March 8, 2021 at Exhibit SD-1.

¹⁰⁵ See Husteel's Case Brief at 2.

¹⁰⁶ *Id.* at 3.

¹⁰⁷ *Id.* at 4.

¹⁰⁸ *Id.*

¹⁰⁹ See Petitioners' Rebuttal Brief at 2.

- Commerce requested a quantitative analysis showing how the expense assigned to the POR sales made at different levels of trade impact price and Husteel essentially stated that it could not provide a quantitative analysis.¹¹⁰
- Commerce may change its practices, if it is reasonable and consistent with the agency's statutory mandate, and Commerce has provided reason for its practice change.¹¹¹
- Commerce accepting Husteel's 2016-2017 selling functions activity chart does not mean Commerce must accept the same chart in this review, and Husteel's chart does not contain quantitative information to support giving Husteel a CEP offset, therefore, Commerce should not grant Husteel a CEP offset in the final results of this review.¹¹²

Commerce Position: We agree with Husteel and are granting a CEP offset in these final results. Husteel has not provided a robust quantitative analysis of the differences in levels of intensity for its selling functions in its chart. However, Commerce never informed Husteel that it wished for more information in this regard. Accordingly, Husteel did not have an opportunity, pursuant to section 782 of the Act, to remedy its deficiency by providing additional information in a supplemental questionnaire. For this reason, we have accepted Husteel's information as sufficient for purposes of this segment of the proceeding and are granting the CEP offset to Husteel for this review. However, we are taking advantage of this opportunity to inform Husteel that in future administrative reviews a more detailed and robust quantitative analysis of its selling functions will be required for us to consider a CEP offset.

VII. RECOMMENDATION

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



Agree

Disagree

9/21/2021

X

Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

¹¹⁰ *Id.*

¹¹¹ *Id.* at 3.

¹¹² *Id.*