

**Final Results of Redetermination Pursuant to Court Remand  
Circular Welded Non-Alloy Steel Pipe from the Republic of Korea  
*Hyundai Steel Company v. United States*,  
Consolidated Court No. 18-00154, Slip Op. 19-148 (CIT November 25, 2019)**

**A. Summary**

The Department of Commerce (Commerce) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (the Court) in *Hyundai Steel Company v. United States*, Court No. 18-00154, Slip Op. 19-148 (CIT November 25, 2019) (*Remand Order*). These final results of redetermination concern *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 27541 (June 13, 2018), and accompanying Issues and Decision Memorandum (*Final Results*).

In the *Remand Order*, the Court remanded two issues to Commerce: (1) particular market situation (PMS), finding that Commerce's determination of the existence of a PMS in the *Final Results* is unsupported by substantial evidence and remanded the issue to Commerce for further proceedings;<sup>1</sup> and (2) assessment rates, finding that Commerce's departure from its normal practice of calculating importer-specific assessment rates with respect to Hyundai Steel Company (Hyundai Steel) was unsupported by substantial evidence and remanded the issue to

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<sup>1</sup> See *Remand Order*, at 13.

Commerce for further proceedings.<sup>2</sup> In these final results of redetermination, we provide further analysis in response to the Court’s *Remand Order*, as directed.

## **B. Background**

### *1. Particular Market Situation*

During the antidumping duty administrative review, Commerce received an allegation from Wheatland Tube (Wheatland) that a PMS existed in the Republic of Korea (Korea).<sup>3</sup> In the *Final Results*, after considering the arguments and comments submitted by interested parties on this issue, Commerce found that record evidence supported a finding that a PMS existed in Korea which distorted the costs of production of circular welded non-alloy steel pipe (CWP) due to the totality of circumstances.<sup>4</sup> Commerce’s finding of the existence of a PMS was based on the evidence on the record of this administrative review and also found that the circumstances present in the Korean market during the previous period of review (POR) “remained largely unchanged from those which led to the finding of a PMS in Korea in *OCTG from Korea POR I*.”<sup>5</sup> Therefore, Commerce continued to find in the *Final Results* that the “collective impact of Korean {hot-rolled coil (HRC)} subsidies, Korean imports of HRC from China, strategic alliances, and government involvement in the Korean electricity market, a PMS exists in Korea which distorts the cost of production for CWP.”<sup>6</sup> Commerce further stated that “record evidence shows subsidization of HRC producers by the Korean government, as well as purchases of HRC by the mandatory respondents from Korean HRC producers, which received such subsidies.”<sup>7</sup>

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<sup>2</sup> *Id.* at 15-16.

<sup>3</sup> See Wheatland’s Letter, “Certain Circular Welded Non-Alloy Steel Pipe from Korea: Allegation of a Particular Market Situation,” dated October 16, 2017 (Wheatland’s PMS Allegation).

<sup>4</sup> See *Final Results*, Issues and Decision Memorandum (IDM) at Comment 1.

<sup>5</sup> *Id.* (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014–2015*, 82 FR 18105 and accompanying IDM (*OCTG from Korea POR I*)).

<sup>6</sup> *Id.*, IDM at Comment 1.

<sup>7</sup> *Id.*

With respect to *OCTG from Korea POR I*, the Court held that Commerce’s PMS approach “was reasonable in theory,” but that “Commerce failed, however, to substantiate its finding of one particular market situation with evidence on the record.”<sup>8</sup> In the instant review, Commerce applied the same approach of considering the totality of circumstances, which the Court endorsed in *OCTG from Korea POR I*. The Court concluded, however, that because Commerce stated that the facts in the instant review are largely identical to the facts in *OCTG from Korea POR I*, and the Court did not affirm Commerce’s determination in *OCTG from Korea POR I* based on substantial evidence, Commerce’s determination that a PMS existed in this administrative review was also unsupported by record evidence and remanded the issue for further proceedings.<sup>9</sup> Even though Wheatland argued that the record of this review contained 17 additional documents, the Court stated that, despite the more expansive record, Commerce relied upon virtually the same record evidence that was present in *OCTG from Korea POR I* in making its PMS determination in the instant review.<sup>10</sup> Therefore, the Court did not analyze these new documents in its opinion any further, concluded that Commerce’s determination that a PMS existed was unsupported by record evidence, and remanded the issue for further proceedings.<sup>11</sup>

## 2. Calculation of Assessment Rates for Hyundai Steel

The Court also remanded for clarification or reconsideration Commerce’s calculation of a single assessment rate rather than importer-specific assessment rates for Hyundai Steel.<sup>12</sup> In the *Final Results*, citing past practice,<sup>13</sup> Commerce calculated a single assessment rate for Hyundai

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<sup>8</sup> See *Nesteel Co. v. United States*, Consol. Court No. 17-00091, Slip. Op. 19-01 (January 2, 2019) at 15.

<sup>9</sup> See *Remand Order*, at 10-13.

<sup>10</sup> *Id.* at 11-13.

<sup>11</sup> *Id.* at 13.

<sup>12</sup> *Id.* at 16.

<sup>13</sup> See, e.g., *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661 (September 1, 2010) and accompanying IDM at Comment 7.

Steel's affiliated importers.<sup>14</sup> The Court found that Commerce did not cite to a single instance in which Commerce has calculated a combined assessment rate for affiliated importers despite an absence of actual manipulation evidence and did not explain why such a practice would be reasonable in light of 19 CFR 351.212(b)(1).<sup>15</sup> The Court remanded the issue for clarification or reconsideration.<sup>16</sup>

On January 16, 2020, Commerce released its draft results of redetermination to interested parties for comment.<sup>17</sup> On January 30, 2020, Commerce received comments from Wheatland,<sup>18</sup> Hyundai Steel,<sup>19</sup> and SeAH Steel Corporation (SeAH Steel).<sup>20</sup>

## C. Analysis

### 1. Particular Market Situation

In the *Remand Order*, the Court remanded Commerce's application of a PMS adjustment to the mandatory respondents' reported costs of production for Korean CWP.<sup>21</sup> After reconsideration of all the record evidence regarding PMS, we continue to find that a PMS exists in Korea that distorts the cost of production (COP) of CWP and, thus, we have also continued to make an adjustment for the PMS based on the countervailing duty (CVD) rate found in *Hot-Rolled Steel Flat Products from Korea*.<sup>22</sup>

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<sup>14</sup> See *Final Results*, IDM at Comment 9.

<sup>15</sup> See *Remand Order*, at 15-16.

<sup>16</sup> *Id.*, at 16.

<sup>17</sup> See *Draft Results of Redetermination Pursuant to Court Remand*, Consolidated Court No. 18-00154, Slip Op. 19-148, dated January 16, 2020 (*Draft Results of Redetermination*).

<sup>18</sup> See Wheatland's Letter, "Certain Circular Welded Non-Alloy Steel Pipe from Korea: Comments on Draft Results of Remand Redetermination," dated January 30, 2020 (Wheatland's Comments).

<sup>19</sup> See Hyundai Steel's Letter, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Comments on Draft Remand Redetermination," dated January 30, 2020 (Hyundai Steel's Comments).

<sup>20</sup> See SeAH Steel's Letter, "Comments of SeAH Steel Corporation on Draft Redetermination on Remand in Consolidated Court No. 18-00154," dated January 30, 2020 (SeAH Steel's Comments).

<sup>21</sup> See *Remand Order*, at 10-13.

<sup>22</sup> See *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016), as amended in *Certain Hot-Rolled Steel Flat Products from Brazil and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determinations*

Section 504 of the Trade Preferences Extension Act (TPEA) added the concept of a PMS in the definition of the term “ordinary course of trade,” for purposes of constructed value under section 773(e), and through these provisions for purposes of the COP under section 773(b)(3).<sup>23</sup> Section 773(e) of the TPEA states that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.”<sup>24</sup> Thus, under section 504 of the TPEA, Congress has given Commerce the authority to determine whether a PMS exists within the foreign market from which the subject merchandise is sourced and to determine whether the cost of materials, fabrication, or processing of such merchandise fail to accurately reflect the COP in the ordinary course of trade.<sup>25</sup> Section 504 of the TPEA does not specify whether to consider these allegations individually or collectively.

In this redetermination regarding a PMS in Korea, Commerce is reviewing the allegations of the existence of a PMS *de novo*, in compliance with the Court’s remand instructions. Therefore, Commerce is examining each alleged factor as it relates to the establishment of a PMS. Additionally, all evidence on the record that may support or detract from a finding of a PMS in Korea has been reviewed as part of this redetermination. This redetermination and renewed examination of a PMS is a market-wide determination and is not intended to be company-specific. Thus, while some companies may not be directly affected by one or other

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*and Countervailing Duty Orders*, 81 FR 67960 (October 3, 2016); and *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Notice of Court Decision Not in Harmony With Amended Final Determination of the Countervailing Duty Investigation*, 84 FR 23019 (May 21, 2019) (collectively, *Hot-Rolled Steel Flat Products from Korea*).

<sup>23</sup> See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA).

<sup>24</sup> *Id.*

<sup>25</sup> See section 773(e) of the Act.

particular factors that Commerce examines, the issue is whether, overall, the market in Korea is affected by the particular market situation.

In the administrative review, Wheatland alleged that a PMS existed in Korea based on: (1) subsidization of Korean hot-rolled steel products by the Korean government; (2) the distortive pricing of unfairly traded Chinese HRC; (3) strategic alliances between Korean HRC suppliers and Korean CWP producers; and (4) distortive government control over electricity prices in Korea.<sup>26</sup> In addition to the four factors alleged by the petitioners, we considered an additional factor in this redetermination: (5) steel industry restructuring effort by the Korean government. Commerce found in both the instant review and in *OCTG from Korea POR I* that a PMS existed based on the totality of these four factors.<sup>27</sup> In the remand of *OCTG from Korea POR I*, the Court found that “Commerce’s particular market situation approach was reasonable in theory,” but that Commerce’s finding of a PMS was not supported by substantial evidence on the record of the first administrative review.<sup>28</sup> As the Court concluded that our approach of considering the totality of circumstances in the market is reasonable, we have continued to use the same methodology in this redetermination and have added another factor to our examination of the totality of the circumstances based upon our review of the evidence on the record.

Commerce is considering, as a whole, each of the aforementioned PMS allegation factors based on their cumulative effect on the Korean CWP market through the COP for CWP and its inputs, as well as an additional factor. In our analysis, we have considered the totality of record evidence, which includes both the documents that were placed on the record on this review that were also on the record of *OCTG from Korea POR I*, and new documents that were placed on

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<sup>26</sup> See Wheatland’s PMS Allegation at 1-3.

<sup>27</sup> See *Final Results*, IDM at Comment 1; see also *OCTG from Korea POR I*, IDM at Comment 3.

<sup>28</sup> See *Nexteel Co., Ltd. v. United States*, Consol. Court No. 17-00091, Slip. Op. 19-1 (January 2, 2019) (*ARI Remand Order*).

the record of this review, but which were not on the record of *OCTG from Korea POR I*.

Although the evidence pertains to the same issue of existence of a PMS in Korea, neither the record evidence nor our evaluation of such evidence is identical to those in *OCTG from Korea POR I*. Based upon our reevaluation of the totality of the conditions in the Korean market during the period of this review, Commerce finds that the allegations and evidence represent facets of a single PMS. We address below the supporting evidence and our analysis for each of these elements.

1. Subsidization of HRC by the Government of Korea (GOK)

In *Hot-Rolled Steel Flat Products from Korea*, Commerce found that the subsidies received by Korean hot-rolled steel producers totaled almost 60 percent of the cost of hot-rolled steel.<sup>29</sup> HRC is the primary input of CWP, constituting a substantial proportion of the cost of CWP production; thus, distortions in the HRC market have a significant impact on production costs of CWP for the mandatory respondents in this review.<sup>30</sup>

2. Distortive Pricing of Chinese HRC

Record information demonstrates that, as a result of significant overcapacity in Chinese steel production, the Korean steel market has been inundated with imports of cheap Chinese steel products, placing downward pressure on Korean domestic steel prices.<sup>31</sup> This market condition is demonstrated in the document, “Announcement for and Excerpts from Relevant Ministries of the Government of Korea, Proposal for Strengthening the Competitiveness of the Steel Industry,”

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<sup>29</sup> See *Hot-Rolled Steel Flat Products from Korea*.

<sup>30</sup> See Wheatland’s PMS Allegation at Attachment 13, Exhibit 4 (containing Maverick Tube Corporation’s Letter, “Certain Oil Country Tubular Goods from the Republic of Korea: Information and Comments Requiring Immediate Action,” dated November 25, 2015, at 3) and at Attachment 11.

<sup>31</sup> See Wheatland’s PMS Allegation at Attachment 12, Exhibit 5 (containing “Announcement for and Excerpts from Relevant Ministries of the Government of Korea, Proposal for Strengthening the Competitiveness of the Steel Industry” (September 30, 2016)).

which states that China is responsible for 60 percent of the global excess supply of steel and that this excess supply is “especially targeted” towards Korea.<sup>32</sup> We find it significant that the Korean government’s document indicates that Chinese excess supply is “especially targeted” toward Korea, which lends further support to a finding that a PMS exists in Korea. This, along with the domestic steel production being heavily subsidized by the Korean government, as described above, has a distorting effect on the market prices of HRC in Korea.

As reported by Asian Steel Watch, Korea is one of China’s largest export destinations; this includes exports of flat-rolled products.<sup>33</sup> As the volume of Chinese exports of hot-rolled steel to Korea increased, the price of these exports decreased, continuing to place downward pressure on Korean steel. This is a years-long trend but was particularly pronounced from 2015-2016 when the hot-rolled steel price per net ton decreased eight percent.<sup>34</sup>

### 3. Strategic Alliance

We agree with Wheatland that certain Korean HRC suppliers and Korean CWP producers attempt to compete by engaging in strategic alliances. The record evidence supports that such strategic alliances existed in Korea recently and that these strategic alliances may have affected prices in 2012-13 and subsequent periods, including this POR.<sup>35</sup> For example, in a SeAH Steel<sup>36</sup> brochure, a processing center was described as operating “as the processing center for

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<sup>32</sup> *Id.*

<sup>33</sup> See Wheatland’s PMS Allegation at Attachment 14, Exhibit 2 (containing article, *China’s Steel Exports Reaching 100 Mt: What It Means to Asia and Beyond*, Asian Steel Watch (January 2016)).

<sup>34</sup> *Id.* at Attachment 14, Exhibit 1 (containing Global Trade Atlas Data “China Exports of Hot-Rolled Carbon/Alloy Steel Products to South Korea”).

<sup>35</sup> See Wheatland’s PMS Allegation at Attachment 13, Exhibit 4 (containing Maverick Tube Corporation’s Letter, “Certain Oil Country Tubular Goods from the Republic of Korea: Information and Comments Requiring Immediate Action,” dated November 25, 2015, at Attachment 4). HRC is the primary input of certain oil country tubular goods and of CWP. Accordingly, this information in the PMS Allegation is also relevant to CWP.

<sup>36</sup> SeAH Steel is a producer and exporter of CWP. See SeAH’s Letter, “Circular Welded Non-Alloy Steel Pipe from Korea — Request for Administrative Review,” dated November 30, 2016.



POSCO.”<sup>37</sup> This further demonstrates a close entanglement between HRC suppliers such as POSCO and CWP producers. Further, information on the record of this review confirms that there were various price-fixing or trade restraint schemes engaged in by various steel suppliers and CWP producers.<sup>38</sup> Because of the close working relationship between the HRC suppliers and producers of CWP, we find that these strategic alliances between certain Korean HRC suppliers and Korean CWP producers are relevant as an element of Commerce’s analysis in that they may have created distortions in the prices of HRC in the past, and have the potential to impact HRC pricing in a distortive manner during the instant POR and in the future. As stated, this factor alone is not definitive, but it is an integral part of Commerce’s reasonable totality approach.

#### 4. Electricity

With respect to the allegation of distortion present in the electricity market, we find that the price of electricity is set by the GOK and that electricity in Korea functions as a tool of the government’s industrial policy.<sup>39</sup> As the record demonstrates, the Korea Electric Power Corporation (KEPCO) stated that the Korean government “heavily regulates the rates we charge for the electricity we sell” and that its “ability to pass on such costs increases to customers is limited.”<sup>40</sup> The GOK has tight control over the electricity market, including supply and pricing.

As KEPCO has stated:

If fuel prices substantially increase and the Government, out of concern for inflation or for other reasons, maintains the current

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<sup>37</sup> See Wheatland’s PMS Allegation at Attachment 13, Exhibit 4 (containing “Certain Oil Country Tubular Goods from the Republic of Korea: Information and Comments Requiring Immediate Action,” dated November 25, 2015, at Attachment 9).

<sup>38</sup> *Id.*

<sup>39</sup> See Wheatland’s PMS Allegation at Attachment 13, Exhibit 5 (citing Maverick Tube Corporation’s Letter, “Certain Oil Country Tubular Goods from the Republic of Korea: Particular Market Situation Allegation on Electricity,” dated February 4, 2016, at 3 (referencing Korea Electric Power Corporation Form 20-F (April 30, 2016) (KEPCO 20-F)).

<sup>40</sup> *Id.*

level of electricity tariff and does not increase it to a level to sufficiently offset the impact of rising fuel prices or prolongs the hold-order on the fuel cost pass-through adjustment system or amend or modify it to the effect that we are prevented from billing and collection of the fuel cost pass-through adjustment amount on a timely basis or at all, the price increases will negatively affect our profit margins or even cause us to suffer net losses and our business, financial condition, results of operations and cash flows would suffer.<sup>41</sup>

The largest electricity supplier, KEPCO, is a government-controlled entity, for which the GOK maintains extensive control over pricing and materials.<sup>42</sup> As a government-controlled entity, KEPCO is responsible for the transmission, distribution, and sale of electricity to customers, but the pricing is heavily monitored and regulated by the GOK:

KEPCO submits to the Ministry of Trade, Industry and Energy a report containing the facts and basis of the calculation of the electricity tariff and the basic accounting documents including the statement on profit and loss and the financial statement. The GOK may request data on KEPCO's investment plan, administrative and operational expense and KEPCO's transaction with an interested party. The costs for providing service to each applicable KEPCO's tariff class are generally submitted in order to discuss and set the electricity rate for each class.<sup>43</sup>

Consistent with the Statement of Administrative Action (SAA), a PMS may exist where there is government control over prices to such an extent that home-market prices cannot be considered to be competitively set.<sup>44</sup> Given the GOK's interest in, and involvement with, the electricity market in Korea, we find that this factor contributes to the distortion of the COM of CWP.

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<sup>41</sup> See Wheatland's PMS Allegation at Attachment 13, Exhibit 5, Exhibit 2 (containing Korea Electric Power Corporation Form 20-F (April 30, 2016) (KEPCO 20-F)).

<sup>42</sup> See Wheatland's PMS Allegation at 36-37.

<sup>43</sup> *Id.* at Attachment 13, Exhibit 5, Exhibit 4 (containing GOK's Letter, "Response of the Government of Korea to the Department of Commerce's Questionnaire January 21, 2015 Welded Line Pipe from the Republic of Korea CVD Original Investigation," dated January 21, 2015, at I-34).

<sup>44</sup> See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) at 822 (SAA).

## 5. Steel Industry Restructuring Effort by the Korean Government

In analyzing the previously-alleged factors of a PMS in Korea, we considered an additional element in which the Korean government is playing an active role in restructuring the private steel industry. A press release from the Korean Ministry of Strategy and Finance, which provided the Korean government's plans to "help accelerate business restructuring planned to manage oversupply, and promote the development of high value added materials" in the steel industry.<sup>45</sup> We also considered publications to observe the conditions surrounding restructuring, such as Invest Chosun's article, "Restructuring of Steel Industry Severe Excess Supply in Steel Pipe, Cold Rolled and Plate Sectors ... Concerns Loom over Dongkook Steel and SeAH Group," which stated that, "{t}he investment industry is expressing the opinion that additional restructuring is necessary."<sup>46</sup>

The Korean steel industry is advocating for restructuring to respond to severe excesses of supply. In response, the Korean government announced its plans to aid and accelerate that restructuring. This type of active government involvement in the steel industry's response to market overcapacity is indicative of a PMS. This is precisely the type of interference that meets the definition of a PMS. As stated in the TPEA, a PMS "exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade."<sup>47</sup> The Korean government's assistance to accelerate the steel industry's response and restructuring interferes with the normal functioning of the free market and alters the ordinary course of trade. Outside government interference in the steel industry in

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<sup>45</sup> See Wheatland's PMS Allegation at Attachment 14, Exhibit 12 (containing "Korean Ministry of Strategy and Finance, Press Release: Government Unveils 2017 Action Plan to for Industrial Restructuring" (January 25, 2017)).

<sup>46</sup> See Wheatland's PMS Allegation at Attachment 12, Exhibit 3 (containing "Severe Excess Supply in Steel Pipe, Cold Rolled and Plate Sectors ... Concerns Loom over Dongkook Steel and SeAH Group," Invest Chosun, dated May 20, 2016).

<sup>47</sup> See TPEA.

response to particular market conditions that affected such industry to the point that the industry may need to undergo restructuring is highly unusual and does not represent the ordinary course of trade. When the investment industry expressed the view that the Korean steel industry needed additional restructuring, as shown in Invest Chosun, the Korean government quickly intervened to assist the steel industry to restructure, as expressed in the press release from the Korean Ministry of Strategy and Finance. We recognize that the government's announcement of additional restructuring of steel industry occurred within months of the end of the POR. Nonetheless, we conclude that the conditions that led to the government's announcement existed during the POR.

6. Interplay Between These Market Conditions

As stated in the *Final Results*, these intertwined market conditions signify that the production costs of CWP, especially the acquisition prices of HRC in Korea, are distorted, and, thus, demonstrate that the costs of HRC to Korean CWP producers are not in the ordinary course of trade. Accordingly, Commerce finds that various market forces result in distortions which impact the costs of production for CWP from Korea. Considered collectively, Commerce finds that the evidence on the record establishes that the Korean CWP market is affected by significant forces that are impacting the cost of producing CWP in Korea during the POR in the instant administrative review.

To be clear, each of these factors alone does not lack the potential for creating a PMS. Any one of these four factors can distort the market such that Commerce could reasonably conclude that a PMS exists. For example, the legislative history indicates that during the floor debates, members of Congress were particularly concerned with cost distortions in inputs. In explaining the proposed legislation, Representative Meehan stated that Commerce "will be empowered to be able to disregard prices or costs of inputs that foreign producers purchase if the

Department of Commerce has reason to believe or suspect that *the inputs in question have been subsidized or dumped* (emphasis added).<sup>48</sup>

Accordingly, based on our evaluation of the record evidence before us, there is no suggestion that any one of the five factors alone are insufficient to establish the PMS. Rather, based on our evaluation of all circumstances, the presence of all five factors, as well as the interaction of the five factors with one another, we find that the totality of circumstances supports the finding that a PMS existed in Korea during the relevant period.

For example, as explained above, one of the factors, the overcapacity of Chinese HRC can, and, in fact, does distort the Korean market. But as part of Commerce’s totality approach, we also evaluated how the overcapacity and price distortion of Chinese steel imports, which are subsidized by the Chinese government, made it extremely difficult for Korean producers to compete without Korean government interference and support. In fact, POSCO’s CEO stated that the prevailing conditions in Korean steel market made it virtually “impossible” for Korean industry to compete:

We’re struggling mostly because China is flooding the market with extremely cheap products with the support from the government. We cannot help but complain about their low prices as it’s impossible for us to produce at the same level and be competitive.<sup>49</sup>

This reaction demonstrates the dramatic price distortion in the Korea steel market, which seems to have led the Korean steel industry to seek the Korean government’s assistance, through subsidization, in response to the Chinese government’s own distortive support of its own steel industry.

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<sup>48</sup> See Congressional Record-House, H4666, H4690 (June 25, 2015); see also Congressional Record-Senate, S2899, S2900 (May 14, 2015)

<sup>49</sup> See Wheatland’s PMS Allegation at Attachment 14, Exhibit 3 (containing “Asian Steel Market Outlook: Next Ten Years,” *Asian Steel Watch* (January 2016)).

In another example, The Boston Consulting Group, in a report prepared for the Korean Iron and Steel Association (KOSA), in its evaluation of the market conditions in the Korean steel market, came to the conclusion that the Korean steel producers faced a “crisis” as a result of Chinese steel imports, and suggested mergers of Korean steel producers in an attempt to push back against the “crisis faced with Chinese makers’ assaults.”<sup>50</sup>

In sum, even if one factor standing alone is sufficient to prove the existence of a PMS, Commerce prefers to look at all factors as a whole. In other words, Commerce’s totality approach in analyzing a PMS allegation does not assign a sum greater than the addition of the parts or factors, but accurately accounts for all the factors’ influence on one another in creating a PMS.

Commerce relied on the entire record to observe the intertwined market conditions. Commerce stated in the *Final Results* that the circumstances present in the Korean market during *OCTG from Korea POR I* are “largely unchanged.”<sup>51</sup> However, this should not be interpreted to mean that the evidentiary documentation present on the record (or our evaluation of this evidence) is identical to the documentation on the record of *OCTG from Korea POR I*. Rather, in the instant administrative review, we found the same or similar circumstances (subsidization by Korean government, flood of cheap Chinese steel imports with support of Chinese government, strategic alliances, the Korean government’s role in electricity markets, and the Korean Government’s role in the restructuring of the steel industry), constituting a PMS, but we note that there is additional evidence on the record of this review that supports the finding of PMS. Commerce stated in the *Final Results* that “the facts in this review are largely identical to

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<sup>50</sup> *Id.* at Attachment 14, Exhibit 8 (citing, “Steel Industry Restructuring: Korean Steel Industry Advised to Reduce Number of Steel Plate Plants by Half,” *Business Korea* (September 19, 2016)).

<sup>51</sup> See *Final Results* and accompanying Issues and Decision Memorandum, at Comment 1.

the facts in *OCTG from Korea POR 1*, and the same evidence is on the record of this review.”<sup>52</sup>

However, the context is important. This statement was in response to the respondents’ arguments that the facts in this instant review have changed significantly, such that no PMS exists.

To clarify: (1) the facts demonstrating the existence of a PMS are similar; (2) the same evidence considered in *OCTG from Korea POR 1* is also included on the record of the instant review; and (3) Commerce also considered additional record evidence establishing the existence of such factors beyond that present on the record of *OCTG from Korea POR 1* and conducted additional analysis that was not performed in *OCTG from Korea POR 1* or in our original determination in this review.<sup>53</sup>

## 2. Calculation of Assessment Rates for Hyundai Steel

In the *Remand Order*, the Court remanded Commerce’s calculation of a single assessment rate for Hyundai Steel’s affiliated importers.<sup>54</sup> We determine there is no evidence of potential manipulation in this review and we have recalculated Hyundai Steel’s assessment rates on an importer-specific basis.<sup>55</sup> This change did not affect the weighted-average margin for Hyundai Steel.

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<sup>52</sup> *Id.*

<sup>53</sup> We note that in the Court’s holding in this case, the Court states that at oral argument, United States’ counsel conceded that there is no additional evidence supporting its PMS finding that was not present in the *OCTG from Korea POR 1* review. *Remand Order*, at 12. United States’ counsel indicated that the evidence in this case was “largely identical” to the evidence in *OCTG from Korea POR 1*. *Id.* at n.2. As clarified above, on remand Commerce has also considered additional evidence beyond that present and analyzed in *OCTG from Korea POR 1*.

<sup>54</sup> See *Remand Order*, at 16.

<sup>55</sup> See Memorandum, “Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Draft Remand Results Calculation Memorandum for Hyundai Steel Company,” dated January 16, 2020.

#### **D. Comments on the *Draft Results of Redetermination***

##### *Wheatland's Comments*

- In its *Draft Results of Redetermination*, Commerce looked at all of the information on the record in CWP Korea, including the information that was newly placed on the record in this review.<sup>56</sup>
- In so doing, Commerce addressed the only two reasons given by the Court in *Nexteel I* for finding against Commerce's decision in *OCTG from Korea POR 1*.<sup>57</sup>
- In this review, we do not have a situation in which Commerce made a different determination on the basis of the same evidence; rather, Commerce made a determination on the basis of different evidence.<sup>58</sup>
- In this review, there was no situation in which Commerce found that individually, the facts do not support a PMS finding: there is only the Commerce determination that the facts when viewed as a whole, support the conclusion that a PMS existed.<sup>59</sup>
- Thus, Commerce correctly determined that the facts on the record in this review, viewed as a whole, support an affirmative determination of a PMS.<sup>60</sup>

##### *Hyundai Steel's Comments*

- The Court directly ruled that Commerce's finding of a PMS in the instant review relied on its finding of a PMS in the prior review and was unsupported by record evidence. The only possible conclusion of the Court's order was that Commerce was not to reexamine

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<sup>56</sup> See Wheatland's Comments at 2-3.

<sup>57</sup> *Id.* at 3 (citing *Nexteel Co., Ltd. v. United States*, 355 F. Supp. 3d 1336 (CIT 2019) (*Nexteel I*)).

<sup>58</sup> *Id.* at 3.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*



or reexplain the analysis, but to reverse the decision to find a PMS. Commerce is seeking to grant itself a remand by reexamining the record.<sup>61</sup>

- In its *Draft Results of Redetermination*, Commerce examined only the evidence which supports its finding of a PMS. At a minimum, it must examine the data presented as to the COP of hot-rolled steel, and if these costs do not accurately reflect the cost of production in the ordinary course of trade.<sup>62</sup>
- Commerce's *Draft Results of Redetermination* does not supply a threshold for the cost of HRC in the ordinary course of trade. Hyundai Steel has provided numerous submissions and exhibits to determine this threshold.<sup>63</sup>
- As an integrated steel producer, while Hyundai Steel purchases certain HRC from unaffiliated parties, Hyundai Steel produces the majority of its own HRC for use in the production of subject merchandise. Both its cost of production for HRC and HRC purchase prices during the POR serve as concrete evidence to show that Hyundai Steel's actual input prices are not distorted in any way. However, Commerce's reevaluation of information overlooks this critical set of evidence.<sup>64</sup>
- Hyundai Steel demonstrated that steel prices move on a global basis, and that steel scrap prices move in the same direction as the price of finished goods. This indicates that movements in steel prices are in "lock step" throughout the world and are moving in the same direction as input costs.<sup>65</sup>

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<sup>61</sup> See Hyundai Steel's Comments at 2-3.

<sup>62</sup> *Id.* at 4-5.

<sup>63</sup> *Id.* at 5-7.

<sup>64</sup> *Id.* at 7.

<sup>65</sup> *Id.* at 7-8.

- Hyundai Steel disagrees that Commerce has any basis to insert surrogate value methodologies in a market economy like Korea, but these data, when properly reviewed, still confirm that the costs of inputs are within the ordinary course of trade.<sup>66</sup>
- Commerce’s adjustment to Hyundai Steel’s HRC input costs has a valuation which is too high and unsupported by record evidence.<sup>67</sup>
- Hyundai Steel, as an integrated producer, makes and supplies its own HRC when producing the subject circular welded pipe products. Hyundai Steel makes strategic decisions to diversify its input sources and therefore also purchases from unaffiliated suppliers for its production. During the POR, Hyundai Steel’s HRC purchase prices from unaffiliated suppliers were all within a very narrow range of the market determined source. This price range, as would be obvious in a market economy like Korea, is compatible with the world market prices for HRC.<sup>68</sup>
- None of the factors in Commerce’s analysis support the finding of a PMS.<sup>69</sup>
- The Court made clear that Commerce cannot simply string together a series of unsubstantiated claims that are “collectively” indicative of a single particular market situation.<sup>70</sup>
- The Court rejected Commerce’s logic and analysis in finding the first factor of subsidization twice. This is not a new analysis and is not consistent with the Court’s conclusion.<sup>71</sup>

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<sup>66</sup> *Id.* at 8-10.

<sup>67</sup> *Id.* at 10-11.

<sup>68</sup> *Id.* at 11-12.

<sup>69</sup> *Id.* at 12-13.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 13-15.

- Commerce’s determination in *Hot-Rolled Steel Flat Products from Korea* was based entirely on the application of AFA and is, thus, inapplicable in this, or the prior, review. Relying on an AFA rate amounts to an application of AFA in this unrelated review. This rate was also revised, on remand, and is expressly not based on accuracy.<sup>72</sup>
- Since *Hot-Rolled Steel Flat Products from Korea* Commerce has confirmed that the subsidies for which it applied AFA in *Hot-Rolled Steel Flat Products from Korea* are not being received by POSCO.<sup>73</sup> Commerce ignores this finding in its *Draft Results of Redetermination* when establishing the PMS adjustment. Commerce should consider the most recent rates of subsidization established for HRC inputs if it intends to conduct a new review of the PMS allegations.<sup>74</sup>
- Commerce does not cite to any evidence that POSCO passed any benefit from alleged subsidies to Hyundai Steel.<sup>75</sup> Commerce cannot avoid the requirements established by the countervailing duty law regarding upstream subsidies by renaming the subsidy a PMS.<sup>76</sup>
- Commerce must perform a “competitive benefit” analysis and determine if any competitive benefit has been passed through to a downstream producer. It has not done that in the *Draft Results of Redetermination*, but rather, assumes, with no evidence, that the full benefit has passed through to Hyundai Steel.<sup>77</sup>

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<sup>72</sup> *Id.* at 15-18.

<sup>73</sup> *Id.* at 18-21 (citing *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 82 FR 16341 (April 4, 2017)(*CTL Plate from Korea*)).

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 21-22.

<sup>76</sup> *Id.* at 22-23.

<sup>77</sup> *Id.* at 23-24.

- While Hyundai Steel purchases some HRC from unaffiliated parties, Hyundai Steel also produces its own HRC for use in circular welded pipe production. Adjusting Hyundai Steel’s reported costs based on an AFA rate assigned to an unaffiliated supplier does not make any commercial sense and is unmoored from any record measure of the cost of hot rolled steel in the ordinary course of trade.<sup>78</sup>
- Commerce relies on an inter-agency Korean government working paper to account for the impact of Chinese imports, but this document does not demonstrate “downward pressure on domestic steel prices.” Instead, it refers to price differentials between domestic and Chinese steel, and indicates the Chinese imports are “primarily for construction,” not pipe production.<sup>79</sup> This document also claims that Chinese exports are targeted toward other large global areas, not just Korea; this does not indicate that China is overflowing the Korean market with cheap steel, thereby creating a PMS.<sup>80</sup>
- Commerce also relies on a published article to demonstrate market conditions that constitute a PMS, but this article discussed market conditions outside of the POR. The article also does not discuss prices, or a meaningful impact on prices in Korea.<sup>81</sup> Hyundai Steel submitted materials demonstrating that prices for hot-rolled inputs were increasing throughout the POR.<sup>82</sup>

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<sup>78</sup> *Id.*, at 24.

<sup>79</sup> *Id.* at 25-26 (citing Wheatland’s PMS Allegation at Attachment 12, Exhibit 5 (containing “Announcement for and Excerpts from Relevant Ministries of the Government of Korea, Proposal for Strengthening the Competitiveness of the Steel Industry,” dated September 30, 2016)).

<sup>80</sup> *Id.* at 24.

<sup>81</sup> *Id.* at 26-27 (citing Wheatland’s PMS Allegation at Attachment 14, Exhibit 2 (containing *China’s Steel Exports Reaching 100 Mt: What it Means to Asia and Beyond*, Asian Steel Watch, dated January 2016)).

<sup>82</sup> *Id.* at 27 -28.

- The *Draft Results of Redetermination* overlooks record evidence that no PMS exists, including documentation that Hyundai Steel sourced very little HRC from China, or that imports from China, which are only one source of imports, are not distorting the Korean market.<sup>83</sup>
- Chinese imports of hot-rolled products are only 20 percent of total imports to Korea. If these products were truly flooding the Korean market, causing a PMS, then no other imports would be able to compete. These Chinese imports are competing and are able to make up 80 percent of the total imports.<sup>84</sup>
- Although Commerce points to Chinese overcapacity, none of the materials indicate that anything is different about Korea relative to the rest of the world; the statute requires that the “market situation” be “particular” to Korea.<sup>85</sup>
- Commercial reality and market principles simply rebut Commerce’s finding that the Korean market has been “inundated with imports of cheap Chinese steel products,” in such a way as to cause a “particular market situation.” If the Chinese imports were truly depressing the market in Korea, HRC producers would have no reason to sell such product at depressed prices so as to compete with Chinese imports. Indeed, Hyundai Steel as a producer of hot rolled coil would cease production rather than continue and certainly would not use its own production as an input into circular welded pipe -- to accept the Department’s finding with respect to Chinese inputs, one would expect Chinese product to entirely crowd out all other sources.<sup>86</sup>

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<sup>83</sup> *Id.* at 28-29.

<sup>84</sup> *Id.* at 29-30.

<sup>85</sup> *Id.* at 30.

<sup>86</sup> *Id.* at 30-31.

- Commerce’s finding of a strategic alliance relies on record evidence which the Court has already found to be insubstantial. Commerce’s conclusion that strategic alliances exist, and are a factor in creating a PMS, is speculative.<sup>87</sup>
- Commerce has previously found, and the Court has affirmed, that the Korean Government’s provision of electricity was not for less than adequate remuneration.<sup>88</sup>
- The *Remand Order* does not permit Commerce to find new factors to support its PMS determination, including the fifth factor of steel industry restructuring.<sup>89</sup> Further, Commerce should not consider this element since it was not alleged in the underlying review. Commerce has found that the petitioner in a PMS allegation bears the burden of substantiating the allegation.<sup>90</sup>
- Commerce’s finding that steel industry restructuring constitutes a factor of a PMS is not supported by record evidence because there is no evidence of actual restructuring. The documents cited by Commerce do not allege any steps taken by the Korean government to restructure the steel industry, or the specific impact that these steps would have on the steel industry.<sup>91</sup>
- Since the documents cited by Commerce in its finding of restructuring are not within the POR, they are irrelevant, and Commerce should remove this factor from its analysis.<sup>92</sup>

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<sup>87</sup> *Id.* at 31-32.

<sup>88</sup> *Id.* at 32-34.

<sup>89</sup> *Id.* at 34.

<sup>90</sup> *Id.* at 34-36.

<sup>91</sup> *Id.* at 36-37.

<sup>92</sup> *Id.* at 37.

- Commerce did not apply a PMS adjustment to Hyundai Steel in the *Final Results*; rather it applied an AFA adjustment, and, thus, had not yet ruled on the appropriate manner to apply a PMS adjustment.<sup>93</sup>
- Commerce’s PMS adjustment is unlawful, even if the Court accepts that a PMS exists. The Court has not yet addressed this.<sup>94</sup>
- The AFA CVD rate used by Commerce in the *Final Results* is no longer in effect; Commerce should instead use the rate from the first review of the CVD order on HRC from Korea because it is more contemporaneous and relevant to this review.<sup>95</sup> Although Commerce is concerned that the rate from the first review of the CVD order on HRC from Korea was not available at the time of the *Final Results*, that concern is immaterial as Commerce in the Remand Redetermination in the second review of OCTG from Korea used a rate that was not published until May 21, 2019, over a year after Commerce issued its final results in that proceeding.<sup>96</sup>
- Commerce should have sought to improve its calculations since the PMS adjustment in the *Final Results* was based on an inaccurate AFA rate.<sup>97</sup>
- By relying on an AFA rate, Commerce has not fulfilled its duty to reach a reasonable decision.<sup>98</sup>

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<sup>93</sup> *Id.* at 38-40

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 40-43.

<sup>96</sup> *Id.* at 42.

<sup>97</sup> *Id.* at 44.

<sup>98</sup> *Id.* at 44-45.

- The PMS provisions are limited to constructed value and Commerce cannot legally apply PMS to costs for purposes of the cost test.<sup>99</sup> The CIT has held that any PMS adjustments are squarely limited to constructed value calculations.<sup>100</sup>

*SeAH Steel's Comments*

- Commerce's finding of a particular market situation is unsupported by substantial evidence.<sup>101</sup>
- Commerce's final remand redetermination should be based on an analysis of the actual data submitted by the mandatory respondents during the period without making a PMS adjustment.<sup>102</sup>

Commerce's Position:

A. *Commerce's Redetermination is in Compliance with the Court's Remand Order*

With respect to Hyundai Steel's argument that in the instant review Commerce relied on its finding of a PMS in the prior review, leading the Court to find it was unsupported by substantial evidence, we hereby clarify that we have based our findings in this remand determination on the administrative record of *this* review. Neither the record evidence, nor our analysis, are identical to the record evidence and analysis in the first administrative review. Each determination stands on its own and has its own analysis and administrative record. Our analysis of record evidence in this remand redetermination is specific to *this* review and contains an

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<sup>99</sup> *Id.* at 45-48.

<sup>100</sup> *Id.* at 47-48 (citing *Saha Thai Steel Pipe Public Company Limited v. United States*, Consol. Ct. No. 18-214, Slip Op. 19-165 (CIT Dec. 18, 2019); *Husteel Co., Ltd. et al. v. United States*, Consol. Ct. No. 18-169, Slip Op. 20-2 (CIT Jan. 3, 2020); *Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States*, Consol. Ct. No. 19-56, Slip Op. 20-4 (CIT Jan. 7, 2020)).

<sup>101</sup> See *SeAH Steel's Comments* at 1.

<sup>102</sup> *Id.*, at 2.



additional factor and evidence that we did not discuss in the first administrative review. It is not appropriate for Hyundai Steel to conflate these two separate administrative determinations.

We disagree with Hyundai Steel that the Court ruled that Commerce was prohibited from reexamining this issue and, if appropriate, modifying our analysis regarding PMS in this remand redetermination. In the *ARI Remand Order*, the Court indeed directed Commerce to reach a particular result with respect to the first administrative review: “Commerce is instructed to reverse the finding of a particular market situation and recalculate the dumping margin for the mandatory respondents and non-examined companies.”<sup>103</sup> In contrast, the Court remanded the issue of PMS here “for further proceedings.”<sup>104</sup> The plain meaning of the language “for further proceedings” does not stand for the proposition that the agency is directed to reach a particular result, unlike the language “instructed to reverse the finding of a particular market situation.” If the Court directed the same result here, as it did in the first administrative review, it would have used the same language as it used in the *ARI Remand Order*, but it did not.

Hyundai Steel’s arguments that the Court directed a result are presumptuous and unpersuasive. Commerce has fully complied with the Court’s order and provided a robust analysis of the record evidence before it. Additionally, there is nothing in the Court’s instructions which would prohibit Commerce from employing a more robust analysis and including consideration of a fifth factor under the totality of circumstances approach which the Court found reasonable.

To the extent that Hyundai Steel argues that the burden to substantiate an allegation of a PMS lies with the petitioner, we agree. However, this does not mean that Commerce should not examine and analyze all of the evidence submitted by the petitioner or any other party. There is

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<sup>103</sup> See *ARI Remand Order*, at 18.

<sup>104</sup> See *Remand Order*, at 18.

no statutory requirement that Commerce must mimic the petitioner's analysis with respect to a PMS allegation in every respect, and Commerce is required to make its determination based on substantial evidence on the record. Under the totality of circumstances approach, Commerce considers all factors that may demonstrate (or not demonstrate) the existence of a PMS, which includes evidence submitted by the petitioner, as well as evidence submitted by other parties or placed on the record by Commerce itself. The additional factor that Commerce considered is part of the totality of circumstances before it. Therefore, Commerce's consideration of the fifth factor is appropriate and is fully consistent with Commerce's approach of evaluating the totality of circumstances.

Furthermore, Hyundai Steel is incorrect in arguing that we have only examined evidence which supports a finding of PMS and did not consider other evidence on the record. Commerce reviewed all of the evidence on the record in this remand redetermination. Out of the multitude of documents on the record, there is no requirement that Commerce specifically reference each and every document in its analysis and explain its relevance, weight, significance, or lack thereof. While Commerce considered all evidence on the record, it is sufficient for the agency to discuss the documents that inform its analysis and which it determines are relevant to its determination, which is what Commerce did in this case. This analysis provides the Court and interested parties with an explanation of the facts and record evidence that provided the basis for Commerce's finding that a PMS existed in Korea. In other words, as required by the Court's remand order, Commerce has set forth on remand its analysis, including a thorough explanation for its decision, citations and references to the relevant documents and facts which support that determination. To the extent that Hyundai cites to additional information on the record that it

believes undermines Commerce's conclusions, we have addressed those citations and arguments below.

B. *Cost of HRC Inputs and Distortive Pricing of Chinese HRC*

Hyundai Steel claims that Commerce must first establish a threshold for the cost of HRC in the ordinary course of trade, but there is no basis in law or the record for such a conclusion. The statute instructs Commerce to determine if a PMS exists “such that that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade.”<sup>105</sup> It does not instruct Commerce to quantify the ordinary course of trade for any and all inputs of a product. Rather, if it is established that a subsidy was received in the production of inputs, or some other factor or factors influenced the cost of materials such that the market prices for that particular input or inputs were distorted, then Commerce may conclude that the cost of materials no longer reflects the COP in the ordinary course of trade and determine the existence of a PMS.

As explained above, in *Hot-Rolled Steel Flat Products from Korea*, Commerce found that the subsidies received by Korean hot-rolled steel producers totaled almost 60 percent of the cost of hot-rolled steel.<sup>106</sup> HRC is the primary input of CWP, and distortions in the HRC market have a significant impact on production costs of CWP for the mandatory respondents in this review. In the *Final Results*, and again on remand, Commerce relied on *Hot-Rolled Steel Flat Products from Korea* to establish that the costs of HRC inputs were distorted in Korea such that the COP of CWP was not in the ordinary course of trade. Commerce therefore found in the *Final Results*, and continues to find on remand, based on the totality of other factors, that a PMS existed during the POR.

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<sup>105</sup> See Section 773(e) of the Act.

<sup>106</sup> See *Hot-Rolled Steel Flat Products from Korea*.

Hyundai Steel argues that Commerce’s findings do not make commercial sense with respect to Hyundai Steel because Hyundai Steel is an integrated producer. However, Commerce disagrees with Hyundai Steel that a company-specific analysis of inputs is necessary. The statute requires Commerce to determine whether there are particular circumstances within a market. By definition, this determination is not company-specific. We disagree with Hyundai Steel’s argument that an analysis of the circumstances surrounding specific companies is necessary as long as evidence supports a finding that a PMS exists in the market. As Commerce demonstrated above, such distortion exists in Korea.

Hyundai Steel’s argument regarding global steel prices is irrelevant to Commerce’s analysis of a PMS in Korea. Even if prices move in the same direction of inputs, that does not affect the findings of distorted prices of inputs in the Korean market. Prices of inputs can increase or decrease, which in turn may raise or lower the price of CWP. That has no relevance to Commerce’s findings that prices of HRC inputs in Korea were distorted. Further, we are not persuaded by the argument that all steel markets are the same and that the steel prices in such markets are synchronized. In fact, the record evidence suggests otherwise. The GOK’s document titled, “Announcement for and Excerpts from Relevant Ministries of the Government of Korea, Proposal for Strengthening the Competitiveness of the Steel Industry,” states that China is responsible for 60 percent of the global excess supply of steel, and that this excess supply is “especially targeted” towards Korea.<sup>107</sup> As a matter of logic, if China’s excess supply of steel is “especially targeted” towards Korea, conditions and prices in the Korean steel market will differ from the steel markets that are not targeted.

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<sup>107</sup> *Id.* at Exhibit 5 (containing, “Announcement for and Excerpts from Relevant Ministries of the Government of Korea, Proposal for Strengthening the Competitiveness of the Steel Industry,” dated September 30, 2016).

Regarding Commerce’s valuation of Hyundai Steel’s HRC inputs, and the adjustment made to account for the finding of a PMS, Commerce maintains that our valuation is reasonable, as stated in the *Final Results*. In determining an AFA rate for POSCO in *Hot-Rolled Steel Flat Products from Korea*, and as explained in the *Final Results*, “Commerce did not find that the AFA rate itself was inaccurate, but, rather, that we could not calculate an accurate rate for POSCO in that proceeding due to POSCO’s failure to submit ‘complete, accurate and reliable data.’”<sup>108</sup> In fact, as stated in the *Final Results*, POSCO may have chosen not to cooperate in *Hot-Rolled Steel Flat Products from Korea* because doing so would have led to an even higher CVD rate.<sup>109</sup> Our decision to apply AFA was affirmed by the Court,<sup>110</sup> even though the AFA rate was revised on remand from 58.68 percent to 41.57 percent.<sup>111</sup> Given that the 58.68 percent rate has been invalidated, it is appropriate to use the rate which was affirmed by the Court and, accordingly, we have revised our calculation of Hyundai Steel’s margin using the domestic subsidization rate for POSCO of 34.22 percent, which is the 41.57 percent rate net of export subsidies.<sup>112</sup>

Hyundai Steel’s assertion that Commerce has found that POSCO was subsidized at much lower rates in the subsequent POR of *Hot-Rolled Steel Flat Products from Korea* is misplaced. Commerce’s determinations regarding the level of POSCO’s subsidization in subsequent PORs have no bearing on subsidization during the earlier period of time at issue in this proceeding. The levels of subsidization and the amount of benefit may increase or decrease during the

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<sup>108</sup> See *Final Results*, IDM at Comment 1 (citing *Hot-Rolled Steel Flat Products from Korea* at Comment 5).

<sup>109</sup> See *Final Results*, IDM at Comment 1.

<sup>110</sup> See *POSCO v. United States*, Consol. Court No. 16-00027, Slip. Op. 19-52 (May 1, 2019).

<sup>111</sup> See *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Notice of Court Decision Not in Harmony With Amended Final Determination of the Countervailing Duty Investigation*, 84 FR 23019 (May 21, 2019).

<sup>112</sup> See Memorandum, “Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Remand Results Calculation Memorandum for Hyundai Steel Company,” dated February 26, 2020 (Final Calculation Memorandum).

different time periods. Commerce has relied on this information to determine the valuation of Hyundai Steel's HRC because that was the applicable rate during most of the POR (as determined for HRC by Commerce in its CVD investigation), and is the most input-specific information available for the POR of the instant review of CWP. We conclude that it is therefore the most appropriate rate for determining a value of HRC inputs for this particular review. If Commerce were to use the most recent rates of subsidization established for HRC, as Hyundai Steel suggests, a significant portion of the data for subsidization would post-date the POR (*i.e.*, would be derived from the future periods in relation to the POR). We are not persuaded that such approach is warranted here, where we have relevant information that does not post-date the POR and, thus, does not present the timing problem of using information that did not exist at the time of the POR.

With respect to Hyundai Steel's argument regarding *CTL Plate from Korea*, as explained in the *Final Results*, we continue to find that the subsidy rates from *HRS from Korea* are more appropriate than the subsidy rates from Commerce's CVD investigation of *CTL Plate from Korea* because the former rates are for HRC, the input used to make CWP, whereas the latter are not. We do not consider it appropriate to use a rate from a CVD investigation covering a different product in a PMS analysis pertaining to a given input without considering whether the facts of that investigation are relevant to the input at issue. That is, the subsidy rate being applied to a particular input as part of our PMS adjustment must directly pertain to the input for the product subject to the order under review. In *CTL Plate from Korea*, Commerce made a determination as to the applicability of certain subsidies to POSCO's production of CTL plate. Commerce did not make an analysis in *CTL Plate from Korea* on the applicability of those subsidies to the production of HRC – HRC is not CTL plate, and HRC is the input at issue in this

PMS analysis for CWP, not CTL plate. Accordingly, we do not find that Commerce's determinations in the *CTL Plate from Korea* CVD investigation inform our PMS analysis in this CWP AD proceeding. We therefore continue to find that the CVD rates from the investigation on *Hot-Rolled Steel Flat Products from Korea* are the more appropriate basis for making a PMS adjustment in this review.

Record evidence demonstrates downward pressure on Korea's domestic steel prices.<sup>113</sup> Hyundai Steel appears to argue that there is no connection between cheap Chinese steel imports and Korean subsidies to the Korean steel industry, yet the record demonstrates that during the POR, as Chinese steel flooded the global market, the Korean government was needed to help strengthen the domestic steel industry and enable Korean industry continue to sell steel at artificially low prices prevailing in the market.<sup>114</sup> Hyundai Steel points out that the overcapacity of Chinese steel was a global problem, and record evidence shows that the excess supply was "especially targeted" toward several key places, one being Korea.<sup>115</sup> Hyundai Steel's argument that distorted pricing caused by a global excess may be a factor in certain other countries potentially creating other particular market situations outside of Korea is irrelevant to this proceeding. The impact of this years-long trend of overcapacity is documented in the article cited above, which discusses market conditions in Korea.<sup>116</sup> Additionally, Hyundai Steel's

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<sup>113</sup> See Wheatland's PMS Allegation at Attachment 12, Exhibit 5 (containing, "Announcement for and Excerpts from Relevant Ministries of the Government of Korea, Proposal for Strengthening the Competitiveness of the Steel Industry," dated September 30, 2016).

<sup>114</sup> See Wheatland's PMS Allegation at Attachment 14, Exhibit 2 (containing article, *China's Steel Exports Reaching 100 Mt: What It Means to Asia and Beyond*, Asian Steel Watch, dated January 2016), and Attachment 12, Exhibit 5 (containing "Announcement for and Excerpts from Relevant Ministries of the Government of Korea, Proposal for Strengthening the Competitiveness of the Steel Industry," dated September 30, 2016).

<sup>115</sup> *Id.* at Exhibit 5 (containing "Announcement for and Excerpts from Relevant Ministries of the Government of Korea, Proposal for Strengthening the Competitiveness of the Steel Industry," dated September 30, 2016).

<sup>116</sup> See Wheatland's PMS Allegation at Attachment 14, Exhibit 2 (containing article, *China's Steel Exports Reaching 100 Mt: What it Means to Asia and Beyond*, Asian Steel Watch, dated January 2016).

argument that the article was published after the POR is irrelevant. The article discusses the years-long trend and documents the conditions that led to a PMS during the POR.

Hyundai Steel presents a graph in which it claims that prices for HRC were “generally increasing throughout the POR.”<sup>117</sup> However, Wheatland’s PMS Allegation contains the data for steel prices that was used for our conclusions that, as the volume of Chinese exports of hot-rolled steel to Korea increased, the price of these exports decreased, continuing to place downward pressure on prices of Korean steel, and that this is a years-long trend but was particularly pronounced from 2015 to 2016, when the hot-rolled steel price per net ton decreased eight percent. Attachment 14 at Exhibit 1 to the PMS Allegation, specifically, contains the Global Trade Atlas data for Chinese exports of hot-rolled products to South Korea. The last column shows the years-long trend of decreasing prices of Chinese steel imports of hot-rolled products to South Korea. The POR, though not reflecting the largest drop in the history of steel prices, nonetheless represents a decrease in prices of eight percent.<sup>118</sup>

Furthermore, the graph that Hyundai Steel submitted highlights a portion which includes the POR. Within the POR, there are price fluctuations down, then up, and then down again. However, these fluctuations in the POR also include the lowest price levels for hot-rolled steel in over ten years. Hyundai Steel’s graph only further demonstrates Commerce’s finding of a years-long trend of hot-rolled steel prices. Since the end of 2010 and beginning of 2011, the prices, even accounting for fluctuations, have been in a downward trend, leading to the POR with the lowest prices in over a decade.<sup>119</sup> Hyundai Steel’s argument tries to focus on one temporal fluctuation, while ignoring the general trend which even its own submission reflects.

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<sup>117</sup> See Hyundai Steel’s Comments at 27.

<sup>118</sup> See Wheatland’s PMS Allegation at Attachment 14, Exhibit 1.

<sup>119</sup> See Hyundai Steel’s Comments at 27.



An article from the publication Asian Steel Watch discusses the increase in the volume of hot-rolled exports. When coupled with the graph that Hyundai Steel submitted, the article indicates that while prices have been declining for a decade, Chinese exports are rapidly increasing, creating price distortions. As stated in the article:

Within China, people seem to openly acknowledge the coming of an era of steel exports exceeding 100 million tonnes. In 2015, Wuhan Iron and Steel completed construction of a coldrolling mill in Fangchenggang with a capacity of 2.1 million tonnes per annum. In 2015, Baosteel completed the No. 1 blast furnace of its Zhanjiang plant, which will have an annual output of 10 million tonnes. Both of these plants are in the China's southern coastal region, a geographically advantageous location for exporting to Southeast Asia and Korea. With decreasing domestic steel consumption, Chinese steelmakers are expected to concentrate efforts on entering overseas markets as a survival measure. According to Chinese media, China's annual steel exports will exceed 100 million tonnes during the period of China's 13th Five-Year Plan (2016-2020).<sup>120</sup>

Hyundai Steel claims that prices of hot-rolled steel increased during the POR but does not demonstrate that any increased prices were within the normal course of trade. Simply pointing out price increases does not speak to whether or not the examined prices are within the normal course of trade. Indeed, fluctuations in the price of HRC inputs can occur in a PMS. Thus, Hyundai Steel's argument does not refute the evidence considered by Commerce in the *Draft Results of Redetermination*. Commerce has not argued that there are no price fluctuations in the POR, or even that those fluctuations do not include price increases. Rather, Commerce considered the overall trend of prices and pointed to an overall downward trend during the POR.

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<sup>120</sup> See Wheatland's PMS Allegation at Attachment 14, Exhibit 2 (containing article, *China's Steel Exports Reaching 100 Mt: What It Means to Asia and Beyond*, Asian Steel Watch, dated January 2016).

Hyundai Steel argues that the price it paid for its hot-rolled steel inputs is in line with Steel Benchmarker data for the POR.<sup>121</sup> As we stated in the *Final Results*, “With respect to {Hyundai Steel’s} arguments based on a comparison of {its} purchases to Steel Benchmarker data, COMTRADE data, GTA import data, American Metal Markets data, Steel Orbis data, and SBB Platts data, we find that the data from these sources are not appropriate benchmarks for the HRC {respondents} use in the production of CWP..”<sup>122</sup> Hyundai Steel is attempting to compare the average price it paid for HRC used in CWP production in the POR to hot-rolled steel band, a product different from HRC. However, we already determined in the *Final Results* that the two data sets are incomparable because of the differences in the products included in each data set.<sup>123</sup>

Furthermore, Hyundai Steel has not presented more specific data on remand, such as HRC prices, to support its “comparison” argument. Instead, Hyundai Steel makes a similar argument, taking the average cost of HRC inputs in CWP, increased by the PMS adjustment, and compares this HRC-specific price point to the data it has placed on the record of a broader category of hot-rolled products. These data sets covering different physical products are also not comparable. Hyundai Steel advocates that we should compare different grades of products with different values, but such a comparison would be distortive, and we therefore are not making such a comparison on remand.

Similarly, Hyundai Steel’s argument that Chinese imports of hot-rolled steel products are only 20 percent of the total imports of HRC to Korea does nothing to refute the evidence. In our view, imports that account for 20 percent of the market are significant enough to put downward

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<sup>121</sup> See Hyundai Steel’s Comments at 7-9 (citing NEXTEEL’s Letter, “Oil Country Tubular Goods from the Republic of Korea: Particular Market Situation Rebuttal Comments and Factual Information,” dated August 15, 2017).

<sup>122</sup> See Final Results IDM at Comment 1.

<sup>123</sup> *Id.*

pressure on prices and distort the rest of the market. Furthermore, one would expect that the volume of Chinese imports would have been even higher if the Korean government had not provided subsidies to prop up its struggling steel industry.

### C. *Electricity*

With respect to electricity, record evidence demonstrates that electricity rates are “heavily regulated”<sup>124</sup> by the GOK. As explained above, the largest electric supplier in Korea is a government-controlled entity and the pricing is monitored by the government. Since electricity is a significant portion of the cost of producing CWP, electricity prices which are not market-based will distort the COM. Contrary to Hyundai Steel’s argument, Commerce did not select only the documents which supported this finding; rather, we reviewed all submitted documents and found that the evidence supported a PMS finding. Additionally, no party takes an issue with the substance of these documents or claims that they are inaccurate. Although the entire record has been factored into this determination, in the *Draft Results of Redetermination*, we detailed the documents which were among the most significant, including the documents that provide the basis for our findings and conclusions.

Although Hyundai Steel argues that Commerce has not determined that electricity has been provided for less-than-adequate-remuneration, the CVD law does not apply in this context. A PMS analysis has to do with market distortion and government intervention. Here, the Korean government uses electricity as a tool of its industrial policy, and electricity rates in Korea are set by the government rather than the market, resulting in significant potential for distortion. This is

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<sup>124</sup> See Wheatland’s PMS Allegation at Attachment 13, Exhibit 5 (citing Maverick Tube Corporation’s Letter, “Certain Oil Country Tubular Goods from the Republic of Korea: Particular Market Situation Allegation on Electricity,” dated February 4, 2016, at 3 (referencing Korea Electric Power Corporation Form 20-F (April 30, 2016) (KEPCO 20-F)).

sufficient to support Commerce's PMS determination, notwithstanding the different showing that would be required in a CVD case.

D. *Subsidization of HRC by the Government of Korea*

Hyundai Steel claims that the Court has twice rejected Commerce's analysis of subsidization. However, Hyundai Steel improperly conflates the *Remand Order* with the remand order relevant to *OCTG from Korea POR 1*. In the remand order relevant to *OCTG from Korea POR 1*, the Court stated that Commerce's PMS approach, which included our analysis of subsidization was "reasonable, in theory," but was not supported by record evidence. Moreover, the Government did not brief this issue in that litigation, so the Court made its findings without the benefit of considering the substantive arguments by the defendant. In this proceeding, the Court remanded the PMS issue without engaging in substantive analysis of subsidization arguments and evidence supporting such analysis. Instead, the Court relied on its findings with respect to *OCTG from Korea POR 1 in toto*, as if the two separate review determinations were one and the same, without directly addressing the Government's substantive arguments which were before the Court for the first time.

On remand, Commerce provided a more robust analysis of the evidence, including the evidence that was not on the record of the first administrative review. Commerce's findings regarding government subsidization are supported by record evidence on the record of this review, and Commerce relied on the current record to continue its "reasonable" approach of examining the totality of circumstances, pursuant to the Court's instructions remanding the issue for further proceedings.

Furthermore, contrary to Hyundai Steel's argument, Commerce is not required to engage in an upstream subsidies analysis and cite to evidence that subsidies from POSCO were passed

on as benefits to Hyundai Steel. As noted above, the CVD law does not apply in this context. Accordingly, Commerce is not required to make a determination that Hyundai Steel received an upstream subsidy. It is sufficient to demonstrate that input prices in the market are distorted by subsidization of input producers in the market. The record evidence demonstrates that input producers received countervailable subsidies from the Korean government at a level of up to 41.57 percent,<sup>125</sup> which is sufficient to constitute a distortion to the normal operation of the market.

As noted above, the totality approach accounts for the interaction of the various factors supporting a PMS finding. Commerce considered that hot-rolled steel producers received subsidies, substantially reducing the COP for HRC, as noted in the first factor. Then Commerce reviewed the second and third factors (overcapacity and strategic alliances) and found compelling evidence on the record that an increase in cheap steel from China depressed prices, and that various steel producers and CWP producers engaged in price-fixing and trade restraint schemes.<sup>126</sup> Our totality approach accounts for the fact that subsidization and strategic alliances were occurring within the same market at similar times. We do not view these phenomena as being isolated from each other.

#### E. *Strategic Alliances*

Commerce's analysis presented record evidence, which supports a finding that strategic alliances existed in Korea recently and that these strategic alliances may have affected prices in

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<sup>125</sup> As noted above, to calculate the adjustment in this case, we are using the domestic subsidization rate for POSCO of 34.22 percent rate, which is the 41.57 percent rate net of export subsidies.

<sup>126</sup> See Wheatland's PMS Allegation at Attachment 13, Exhibit 4 (containing Maverick's Letter, "Certain Oil Country Tubular Goods from the Republic of Korea: Information and Comments Requiring Immediate Action," dated November 25, 2015, at Attachment 4).

2012-13 and subsequent periods, including this POR.<sup>127</sup> Hyundai Steel has not rebutted, or even disputed, the facts on the record underlying Commerce’s determination. Hyundai Steel indicates that Commerce incorrectly cited to a SeAH Steel brochure in the *Draft Results of Redetermination*, which it was unable to locate in the record. Hyundai Steel is correct that we made a typographical error when citing to the SeAH Steel brochure and we have corrected the citation in these Final Results of Redetermination.<sup>128</sup>

With respect to Hyundai Steel’s assertion that the Court has “already” found this evidence to be insufficient to support our analysis of this factor, we disagree. The Court previously found that interpreting a “silent agreement” in a way that assumed that the prices for some unaffiliated producers were influenced, but that the prices for unaffiliated producers were not, is erroneous.<sup>129</sup> Commerce is making no assumptions that pricing is dependent on affiliation. However, we are citing to this pricing arrangement between POSCO and unaffiliated pipe producers to demonstrate the existence of strategic alliances, which, in turn, is one of the factors that Commerce considered under the totality approach.

F. *Restructuring Efforts by the Korean Government*

Commerce determined that there is an effort by the Korean government to assist in restructuring the steel industry in response to the years-long patterns within the steel industry. Hyundai Steel does not address these findings substantively. Instead, it attempts to make a timing argument suggesting that the restructuring of Korean steel industry did not occur during

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<sup>127</sup> See Wheatland’s PMS Allegation at Attachment 13, Exhibit 4 (containing Maverick Tube Corporation’s Letter, “Certain Oil Country Tubular Goods from the Republic of Korea: Information and Comments Requiring Immediate Action,” dated November 25, 2015, at Attachment 4). HRC is the primary input of certain oil country tubular goods and of CWP. Accordingly, this information in the PMS Allegation is also relevant to CWP.

<sup>128</sup> The correct citation is Wheatland’s PMS Allegation at Attachment 13, Exhibit 4 (containing “Certain Oil Country Tubular Goods from the Republic of Korea: Information and Comments Requiring Immediate Action,” dated November 25, 2015, at Attachment 9).

<sup>129</sup> See *Husteel v. United States*, 98 F. Supp. 3d 1315, 1359 (CIT 2015).

the POR. Contrary to arguments from Hyundai Steel, record evidence indicates that there was a working relationship between the Government of Korea and the Korean steel industry to develop a plan to restructure the steel industry due to factors present within the POR.<sup>130</sup> The press release of this effort occurred a few months after the POR, indicating that this is a joint public and private industry plan responding to factors which existed during the POR.<sup>131</sup> It is likely that the Korean government began assisting the Korean steel industry with the development of this restructuring plan during the POR.

Finally, with respect to Hyundai Steel's argument that the PMS provisions are limited to constructed value and Commerce cannot legally apply PMS to costs for purposes of the cost test, that legal issue was not argued to the Court in this litigation and was not therefore considered by the Court as part of its holding. Because the Court did not order Commerce to address that claim on remand, we are not going to address this new legal argument for the first time in this document. Commerce is no way restricted in its analysis on remand by determinations made by the CIT in response to arguments raised by other parties in ongoing litigation addressing Commerce's determinations in other cases. Commerce has the statutory authority to apply PMS to costs for purposes of the cost test, as it did in the *Final Results*, and will continue to do so on remand.<sup>132</sup>

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<sup>130</sup> See Wheatland PMS Allegation at Attachment 14, Exhibit 12 (containing "Korean Ministry of Strategy and Finance, Press Release: Government Unveils 2017 Action Plan to for Industrial Restructuring" (January 25, 2017)) and at Attachment 12, Exhibit 3 (containing "Severe Excess Supply in Steel Pipe, Cold Rolled and Plate Sectors ... Concerns Loom over Dongkook Steel and SeAH Group," Invest Chosun, dated May 20,2016).

<sup>131</sup> See Wheatland PMS Allegation at Attachment 14, Exhibit 12 (containing "Korean Ministry of Strategy and Finance, Press Release: Government Unveils 2017 Action Plan to for Industrial Restructuring" (January 25, 2017))

<sup>132</sup> See *Final Results*, IDM at 11.

## E. Final Results of Redetermination

Commerce has further considered its PMS determination and has recalculated Hyundai Steel's assessment rates on an importer-specific basis pursuant to the *Remand Order*. Additionally, Commerce has recalculated Hyundai Steel's margin using the 34.22 percent domestic subsidization rate which was calculated upon remand and upheld by the Court.<sup>133</sup> The weighted-average dumping margin changed as a result of this change and is now 29.71 percent. Should the Court affirm this final remand redetermination, Commerce intends to issue a notice in the *Federal Register* court decision not in harmony with the *Final Results*.

Upon a final and conclusive decision in this litigation, Commerce will instruct U.S. Customs and Border Protection to liquidate appropriate entries for the November 1, 2015 through October 31, 2016, POR consistent with these final results of redetermination.

2/26/2020

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Signed by: JEFFREY KESSLER

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Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

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<sup>133</sup> See *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Notice of Court Decision Not in Harmony With Amended Final Determination of the Countervailing Duty Investigation*, 84 FR 23019 (May 21, 2019).