



A-580-878
Administrative Review
POR: 07/01/2017 – 06/30/2018
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March 10, 2020

MEMORANDUM TO: Jeffrey I. Kessler
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
Antidumping Duty Administrative Review and Final
Determination of No Shipments: Certain Corrosion-Resistant
Steel Products from the Republic of Korea; 2017-2018

I. SUMMARY

The Department of Commerce (Commerce) analyzed the case and rebuttal briefs submitted by the interested parties in the administrative review of the antidumping duty order on corrosion-resistant steel products (CORE) from the Republic of Korea (Korea) covering the period of review (POR) July 1, 2017 through June 30, 2018. As a result of this analysis, we have made changes to the margin calculations for the mandatory respondents Hyundai Steel Mills Co., Ltd. (Hyundai) and Dongkuk Steel Mills Co., Ltd. (Dongkuk). We recommend that you approve the positions described in the “Discussion of Comments” section of this memorandum.

Below is the complete list of issues for which we received comments from the interested parties.

Particular Market Situation (PMS)

Comment 1: Legal Authority for Applying PMS to the Sales-Below-Cost Test

Comment 2: Existence of a PMS

Comment 3: Quantifying the PMS

Dongkuk

Comment 4: Constructed Export Price (CEP) Offset

Comment 5: Inland Freight from Plant to Port of Exportation



II. BACKGROUND

On September 12, 2019, Commerce published the *Preliminary Results* of this review.¹ On October 15, 2019, ArcelorMittal USA LLC (ArcelorMittal) filed a case brief regarding Dongkuk.² On October 21, 2019, Dongkuk filed a rebuttal brief.³

On January 27, 2020, Commerce determined that the cost-based PMS existed in Korea during the POR.⁴ On January 28, 2020, Commerce established the briefing schedule for PMS-related issues.⁵ On February 4, 2020, ArcelorMittal, AK Steel Corporation, California Steel Industries and Steel Dynamics, Inc., Nucor Corporation, and United States Steel Corporation (collectively, the petitioners), Hyundai, and Dongkuk each filed a PMS case brief;⁶ POSCO and Coated & Color Steel Co., Ltd. (POSCO C&C) each filed a letter with respect to the PMS determination.⁷ On February 12, 2020, the petitioners, Hyundai, and Dongkuk each filed a PMS rebuttal brief.⁸

¹ See *Corrosion-Resistant Steel Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 48118 (September 12, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² See ArcelorMittal's Letter, "Petitioner's Case Brief Regarding Dongkuk Steel Mill Co.," dated October 15, 2019 (ArcelorMittal Case Brief).

³ See Dongkuk's Letter, "Rebuttal Brief of Dongkuk Steel Mill Co., Ltd.," dated October 21, 2019 (Dongkuk Rebuttal Brief).

⁴ See Memorandum, "Antidumping Duty Administrative Review of Certain Corrosion-Resistant Steel Products from the Republic of Korea; 2017-2018: Post-Preliminary Decision Memorandum on Particular Market Situation," dated January 27, 2020 (PMS Memorandum).

⁵ See Memorandum, "Corrosion-Resistant Steel Products from the Republic of Korea: Antidumping Duty Administrative Review; 2017-2018, Case Briefing Schedule for the Particular Market Situation," dated January 28, 2020.

⁶ See Petitioners' Letter, "Petitioners' Case Brief Regarding Particular Market Situation," dated February 4, 2020 (Petitioners PMS Case Brief); see also Dongkuk's Letter, "Brief Regarding Commerce's Particular Market Situation Determination," dated February 4, 2020 (Dongkuk PMS Case Brief); and Hyundai's Letter, "Case Brief Addressing Particular Market Situation Issues," dated February 4, 2020 (Hyundai PMS Case Brief).

⁷ See POSCO's Letter, "POSCO's Letter in Lieu of Case Brief," February 4, 2020; see also POSCO C&C's Letter, "POSCO's Letter in Lieu of Case Brief," dated February 4, 2020.

⁸ See Petitioners' Letter, "Corrosion-Resistant Steel Products From South Korea: Petitioners' PMS Rebuttal Brief," dated February 12, 2020 (Petitioners PMS Rebuttal Brief); see also Hyundai's Letter, "Certain Corrosion-Resistant Steel Products from the Republic of Korea: Hyundai Steel's Rebuttal Brief Addressing Particular Market Situation Issues," dated February 12, 2020 (Hyundai PMS Rebuttal Brief); and Dongkuk's Letter, "Corrosion-Resistant Steel Products from the Republic of Korea - Rebuttal Brief Regarding Commerce's Particular Market Situation Determination," dated February 12, 2020 (Dongkuk PMS Rebuttal Brief).

On October 15, 2019, ArcelorMittal and Hyundai each filed a hearing request.⁹ On January 28, 2020, Commerce scheduled a public hearing.¹⁰ Subsequently, Hyundai and ArcelorMittal each withdrew its hearing request.¹¹ Accordingly, we cancelled the scheduled hearing.¹²

On January 2, 2020, we extended the time limit for the final results of this review from 120 days to 180 days.¹³ The final results are due no later than March 10, 2020.

III. SCOPE OF THE ORDER

The products covered by this order are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. A full description of the scope of the order is contained in the attachment to this memorandum.

IV. CHANGES SINCE THE *PRELIMINARY RESULTS*

We increased the cost of the respondents' purchased hot-rolled coil (HRC) by 17.29 percent for the final results, revised from the 13.97 percent used in the post-preliminary results.¹⁴

V. COMPANIES NOT SELECTED FOR INDIVIDUAL EXAMINATION

This review covers twelve companies that were not selected for individual examination: (1) Anjeon Tech Co., Ltd.; (2) Benion Corp.; (3) Dongbu Steel, Co., Ltd.; (4) Dongbu Incheon Steel Co., Ltd.; (5) GS Global Corp.; (6) Kima Steel Corporation Ltd.; (7) Mitsubishi Corp. (Korea) Ltd.; (8) POSCO; (9) POSCO C&C; (10) POSCO Daewoo Corporation; (11) SeAH Coated Metal Corporation; and (12) Young Steel Co., Ltd.

The statute and Commerce's regulations do not address the establishment of a weighted-average dumping margin to be applied to companies not selected for individual examination when

⁹ See ArcelorMittal's Letter, "Second Administrative Review of Corrosion-Resistant Steel Products from the Republic of Korea – Petitioner's Request for a Hearing," dated October 15, 2019; see also Hyundai's Letter, "Certain Corrosion-Resistant Steel Products from the Republic of Korea: Hyundai Steel Company Hearing Request," dated October 15, 2019.

¹⁰ See Memorandum, "Corrosion-Resistant Steel Products from the Republic of Korea: Antidumping Duty Administrative Review; 2017-2018, Hearing Schedule," dated January 28, 2020.

¹¹ See Hyundai Letter, "Certain Corrosion-Resistant Steel Products from the Republic of Korea: Withdrawal of Hearing Request," dated February 11, 2020; see also ArcelorMittal's Letter, "Second Administrative Review of Corrosion-Resistant Steel Products from the Republic of Korea - Petitioner's Withdrawal of Hearing Request," dated February 12, 2020.

¹² See Memorandum, "Cancellation of a Scheduled Hearing," dated February 11, 2020.

¹³ See Memorandum, "Certain Corrosion-Resistant Steel Products from the Republic of Korea: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated January 2, 2020.

¹⁴ See Memorandum, "2017-2018 Antidumping Duty Administrative Review of Corrosion-Resistant Steel Products from the Republic of Korea, Final Calculation Memorandum for Dongkuk Steel Mill Co., Ltd. (Dongkuk)," dated March 10, 2020 (Dongkuk Final Calculation Memorandum); see also Memorandum, "Antidumping Duty Administrative Review of Corrosion-Resistant Steel Products from the Republic of Korea; 2017-2018, Final Margin Calculation for Hyundai Steel Company," dated March 10, 2020 (Hyundai Final Calculation Memorandum).

Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Tariff Act of 1930, as amended, (the Act). Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a less-than-fair-value investigation, for guidance when calculating the weighted-average dumping margin for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally “an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or de minimis margins, and any margins determined entirely {on the basis of facts available}.” However, section 735(c)(5)(B) of the Act states that if the weighted-average dumping margins for all individually examined exporters or producers are zero, *de minimis*, or based entirely on facts available, then Commerce may use “any reasonable method” to establish the all-others rate, including averaging the weighted-average dumping margins for the individually examined companies.

For the final results of this review, the only weighted-average dumping margin that is not zero, *de minimis*, or determined entirely on the basis of facts is the PMS-adjusted margin calculated for Dongkuk. Thus, Commerce has assigned to non-examined companies a margin of 2.43 percent.

VI. FINAL DETERMINATION OF NO SHIPMENTS

In the *Preliminary Results*, we found that Samsung C&T Corporation, Hyosung Corporation, and Hyosung TNC had no shipments of subject merchandise during the POR.¹⁵ We received no comments from parties with respect to those companies. As the record contains no other information or evidence that calls into question our preliminary finding, we continue to find that those three companies had no shipments of subject merchandise during the POR. Thus, we are rescinding the review with respect to those three companies and will issue an instruction to U.S. Customs and Board Protection based on these final results.

VII. DISCUSSION OF COMMENTS

Comment 1: Legal Authority for Applying PMS to the Sales-Below-Cost Test

Respondents' Comments

The statute only authorizes PMS adjustments in a constructed value context, not in a sales-below-cost context:

- The Trade Preferences Extension Act of 2015 (TPEA) modified sections 771(15) and 773(e) of the Act. Congress intended to change section 773(e) of the Act only to permit Commerce to adjust constructed value (CV) if a PMS exists such that the cost of production in the ordinary course of trade is not accurately reflected. However, the TPEA did not change section 773(b)(3) of the Act which governs the calculation of cost of production (COP).¹⁶
- The term of “ordinary course of trade” is not used in section 773(b)(3) of the Act. Together, this establishes that Congress did not intend for Commerce to make a PMS adjustment for

¹⁵ See *Preliminary Results* PDM at 5.

¹⁶ See Hyundai PMS Case Brief at 4-5.

the cost test. Commerce might speculate that the bolded expression “ordinary course of business” is similar to “ordinary course of trade,” but it cannot ignore the specific word choice of Congress.¹⁷

- The Court of International Trade (CIT) found that Commerce cannot apply a PMS adjustment in the cost test in *Saha Thai*, *Husteel*, and *Borusan*.¹⁸
- Even if a cost-based PMS exists, nothing on the record indicates that home market prices cannot form the basis of a fair comparison to U.S. price, as any claimed distortion would appear to lower costs and prices on both sides of the less-than-fair value equation.¹⁹
- The post-preliminary PMS adjustments to the respondents’ COP were in contravention of the statute, because the respondents’ margins are based on price-to-price comparisons under section 773(b)(3) of the Act. The TPEA amendments of sections 771(15) and 773(e) of the Act are not applicable because Commerce made no findings that the respondents’ home market sales were made outside the ordinary course of trade, and that those sales should be discarded and use CV instead.²⁰ Thus, because of this lack of statutory authority, Commerce must reverse those adjustments in the final results.²¹

Petitioners’ Comments

Commerce’s interpretation of the statute is reasonable and consistent with the statutory scheme:

- The fact that the authorization is contained in section 773(e) of the Act, and that there is no identical language in section 773(b)(3) of the Act, does not in itself restrict the scope of the explicit authority granted to Commerce under section 773(e)(1) to use any other calculation methodology, which would include the sales-below cost methodology.²² In *Vicentin*, the CIT determined that section 773(e) does not direct Commerce to any particular calculation methodology once a PMS is found.²³ Commerce has repeatedly held that the adjustment to a respondent’s COP qualifies as “any other calculation methodology.”²⁴
- Even if Congress did not envision that Commerce would decide to adjust COP for the sales-below-cost-test when selecting “any other calculation methodology” once a cost-based PMS was found, this does not limit the broad discretion provided in the unambiguous text of the statute. As explained by the Supreme Court: “the fact that a statute can be ‘applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth.’”²⁵

¹⁷ See Dongkuk PMS Case Brief at 6.

¹⁸ See Hyundai PMS Case Brief at 4-5 (citing *Saha Thai Steel Pipe Public Co. v. United States*, Consol. Slip Op. 19-165 (CIT 2019) (*Saha Thai*); *Husteel Co. v. United States*, Slip Op. 20-2 (CIT 2020) (*Husteel*); and *Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States*, Slip Op. 20-4 (CIT 2020) (*Borusan*)).

¹⁹ See Hyundai PMS Case Brief at 4-5; see also Dongkuk PMS Case Brief at 6-7.

²⁰ See Dongkuk PMS Case Brief at 3; see also Hyundai PMS Case Brief at 2-3.

²¹ See Dongkuk PMS Case Brief at 6.

²² See Petitioners PMS Rebuttal Brief at 4-8.

²³ *Id.* at 7 (citing *Vicentin S.A.I.C. v. United States*, 404 F. Supp. 3d 1323 (CIT 2019) (*Vicentin*)).

²⁴ *Id.* at 8 (citing *Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 3616 (January 22, 2020) (CWP from Turkey AR 17-18); and *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 AR 17-18)).

²⁵ *Id.* at 9.

- Sections 773(b)(3)(A) and 773(e)(1) use nearly identical language.²⁶ Given that the COP and CV provisions rely on nearly identical language to define the first element of each, it was reasonable for the Commerce to conclude that the TPEA added the PMS concept to section 773(e), and through these provisions for purposes of the COP under section (b)(3) of the Act.²⁷
- Normal value (NV) must be based on sales or costs that reflect the ordinary course of trade. As the PMS-distorted costs are outside the ordinary course of trade, it was reasonable for Commerce not to use the distorted costs for calculating COP.²⁸ The respondents' interpretation would suggest that the very same costs that are too distorted to use for calculating CV must nonetheless be used to calculate the COP.²⁹
- Had Congress determined that Commerce must use PMS-distorted costs for the sales-below-cost-test, the resulting NV would not achieve the broader statutory mandate of providing a fair comparison with export price (EP) and CEP.³⁰
- The respondents' reliance on *Saha Thai*, *Borusan*, and *Husteel* are unpersuasive because those decisions are not final and conclusive and remain subject to appeal.³¹

Commerce's Position:

We disagree with the respondents' interpretation of the Act. As Commerce stated in the PMS Memorandum, contrary to the respondents' argument that Commerce's adjustment to COP for the sales-below-cost test to address a PMS is not in accordance with the law, the Act permits Commerce to address distortions in reported costs through various calculation methodologies, including cost adjustments.³² The respondents maintain that section 504(b) of the TPEA does not apply to the calculation of COP when determining whether home market sales are below cost, but applies only when CV is used for determining NV.³³ In other words, the respondents contend that, because Congress did not modify the specific statutory provision governing the sales-below-cost analysis for determining which sales to exclude from the calculation of NV, Commerce has no statutory authority to adjust COP when not using CV as NV.

The statute requires Commerce in antidumping proceedings to determine NV based on the rules set forth in section 773 of the Act to achieve a "fair comparison" between NV and export price.³⁴ The statute in its definition of NV requires that NV reflect a price that is in the "ordinary course of trade."³⁵

²⁶ Section 773(b)(3)(A) of the Act states "the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product, during a period which would ordinarily permit the production of that foreign like product in the ordinary course of business." Section 773(e)(1) of the Act states "the cost of materials and fabrication or other processing of any kind employed in producing the merchandise, during a period which would ordinarily permit the production of the merchandise in the ordinary course of trade. *Id.* at 9.

²⁷ *Id.* at 10.

²⁸ *Id.* at 11.

²⁹ *Id.* at 12.

³⁰ *Id.* at 12.

³¹ *Id.* at 13.

³² See PMS Memorandum at 8-9.

³³ See Dongkuk PMS Case Brief at 5-8.

³⁴ See section 773(a) of the Act.

³⁵ See section 773(a)(1)(B)(i) of the Act.

The TPEA generally expanded the meaning of “ordinary course of trade” to include “situations in which the administering authority determines that the particular market situation prevents a proper comparison {of NV} with the export price or constructed export price.”³⁶ Thus, where a PMS affects the COP for the foreign like product through distortions to the cost of inputs, it is reasonable to conclude that such a situation may prevent a proper comparison of the EP with NV based on home market prices just as with NV based on CV. The claim that an examination of a PMS for purposes of the sales-below-cost test goes beyond the plain language of the Act fails to consider that the provision at issue, section 773(e) of the Act, specifically includes the term “ordinary course of trade.” Thus, the definition of that term, again, found in section 771(15) of the Act, is integral to that PMS provision.

Similarly, section 773(e) of the Act discusses the CV and provides Commerce with broad authority to use “*any* other calculation methodology” if it determines that a “particular market situation exists such that the cost of materials . . . does not accurately reflect the cost of production in the ordinary course of trade.”³⁷ Although section 773(e) of the Act is applicable to CV, it is unreasonable to conclude that while Congress intended for Commerce not to rely on costs distorted by a PMS for CV, it would have intended for Commerce to continue to rely on those same distorted costs for purposes of the COP used in the sales below-cost test. Thus, the respondents’ arguments in support of their statutory interpretation are unpersuasive, given the language of the statute and its context, which support the conclusion that Congress intended for Commerce to have flexibility in this area.³⁸

Further, the relevant legislative history indicates that the TPEA permits Commerce to adjust the respondents’ costs based upon the PMS. The Senate Report indicated that the amendments ultimately enacted in the TPEA “provide that where a particular market situation exists that *distorts pricing or cost in a foreign producer’s home market*, {Commerce} has *flexibility* in calculating a duty that is not based on distorted pricing or costs.”³⁹

Based on the statutory language and evidence of legislative intent, Commerce has consistently found that Section 504 of the TPEA added the concept of PMS in the definition of the term “ordinary course of trade,” for purposes of constructed value, “and through these provisions for purposes of the cost of production under {section 773(b)(3)}.”⁴⁰ Thus, where a PMS affects the

³⁶ See section 771(15)(C) of the Act (Commerce “shall consider” such transactions outside ordinary course of trade).

³⁷ *Id.* (emphasis added).

³⁸ See *Norfolk & W. Ry. Co. v. American Train Dispatchers’ Ass’n*, 499 U.S. 117, 129 (1991) (declining to resort to a canon of construction that supported a particular interpretation of a statute when the “whole context,” including the statute’s plain language, “dictate a different conclusion” process).

³⁹ See S. Rep. No. 114-45, at 37 (2015) (emphasis added); and *NEXTEEL Co., Ltd. v. United States*, 355 F. Supp. 3d 1336, 1349 (CIT 2019) (*NEXTEEL I*) (quoting same).

⁴⁰ See, e.g., *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 18105 (April 17, 2017) (*OCTG from Korea AR 14-15*), and accompanying Issues and Decision Memorandum (IDM) at Comment 3; see also *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) (*CWP from Korea AR 15-16*), and accompanying IDM at Comment 1.

COP of the foreign like product, it is reasonable to conclude that such a PMS may prevent an accurate evaluation of the sales below cost test.⁴¹

Comment 2: The Existence of a PMS

Respondents' Comments

There is no “cost-based” PMS with respect to HRC inputs in the production of subject merchandise:

- Commerce should reject the PMS finding in light of the CIT’s rulings in *NEXTEEL I* and *NEXTEEL II*,⁴² In the former, the CIT instructed Commerce to reverse its PMS finding, stating if the facts in a PMS allegation individually do not support a finding of a PMS, those facts, collectively, could not support a finding of a PMS.⁴³ The facts on this record are substantially the same, aside from additional new articles.
- The petitioners provided only limited POR-specific information, instead relying heavily on Commerce’s prior determinations.⁴⁴ By acknowledging that the alleged steel overcapacity is a global problem, the petitioners undermines its central proposition that a “unique” or “particular” market situation had arisen in the Korean market due to such global overcapacity.⁴⁵ Recent data shows that the overcapacity problem was controlled before the beginning of the POR.⁴⁶
- Commerce should reverse its PMS finding because the CIT’s rationale in *NEXTEEL I* and *NEXTEEL II* applies equally to this case.⁴⁷ The facts on this record have not established that the alleged dumping of Chinese HRC (due to overcapacity) into Korea or that the subsidies provided to the Korean HRC producers were factors unique or “particular” to the Korean steel market. The resulting price distortions alleged to continue during the POR were not a phenomenon unique to the Korean market. Moreover, the allegation that low-priced Chinese HRC flooded the Korean market during the POR is contradicted by facts herein.⁴⁸ Recently, Commerce has rejected PMS allegations in *OCTG from Turkey AR 16-17*, *CWP from Oman AR 16-17*, and *CWP from UAE AR 16-17*, where the petitioners failed to present substantial evidence of price distortion.⁴⁹

⁴¹ In *Saha Thai*, the CIT held that because Commerce determined it could compare the respondents’ U.S. and home market sales, Commerce was not permitted to apply a cost-based PMS to a respondent’s COP when applying the below-cost test under section 773(b)(3) of the Act. That decision, as well as *Borusan* and *Husteel*, are not final and conclusive and remain subject to appeal. Accordingly, these cases do not apply to Commerce’s application of its PMS methodology in this administrative review.

⁴² See Dongkuk PMS Case Brief at 14-15; and Hyundai PMS Case Brief at 9-10 (citing *NEXTEEL I* and *NEXTEEL Co., Ltd. v. United States*, 392 F. Supp. 3d 1276 (CIT 2019) (*NEXTEEL II*)).

⁴³ See Hyundai PMS Case Brief at 9-11 (citing *NEXTEEL I*; *NEXTEEL II*; *Husteel*; and *Hyundai Steel Company v. United States*, Slip Op. 19-148 (CIT 2019) (*Hyundai*)).

⁴⁴ See Dongkuk PMS Case Brief at 12-17.

⁴⁵ *Id.* at 13-14.

⁴⁶ *Id.* at 30-36.

⁴⁷ *Id.* at 14, 30-36.

⁴⁸ *Id.* at 14-15.

⁴⁹ *Id.* at 14-16 (citing *Certain Oil Country Tubular Goods from Turkey: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 64107 (December 13, 2018) (*OCTG from Turkey AR 16-17*); *Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman: Final Results of Antidumping Duty Administrative*

- A PMS adjustment in this review would be inappropriate because Commerce’s settled historical practice requires that PMS findings are reserved for rare and unique circumstances that can be found only when the record contains substantial evidence of distortions in a respondent’s costs of manufacturing.⁵⁰
- To the extent that Commerce agrees acquisition costs of HRC continued to be distorted during the POR, the resulting circumstances do not represent a novel or unusual situation in Korea. Instead these distortions have been ongoing from July 2014 through June 2018.⁵¹ Consequently, these conditions are normal and Commerce can no longer consider them to be outside the ordinary course of trade.⁵²
- Commerce must base its determination on an empirical analysis and calculate any PMS cost adjustment accordingly, because it has a longstanding practice of conducting a data-driven, quantitative analysis, as demonstrated in *Rebar from Taiwan*, *Biodiesel from Argentina*, and *Biodiesel from Indonesia*.⁵³ In fact, Commerce’s determination in *Biodiesel from Argentina* is the only case in which the CIT has affirmed Commerce’s factual determination that a PMS existed.⁵⁴

Steel Overcapacity and Price Suppression

- Respondents contend that Commerce has taken the ArcelorMittal’s allegation and supporting evidence at face value, giving little weight to respondents’ rebuttal comments. Commerce found that the Government of Korea (GOK) failed to impose trade remedy measures to address subsidized and dumped Chinese steel imports, although respondents demonstrated that there were measures in place.⁵⁵

Review; 2016-2017, 84 FR 29846 (June 25, 2019) (*CWP from Oman AR 16-17*); and *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review*; 2016-2017, 84 FR 44845 (August 27, 2019) (*CWP from UAE AR 16-17*)).

⁵⁰ *Id.* at 18-19; *see also* Hyundai PMS Case Brief 6-7 (citing Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 (1994) (SAA), at 822, reprinted in 1994 U.S.C.C.A.N. 4040, 4162; *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27357 (May 19, 1997); *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 68 FR 52741 (September 5, 2003), and accompanying IDM at Comment 1; and *Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404 (April 15, 1997) at Comment 1).

⁵¹ *See* Dongkuk PMS Case Brief at 18-19; *see also* Hyundai PMS Case Brief at 12.

⁵² *See* Dongkuk PMS Case Brief at 18-21; *see also* Hyundai PMS Case Brief at 6-7.

⁵³ *See* Dongkuk PMS Case Brief at 22-25; *see also* Hyundai PMS Case Brief 12 (each citing *Steel Concrete Reinforcing Bar from Taiwan: Final Determination of Sales at Less Than Fair Value*, 82 FR 34925 (July 27, 2017) (*Rebar from Taiwan Inv.*), and accompanying IDM at Comment 1; *Biodiesel from Argentina: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 50394 (October 31, 2017), and accompanying PDM at 23, unchanged in *Biodiesel from Argentina: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 8837 (March 1, 2018), and accompanying IDM at Comment 3 (collectively, *Biodiesel from Argentina*); and *Biodiesel from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 50379 (October 31, 2017), and accompanying PDM at 23, unchanged in *Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018), and accompanying IDM at Comment 3 (collectively, *Biodiesel from Indonesia*)).

⁵⁴ *See* Dongkuk PMS Case Brief at 22-23 (citing *Vicentin*).

⁵⁵ *See* Dongkuk PMS Case Brief at 27-28; *see also* Hyundai PMS Case Brief at 12-13.

- Recent data, reported by the World Steel Association Yearbook 2018, the Organization for Economic Co-operation and Development (OECD), and the Global Steel Purchasing Managers' Index (PMI), shows that erstwhile problems relating to steel capacity, production, and capacity utilization were significantly reduced during the POR, and effectively, were controlled even before the POR.⁵⁶
- Since early 2016, global steel overcapacity has been effectively controlled and prices of steel products (including HRC) began rebounding to their normal levels.⁵⁷ According to the ArcelorMittal's own data, the weighted-average capacity utilization rates of Chinese and Japanese steel producers - whose exports together accounted for 92.6 percent of Korean imports during the POR - were 83.31 percent in 2017, 89.67 percent in 2018, and 86.49 percent in the POR.⁵⁸
- The record evidence demonstrates that HRC imports could not have triggered a PMS during the POR. The average unit value (AUV) of HRC imports into Korea increased by 36 percent from 2016 to 2017 and increased again by 15 percent from 2017 to 2018.⁵⁹ Total imported volumes from all sources decreased by 35 percent, and total imported volumes from China decreased by 48 percent.⁶⁰ By 2018, the total imported volume from all sources was less than 9 percent of Korean production volume, and the total imported volume from China was less than 4 percent of Korean production volume.⁶¹ Such a tiny market share casts doubts on the ArcelorMittal's claim that Chinese imports flooded the Korean market during the POR. The AUV of Korean imports in 2017 and 2018 was higher than benchmark prices and Dongkuk's acquisition cost for HRC reflects market prices.⁶²

GOK Subsidization of Hot-Rolled Coil

- Respondents disagree with Commerce that the GOK subsidization of the Korean HRC industry can serve as a basis for its PMS finding. Commerce based its PMS determination on the unsupported conclusion that the GOK established the Special Act on the Corporate Revitalization program and the One-Shot Act in response to and to counter the effects of the global steel overcapacity.⁶³ There is no evidence on the record which supports the conclusion that the GOK introduced the programs at issue to counteract the effects of overcapacity.
- Commerce found in *HRS from Korea CVD AR 2016* that those programs did not confer a measurable benefit to respondents or that the respondents did not participate in those programs. Therefore, it is unreasonable for Commerce to determine that a PMS inquiry serves to evaluate whether government interference in the market in such manner contributes

⁵⁶ See Dongkuk PMS Case Brief at 35; see also Hyundai PMS Case Brief at 14-17 and 22-23.

⁵⁷ See Dongkuk PMS Case Brief at 48-49; see also Hyundai PMS Case Brief at 17, 22-26 and 30-35.

⁵⁸ See Dongkuk PMS Case Brief at 48-49; see also Hyundai PMS Case Brief at 17.

⁵⁹ See Dongkuk PMS Case Brief at 29 and 49; see also Hyundai PMS Case Brief at 18.

⁶⁰ See Dongkuk PMS Case Brief at 49; see also Hyundai PMS Case Brief at 29-30.

⁶¹ See Dongkuk PMS Case Brief at 49.

⁶² See Dongkuk PMS Case Brief at 49-50; see also Hyundai PMS Case Brief at 28.

⁶³ See Hyundai PMS Case Brief at 35 (citing PMS Memorandum at 12-13).

to a PMS.⁶⁴ This is pure speculation, as “any subsidization benefit logically would be retained by the recipient of the subsidy and not translated into direct one-for-one reductions in price.”⁶⁵

- The near *de minimis* final subsidy rates calculated by Commerce for POSCO and Hyundai in *HRS from Korea CVD AR 2016* and *CORE from Korea CVD AR 15-16*, and by the *de minimis* preliminary subsidy rates published in *CORE from Korea CVD AR 2017* demonstrated that any potential GOK intervention in the domestic HRC market had no material impact on the production costs of HRC.⁶⁶ In the 2016 and ongoing 2017 CORE CVD administrative reviews, Commerce calculated rates at slightly above and at *de minimis* rates for both Dongkuk and Hyundai, demonstrating that Commerce’s conclusion that the GOK intervened in the steel market during the POR is speculative and without merit.⁶⁷

Strategic Alliances

- Commerce relies on the outdated and irrelevant Korea Fair Trade Commission (KFTC) information pertaining to the sale of pipe, not HRC or CORE, to suggest that strategic alliances may impact prices and cause distortions in the market. Commerce fails to point to empirical data demonstrating that the alleged alliances directly or indirectly had an influence on HRC prices or indirectly affected the cost of subject CORE and has not and cannot show that Hyundai has strategic alliances with its suppliers.⁶⁸
- In its PMS finding, Commerce did not explain how HRC prices may have been impacted by strategic alliances or even the name of the supplier with which Hyundai was supposed to have a strategic alliance.⁶⁹
- The CIT rejected the very notion of strategic alliances in *Husteel*.⁷⁰
- The allegation at issue in this review contains no factual evidence that would demonstrate that any alleged alliances between Korean producers of HRC and CORE existed during the POR. The only agreement cited in the allegation with respect to Dongkuk was terminated before the beginning of the POR, and that termination was fully documented in the last

⁶⁴ See Dongkuk PMS Case Brief at 50-52 (citing PMS Memorandum at 12-13; *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 2016*, 84 FR 28461 (June 19, 2019) (*HRS from Korea CVD AR 2016*); see also Hyundai PMS Case Brief at 35-36).

⁶⁵ See Hyundai PMS Case Brief at 36.

⁶⁶ See Dongkuk PMS Case Brief at 52-53 (citing *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2015-2016*, 84 FR 11749 (March 28, 2019) (*CORE from Korea CVD AR 15-16*); see also *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, and Rescission of Review, in Part; 2017*, 84 FR 48107 (September 12, 2019) (*CORE from Korea CVD AR 2017*)).

⁶⁷ *Id.* at 53 (citing *See Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, 2017*, 84 FR 67927 (December 12, 2019) (*HRS from Korea CVD AR 2017*); see also *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35310 (June 2, 2016) (*CORE from Korea CVD Determination*); *CORE from Korea CVD AR 15-16*; and *CORE from Korea CVD AR 2017*).

⁶⁸ See Hyundai PMS Case Brief at 36-37 (citing PMS Memorandum at 12-13).

⁶⁹ *Id.* at 37-38 (citing *Husteel v. United States*, 98 F. Supp. 3d 1315, 1359 (CIT 2015) (*Husteel*)); and Dongkuk PMS Case Brief at 54.

⁷⁰ See Dongkuk PMS Case Brief at 55 (citing *Husteel*); and Hyundai PMS Case Brief at 37-38.

review.⁷¹ Even that agreement did not support Commerce’s prior finding. Further, the cited agreement does not confirm that any such alliances distort HRC prices in Korea.⁷²

Distorted Electricity Input Costs

- In all relevant Korea CVD proceedings, Commerce has determined that the GOK does not provide electricity in Korea for less than adequate remuneration.⁷³ The records of those proceedings demonstrate that the prices in Korea are consistent with global prices and that Korea Electric Power Corporation (KEPCO) is able to recover its costs. With the electricity prices charged to industrial users reasonably reflecting the actual cost for electricity, there can be no distorting effect on the actual manufacturing costs, and further, any alleged distortion cannot be quantified.⁷⁴
- As KEPCO’s lines of business go beyond just electricity provision, unprofitability on the consolidated level has nothing to do with electricity pricing in Korea, and KEPCO’s profit levels do not establish a PMS.⁷⁵

Petitioners’ Comments

- The TPEA does not specify whether to consider the components of particular market situations individually or collectively.⁷⁶ Further, respondents wrongly argue that a cumulative finding of a PMS based on the factors Commerce relied on in its post-preliminary determination is inconsistent with the recent CIT rulings on *NEXTEEL I* and *NEXTEEL II*. To the contrary, in *NEXTEEL I*, the CIT ruled that considering the totality of circumstances in the market was “reasonable.”⁷⁷
- The *NEXTEEL* cases involved a different proceeding with a different administrative record, in which the CIT found that Commerce provided insufficient justification to reverse its preliminary findings and determine that the cumulative effect of the factors created the existence of a PMS.⁷⁸
- In *NEXTEEL II* the CIT specifically states that the language of the statute allows Commerce to consider a particular market situation based on the cumulative effect and the totality of the conditions, but rejected Commerce’s sole reliance in that segment on its previous finding without further analysis.⁷⁹ Likewise, Hyundai’s reference to *Husteel* is misplaced, as in

⁷¹ See Dongkuk PMS Case Brief at 54.

⁷² *Id.* at 54-56.

⁷³ *Id.* at 57-58 (citing *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49946 (July 29, 2016), and accompanying IDM at 45 (*CRS from Korea CVD Inv.*); see also *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 from Korea CVD Inv.*), and accompanying IDM at 28-33); and Hyundai PMS Case Brief at 38.

⁷⁴ See Hyundai PMS Case Brief at 39-40.

⁷⁵ See Dongkuk PMS Case Brief at 58-59 (citing PMS Memorandum at 14); and Hyundai PMS Case Brief at 38.

⁷⁶ See Petitioners PMS Rebuttal Brief at 14 (citing *CWP from Turkey AR 17-18*, and accompanying IDM at 11).

⁷⁷ *Id.* at 14 (citing *NEXTEEL I*; and *NEXTEEL II*).

⁷⁸ *Id.* at 14-16.

⁷⁹ *Id.* at 16-17.

Husteel the CIT specifically stated that Commerce may rely on the cumulative effect of multiple distortions, but it may not use the methodology to bypass a meaningful examination of the sufficiency of the record.⁸⁰

- The respondents also misconstrue the definition of “ordinary course of trade” within the meaning of section 771(15) of the Act. Their argument that Commerce cannot find that a PMS exists in the instant POR because the “situation” is not outside the ordinary course of trade but is now the “normal state of affairs in Korea” that has existed for “at least four years” is illogical. Congress specifically defined a PMS to exist when the market situation prevents a proper comparison of normal value with the EP or CEP, and the statute does not set a time period when market distortions become normalized.⁸¹ Commerce has specifically rejected this argument in a prior review of this order, *CORE from Korea AR 16-17*, as well as in *CWP from Thailand AR 16-17*, and *Biodiesel from Argentina*.⁸²
- The respondents’ argument that an affirmative PMS finding is reserved for rare and unique situations is also misplaced, because, as Commerce stated in its PMS finding, “{t}here is no additional requirement under the statute for Commerce to determine whether the circumstances are ‘ongoing’ or ‘most unusual’ prior to making a PMS adjustment.”⁸³ Also misplaced is respondents’ claim that the Preamble to Commerce’s antidumping regulations sets a high standard for a PMS finding.⁸⁴ This argument has previously been rejected by the CIT, stating the Preamble accompanying the promulgation of Commerce’s regulations does not define a PMS. The CIT also rejected respondents’ suggestion that the SAA language can be employed to limit the boundaries of the cost-based PMS provision to the calculation of constructed value.⁸⁵
- Contrary to Dongkuk’s claim, Commerce does not need to establish a linkage between respondents’ actual cost of manufacturing and the alleged distortions during the POR, and neither the relevant statute nor the legislative history indicates that Commerce must make a benchmark analysis to identify a PMS. As Commerce clearly stated in the prior review of this proceeding, and in *OCTG from Korea 2016-2017* and in *CWP from India AR 17-18*, the PMS analysis is concerned with distortions in the overall market rather than individual sales transactions.⁸⁶ Therefore, Commerce found that the entire HRC market was distorted. The finding was not specific to HRC purchases by any individual company.⁸⁷
- Section 773(e) of the Act directs Commerce to consider the existence of a PMS and does not set limits on its analytical means to arrive at the determination. Thus, an empirical analysis to determine whether a PMS exists is not required. Further, the TPEA allows Commerce to

⁸⁰ *Id.* at 17-18 (citing *Husteel*).

⁸¹ *Id.* at 18-19.

⁸² *Id.* at 19-20 (citing *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 10784 (*CORE from Korea AR 16-17*), and accompanying IDM 12; see also *Circular Welded Carbon Steel Pipes and Tubes from Thailand: final results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 51927 (October 15, 2018) (*CWP from Thailand AD AR 16-17*), and accompanying IDM at 9; and *Biodiesel from Argentina* IDM at 23).

⁸³ *Id.* at 20-21 (citing PMS Memorandum at 9; and section 504 of the TPEA).

⁸⁴ *Id.* at 21.

⁸⁵ *Id.* at 21-22 (citing *Vicentin*).

⁸⁶ *Id.* at 23-24 (citing *CORE from Korea AR 16-17* IDM at 14; see also *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 24085 (May 24, 2019) (*OCTG from Korea AR 16-17*), and accompanying IDM at 28; and *CWP from India AR 17-18*).

⁸⁷ *Id.* at 23-24.

use any other calculation methodology under section 773(e) in the event 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.”⁸⁸ Thus it allows Commerce to use any other calculation methodology to account for the distorted prices and costs as reported.⁸⁹

- Commerce’s adjustment to Dongkuk’s actual HRC costs was consistent with the WTO Antidumping Agreement, as Commerce’s PMS methodology has never been determined by a WTO body to be inconsistent with the United States’ obligations.⁹⁰ Commerce applied a PMS adjustment to Dongkuk’s reported HRC costs in its post-preliminary PMS determination to remedy the distortions that existed in the entire Korean HRC market during the POR. Commerce has consistently held that when there is sufficient record evidence that a market as a whole is distorted and a PMS exists, impacting the cost of production during the POR, a company-specific analysis is not necessary or appropriate.⁹¹ That is, “the statute provides an inherent authority to adjust a respondent’s reported costs when the costs are found to be distortive and do not reasonably reflect costs associated with the production of merchandise.”⁹²

Steel Overcapacity and Price Suppression

- Commerce based its PMS finding on the totality of the conditions in the Korean HRC market, that is, the confluence of several distinct distortions in the Korean HRC market. Commerce clearly stated in its post-preliminary PMS finding, HRC overcapacity manifests itself in the Korean market, an argument clearly laid out in the record and that respondents failed to rebut.⁹³
- The petitioners reject all four of the respondents’ claims, namely, that: (1) the record evidence does not demonstrate that the volume of Chinese HRC imports into Korea was too low to distort the Korean HRC prices, (2) Commerce did not conduct an analysis to determine whether the COP for CORE was below the suppliers’ production costs; (3) the distorting issues were not particular to the Korean market; and (4) Commerce failed to demonstrate that Chinese steel capacity has risen.⁹⁴ To the contrary, in its post-preliminary PMS determination, Commerce addressed all of the above claims.⁹⁵ The record supports a finding that overcapacity distorts world markets and that Korean inputs were affected by these distortions. Respondents compared steel production statistics in 2016 and 2017 and claim the comparison is “unambiguous” evidence to rebut Commerce’s finding that Chinese steelmaking has risen since 2015. However, they failed to include the 2015 data in their comparison.⁹⁶

⁸⁸ *Id.* at 25 (citing section 773(e) of the Act).

⁸⁹ *Id.* at 25.

⁹⁰ *Id.* at 26 (citing *Biodiesel from Argentina* IDM at Comment 3).

⁹¹ *Id.* at 27-28 (citing *CORE from Korea* AR 16-17; and *CWP from India* AR 17-18).

⁹² *Id.* at 27-28.

⁹³ *Id.* at 28-29.

⁹⁴ *Id.* at 30.

⁹⁵ *Id.* at 30-31 (citing PMS Memorandum at 9-10).

⁹⁶ *Id.* at 31 (citing Dongkuk PMS Case Brief at 31-32; and Hyundai PMS Case Brief at 19).

- Information on the record undermines respondents' claims on steel production capacity. According to the OECD, there was only a modest reduction in overcapacity in 2017. Further, the reported Chinese capacity reductions are misleading because newly commissioned plants in China often offset the capacity lost in the reported shutdowns. The record demonstrates that steel production capacity data publicly reported by the Chinese government is not accurate, as corroborated by information from the South East Asia Iron and Steel Institute, which the petitioners put on the record. Even the OECD data respondents rely on appears to be inconsistent and contradictory with respect to the production capacity reductions in 2016 and 2017.⁹⁷ According to the OECD 2019 report, China allows the replacement of existing basic oxygen furnaces (BOF) with electric arc furnaces (EAF) at a one-to-one ratio thereby maintaining its existing capacity, and as of 2018, global steelmaking capacity remained unchanged, whereas planned capacity expansion projects would add four to five percent to global capacity.⁹⁸ The petitioners further note that S&P Global Platts reports that China continues to build new steel production capacity, and that the PMI, as referenced by respondents, is a misleading snapshot of data rather than proof that overcapacity is receding and that there has been a revival of the Korean steel market in particular. While steel consumption may have increased, as argued by respondents, the steel industry is still suffering from overcapacity.⁹⁹
- As the OECD data placed on the record by respondents clearly lays out, global steel overcapacity was not resolved in 2016, and Commerce found in its post-preliminary PMS finding that the influx of dumped Chinese and Japanese steel in 2017 and 2018 distorted Korean HRC prices during the POR, leading to the particular market situation.¹⁰⁰ While steel prices and profits have increased in recent years, those improvements are insufficient to neutralize the existing overcapacity in the steel making industry. Adjusting for inflation and normal economic growth, prices and profitability have not increased to the extent that overcapacity no longer exists. The alleged financial strength of POSCO does not prove that the Korean steel market has recovered from global overcapacity.¹⁰¹

GOK Subsidization of Hot-Rolled Coil

- The petitioners argue that assistance provided by the GOK, such as the "One-Shot Act" which counteracts the effects of overcapacity, does not have to be a countervailable subsidy to distort the cost of production and contribute to a PMS. Although respondents claim not to have utilized the program, information on the record indicates that steelmakers participated in the GOK program.¹⁰²
- The existence of such GOK programs to facilitate fast-tracked mergers and acquisitions, as well as restructuring, confirms that the Korean steel market was not working within the ordinary course of trade. The fact that the GOK attempted to correct a domestic market impacted by the global steel overcapacity crisis through subsidization effectively caused

⁹⁷ *Id.* at 31-32.

⁹⁸ *Id.* at 32-33.

⁹⁹ *Id.* at 34.

¹⁰⁰ *Id.* at 35-37.

¹⁰¹ *Id.* at 37-38.

¹⁰² *Id.* at 39-40.

distortions in the domestic market. These distortions in the HRC market have a significant impact on the production costs for CORE.¹⁰³

Strategic Alliances

- The analysis of the existence of anticompetitive behavior in a market is one integral part in Commerce's evaluation of the full effect of all elements of its PMS analysis.¹⁰⁴ The petitioners provided record evidence demonstrating that Korean steel producers engaged in anticompetitive behavior in the past, as documented by KFTC decisions indicating market distorting strategic alliances, such as price-fixing and unfair business practices.¹⁰⁵
- Contrary to respondents' complaint concerning the specificity of the record, record evidence demonstrates that respondents obstructed cartel investigations, such as Hyundai being fined by the KFTC for destroying evidence just a few months prior to the POR.¹⁰⁶
- For a PMS analysis the key is whether there was anticompetitive behavior in the relevant market overall, rather than whether a respondent specifically engaged in anticompetitive behavior.¹⁰⁷ Therefore, respondents' specificity argument is not relevant for this PMS analysis. Further, with respect to the respondents' contemporaneity argument, while the KFTC decisions referenced predate the POR, it would be unlikely to have any KFTC decisions involving anticompetitive behavior occurring during the POR available during this POR.¹⁰⁸

Distorted Electricity Input Costs

- The GOK is the majority shareholder of KEPCO, which allows the GOK to control the price for electricity in Korea. According to KEPCO, it submits its costs to the GOK, and the GOK establishes the electricity rate, allowing the GOK to use electricity pricing as an instrument for its industrial policy.¹⁰⁹
- Further, KEPCO reported its first operating loss in 2018 and also expects a loss in 2019. Respondents' concern whether this loss occurred during the POR is misplaced as these operating profits or losses are always based on the fiscal year. That KEPCO generated profits in the prior years does not demonstrate that the electricity prices were not distorted. In addition, KEPCO did not make any cross-sector tariff increase since 2013, making the costs for electricity static, leading to the conclusion that a price can include a profit but can still be distorted.¹¹⁰
- The GOK also controls the Korea Power Exchange (KPX) that sets the electricity transfer prices between all generators and the sole distributor, which allows the GOK to monopolize the electricity market, making electricity a contributor to a PMS in Korea.¹¹¹ Respondents'

¹⁰³ *Id.* at 41-42.

¹⁰⁴ *Id.* at 44-45.

¹⁰⁵ *Id.* at 42-43 (citing *OCTG from Korea AR 16-17 IDM* at Comment 1-B).

¹⁰⁶ *Id.* at 43.

¹⁰⁷ *Id.* at 44.

¹⁰⁸ *Id.* at 44.

¹⁰⁹ *Id.* at 45-46 (citing PMS Memorandum at 14).

¹¹⁰ *Id.* at 46-47.

¹¹¹ *Id.* at 47.

claim that the GOK's involvement in the electricity market is no different from other sovereign countries' control of the energy market is misplaced and undocumented. The petitioners contend that third country energy prices, without taking into account all variables of that country, are not probative of undistorted Korean electricity cost.¹¹²

Commerce's Position

Section 504 of the TPEA added the concept of "particular market situation" in the definition of the term "ordinary course of trade," under section 771(15) of the Act, for purposes of CV under section 773(e) of the Act, and through these provisions for purposes of the cost of production under section 773(b)(3) 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 {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." The statute does not define "particular market situation," but the SAA explains that such a situation may exist for sales "where there is government control over pricing to such an extent that home market prices cannot be considered competitively set."¹¹³ Prior to the TPEA, in a limited number of cases, Commerce found that a PMS existed and, as a result, declined to use an entire market for purposes of calculating NV, as provided for in section 773(a)(1) of the Act and 19 CFR 351.404(c)(2).¹¹⁴ More recently, Commerce determined that a PMS existed which distorted the domestic costs of major inputs used in the production of subject merchandise.¹¹⁵

Commerce finds that a cost-based PMS existed in Korea during the POR concerning the cost of HRC as a component of the COP. The PMS that we find to have existed in Korea during the POR results from the collective impact of the continued effects of global steel overcapacity, the unfairly-traded Chinese HRC contributing to it, and the resulting steel industry restructuring effort by the GOK; the GOK's subsidization of HRC; strategic alliances between Korean HRC suppliers and Korean CORE producers; and the GOK's distortive involvement in the Korean electricity market. In this review, we considered the components of the PMS allegation as a whole, based on their cumulative effect on the Korean market for HRC. Based on the totality of the conditions in the Korean HRC market, Commerce finds that the factors described above represent aspects of a single PMS. As clearly stated, our PMS finding is with respect to the entire market, rather than individual companies, and our PMS adjustment for HRC serves to correct the distortions in the Korean market, and not the HRC purchases of an individual company. Accordingly, we do not need to establish a linkage between respondents' actual cost of manufacturing and the alleged distortions during the POR.

In *NEXTEEL I* and *NEXTEEL II*, the CIT upheld our "totality of the circumstances" approach, finding only that our decision was not supported by substantial evidence. Although the factors

¹¹² *Id.* at 48.

¹¹³ *See* SAA at 822.

¹¹⁴ Examples of investigations or reviews where we have found a price-based particular market situation include *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile*, 63 FR 31411 (June 9, 1998); and *Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 72 FR 7011 (February 14, 2007).

¹¹⁵ *See, e.g., Biodiesel from Argentina.*

are the same, additional evidence (*e.g.*, HRC prices) relevant to this POR (17-18) did not exist during the PORs of *NEXTEEL I* (14-15) and *NEXTEEL II* (15-16). Here, we have performed a thorough analysis of the evidence, and the CIT's decisions in *NEXTEEL I* and *NEXTEEL II* are not on point. Moreover, because *NEXTEEL II* is still ongoing before the CIT and is not yet final and conclusive, the impact of that litigation is not yet known, and it is not binding in this proceeding.

Section 773(e) of the Act states that “if a {PMS} exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, {Commerce} may use another calculation methodology under this subtitle or any other calculation methodology.” Our analysis of the evidence on the record of this review indicates that costs are distorted such that they do not “accurately reflect the cost of production in the ordinary course of trade,” which, by definition, is unusual. Having found that a PMS exists based on the totality of the evidence on the record, Commerce is authorized by statute to use any other calculation methodology to calculate the COP of CORE in Korea. Further, contrary to respondents' claim, there is no additional requirement under the statute for Commerce to determine whether the circumstances are “ongoing” or “most unusual” prior to making a PMS adjustment. Respondents' assertion that the circumstances for a PMS finding resulting from distorted acquisition costs of HRC during the POR do not represent a novel or unusual situation in Korea, but instead reflect a normal situation that even Commerce recognizes has been ongoing from July 2014 through June 2018 does not hold. Congress specifically defined a PMS to be outside the ordinary course of trade, and the statute does not set a time period when market distortions become normalized. We also reject respondents claim that acknowledging steel overcapacity to be a global problem undermines the central proposition that a “unique” or “particular” market situation had arisen in the Korean market due to such global overcapacity.

Furthermore, contrary to respondents' contention that the Preamble to Commerce's antidumping regulations sets a high standard for a PMS finding, the CIT has explicitly rejected this claim, stating that the Preamble to Commerce's regulations does not define the PMS.¹¹⁶ The CIT also rejected respondents' suggestion that the SAA language can be employed to limit the boundaries of the cost-based PMS provision to the calculation of constructed value.¹¹⁷

Global Steel Overcapacity and Price Suppression

As we stated in the PMS Memorandum, the PMS Allegation and PMS Clarification, reiterated, in part, the interested parties' comments and rebuttal comments,¹¹⁸ and provide a plethora of information concerning the global steel overcapacity crisis and its far-reaching effects around the

¹¹⁶ See *Davis Wire Corp. v. United States*, 180 F. Supp. 3d 1187, 1193 (CIT 2016).

¹¹⁷ See *Vicentin*.

¹¹⁸ See PMS Memorandum at 9-10; see also ArcelorMittal's Letter, “Corrosion-Resistant Steel from the Republic of Korea - Petitioner's Particular Market Situation Allegation,” dated August 7, 2019 (PMS Allegation); ArcelorMittal's Letter, “Corrosion-Resistant Steel Products from the Republic of Korea - Petitioner's Initial Comments and New Factual Information Concerning PMS Allegation,” dated November 19, 2019 (PMS Clarification); Dongkuk PMS Case Brief; and Hyundai PMS Case Brief.

globe (including in Korea), an issue that Commerce has previously encountered and addressed in several of its other proceedings.¹¹⁹

During the POR, China continued to be the largest manufacturer and exporter of steel globally, with estimates indicating that its capacity for steel production continues to grow.¹²⁰ Further, in contrast with the respondents' and the Chinese government's claims that Chinese steel production capacity was reduced in 2018, data indicate that Chinese steel capacity has actually risen since 2015, despite supposed efforts by the Chinese government to rein in its overcapacity problem.¹²¹ The Chinese government also took steps during the POR to amplify Chinese steel overcapacity in the global market by implementing measures such as loosening lending requirements for steel, removing export taxes on steel, and allowing for provincial subsidization of steel producers' upgrades and restructuring.¹²² We note that while steel overcapacity did decrease for the second year in a row in 2017, the OECD stated that this "modest reduction...still falls short of alleviating global excess capacity."¹²³

Further, the AUV for HRC imported from China into Korea was lower than the AUV of China's exports to other countries, with AUVs for HRC imported from China into Korea in the bottom 15 percent of all 160 Chinese export destinations in 2017 and 2018.¹²⁴ In addition, imports from China have constituted at least 12 percent of Korean domestic production of hot-rolled steel (HRS) from 2013 through 2017.¹²⁵ Contrary to the respondents' claims, the data strongly support a determination that imports of low-priced HRC from China contributed to the existence of a PMS during the POR.¹²⁶

HRC imports from China are subsidized, dumped, and tainted by other non-market distortions, but these distortions were not addressed by any Korean trade remedy measure during the POR. The failure to offset these unfair trade practices contributed to a PMS impacting the entire Korean market for HRC, and distorting the acquisition price for HRC during the POR. In *CWP from Turkey AR 17-18*,¹²⁷ we explained a similar phenomenon affecting the Turkish market for

¹¹⁹ “[E]xcess steel-production capacity has created market distortions across the globe. Excess steel-production capacity causes serious market distortions and contributes to the downturn in global steel markets, including significant price suppression, displaced markets, unsustainable capacity utilization, negative financial performance, shutdowns, and lay-offs. The deterioration in steel demand, along with continued capacity expansions, are likely to place further pressure on country-specific steel markets and create incentives for government interventions which will further distort the production costs and prices for a wide range of steel products.” See *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 57583 (December 6, 2017), and accompanying PDM at 14, unchanged in *CWP from Korea AR 15-16*.

¹²⁰ See PMS Allegation at 10; see also PMS Clarification at 7.

¹²¹ See Petitioners PMS Rebuttal Brief at 36-38; see also PMS Clarification at 7-9.

¹²² See Petitioners PMS Rebuttal Brief at 36-38; see also PMS Memorandum at 10; PMS Clarification at 7-9.

¹²³ See Respondents' Joint Letter, “Corrosion-Resistant Steel Products from the Republic of Korea: Hyundai Steel and Dongkuk's Particular Market Situation Comments and Rebuttal Factual Information,” dated November 19, 2019 (Joint Rebuttal Comments) at Exhibit CAP-2: “OECD Recent Developments in Steelmaking Capacity, 2018”; and Dongkuk PMS Case Brief at Attachment A.

¹²⁴ See PMS Allegation at Exhibit 6.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ See PMS Memorandum at 10 (citing *CWP from Turkey AR 17-18* IDM at Comment 2).

HRC based, in part, on the non-payment of safeguard duties on injuriously low-priced Turkish imports of HRC, stating that, “{t}he failure to offset these unfair trade practices contributed to a PMS impacting the entire Turkish market for HRC, distorting the acquisition price for HRC during the POR.”¹²⁸

Similar to our findings in *CWP from Korea AR 16-17*,¹²⁹ we find that the facts in this review fail to demonstrate that Chinese steel overcapacity and its effects were absent during this POR, or that increases in steel prices in general, or in HRC in particular, have risen to such an extent that the downward price effects caused by global steel overcapacity did not exist during the POR. On the contrary, the record shows that although during the POR world steel prices for flat products (which includes HRC) increased from a ten-year record low point achieved in 2015,¹³⁰ they were still at the low levels prevalent in the 2012-2013 period.

Consistent with our recent findings that HRC prices in Korea were distorted in *CWP from Korea AR 16-17*, we find here that global steel overcapacity, and particularly, Chinese steel overcapacity, has had, and continues to have, both direct (from Chinese imports) and associative (from Japanese imports) effects on Korean steel markets. Further, we find that record evidence continues to support this finding in the instant review as Korea was the second largest destination of Chinese exports of hot-rolled products in 2017 and 2018, importing between 1.8 and 3.6 million metric tons (MT), respectively.¹³¹ Chinese exports of hot-rolled products in 2017 and 2018 comprised approximately 50 percent and 42 percent of Korea’s total imports of these products in 2017 and 2018.¹³² Also, in addition to the large volume of Chinese exports, we find it appropriate to consider the imports from Japan which were also heavily impacted from this Chinese spillover. Taken together, Chinese and Japanese imports of hot-rolled products in 2017 and 2018 comprised over 90 percent of HRS imports into Korea.¹³³ Based on the foregoing, we determined that the associative effect of Japanese imports, impacted by Chinese imports into the Japanese market, further demonstrates that the Korean hot-rolled market was distorted by imports of hot-rolled products from China.

The respondents argued that imports into Korea are insignificant, since the total imported volume from all sources was less than nine percent of Korean production volume, and the total imported

¹²⁸ *Id.* at 10 (citing PMS Clarification at Attachment 2 (citing Memorandum, “2017-2018 Administrative Review of the Antidumping Duty Order on Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Decisions on Particular Market Situation Allegations,” dated July 10, 2019 at 10)).

¹²⁹ *Id.* at 11 (citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 24601 (June 6, 2019) (*CWP from Korea AR 16-17*); and accompanying IDM at Comments 1-A and 1-B; and *OCTG from Korea AR 16-17* IDM at Comments 1-B).

¹³⁰ The ten-year period was from January 2008 to June 2018. *Id.* at 11 (citing Joint Rebuttal Comments at 29 and Exhibit CAP-9: “World Steel Prices” chart from data in the OECD Steel Market Developments 2018 Q4 report, dated January 11, 2019).

¹³¹ *Id.* at 11 (citing PMS Allegation at 11 and Exhibit 6: “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Particular Market Situation Allegation and Supporting Information,” dated April 2, 2019 (HWR Korea PMS Allegation), at Exhibit 113).

¹³² *Id.* at 12 (citing PMS Allegation at 11 and Exhibit 6 (citing HWR Korea PMS Allegation at Exhibit 116)).

¹³³ *Id.* at 12.

volume from China was less than four percent of Korean production volume.¹³⁴ However, Commerce calculates import penetration as the ratio between the volume of imports and consumption.¹³⁵ The record here contains no information on Korean consumption of HRC, so we cannot determine the import penetration rate with respect to HRC. However, Commerce reported that Korean import penetration of all steel products was 32.3 percent in 2017 and 25.7 percent in 2018.¹³⁶ Moreover, in *CWP from India AR 17-18*, we noted that the import penetration rate of nine percent, relative to domestic demand, is not an insignificant factor.¹³⁷

In arguing that the PMS Allegation is not particular to Korea, the respondents assert that the global overcapacity crisis, or Chinese/Korean steel overcapacity, has distorted the cost of steel production all over the world, and that the Korean steel market is no more “particular” than the rest of the world. We do not find this argument persuasive because the global overcapacity crisis will manifest its distortive effects differently in different markets. In the Korean market particularly, the government provided subsidization to major producers of HRC aimed at supporting domestic steel producers and their ambitions for capacity expansions, a scenario of further distortions that is unique to Korea.¹³⁸

GOK Subsidization of HRC

As stated in the post-preliminary PMS determination, Commerce found that the GOK subsidized the biggest HRC producers in Korea.¹³⁹ The actual level of subsidization of HRC is above *de minimis* levels, which is acknowledged by the respondents.¹⁴⁰ Further, Commerce excluded Dongkuk from the CVD order on CORE, not HRC, which is also acknowledged by the respondents.¹⁴¹ The GOK’s subsidization of domestic HRC production was a response to the global steel overcapacity crisis.¹⁴² The GOK’s subsidization of Korean steel producers exerted downward pressures on HRC prices in Korea, in connection with transactions involving consumers of HRC (*i.e.*, producers of CORE). To remain afloat, the domestic HRC market must inevitably cope and compete with the suppression in the HRC import prices caused by the continued effects of the global steel overcapacity crisis. These resultant distortions of HRC input costs flow directly to the COP of CORE.

Furthermore, the GOK established the “Special Act on the Corporate Revitalization” or “One-Shot Act” to counter the effects of global steel overcapacity.¹⁴³ The program provides

¹³⁴ See Dongkuk PMS Case Brief at 49; Dongkuk Rebuttal Comments at Attachments 2 and 3: Global Steel Trade Monitor, Steel Imports Report: South Korea, dated May 2019).

¹³⁵ See PMS Memorandum at 11; Dongkuk PMS Case Brief at 42-43; and Joint Rebuttal Comments at 23 and 26 (citing U.S. Department of Commerce, Global Steel Trade Monitor, Steel Imports Report: South Korea, dated May 2019).

¹³⁶ See PMS Memorandum at 12 (citing Dongkuk Rebuttal Comments at Attachment 3: Global Steel Trade Monitor, Steel Imports Report: South Korea, dated May 2019).

¹³⁷ *Id.* (citing *CWP from India AR 17-18*).

¹³⁸ *Id.* (citing PMS Allegation at Exhibits 31 and 32).

¹³⁹ *Id.* (citing PMS Allegation at 21-24).

¹⁴⁰ *Id.* (citing Joint Rebuttal Comments at 35).

¹⁴¹ *Id.*

¹⁴² *Id.* (citing PMS Clarification at Attachment 1).

¹⁴³ *Id.* at 12 (citing PMS Clarification at 9).

government financial and institutional support “to promote voluntary corporate restructuring” and is evidence of government intervention in the market.¹⁴⁴ Although we have found those programs not to confer a measurable benefit in the context of a CVD proceeding,¹⁴⁵ a PMS inquiry is not meant to determine whether a particular form of government assistance constitutes a countervailable subsidy; rather, we evaluate whether government interference in the market through assistance or otherwise has caused a distortion that contributes to a PMS.¹⁴⁶

Record evidence demonstrates that the combination of government programs, such as the One-Shot Act, established to counteract the effects of overcapacity, together with the GOK’s subsidies to HRC producers, and further exacerbated by the presence of low-priced imports marked by unfair trade practices and driven by steel excess capacity, have all contributed to the creation of a PMS distorting the costs of HRC during the POR.

Anticompetitive Behavior Among Korean Steel Producers

Commerce continues to find that, as a result of the significant global overcapacity in steel production, which stems, in part, from the distortions and interventions prevalent in the Chinese economy, the Korean steel market has been flooded with imports of cheap steel products, including HRC, from multiple countries, including China and Japan.

In the instant review, we agree that the strategic alliance agreement between Dongkuk and POSCO formally expired before the beginning the POR. However, we continue to find that evidence on the record shows that Korean steel producers do attempt to compete by engaging in strategic alliances. Such evidence supports the allegation that these strategic alliances may have affected prices in the period covered by the original less-than-fair-value investigation and prior administrative reviews, up to and including this POR.

For example, on December 21, 2017, the KFTC fined Hyundai along with five other Korean steel producers 92.1 billion won for rigging bids for pipe sold to a Korean gas company over a period of ten years.¹⁴⁷ Hyundai and five other Korean steel producers received the largest fines amongst the group of steelmakers, and the practice was referred to by a KFTC official as a “long-term chronic practice.”¹⁴⁸

Although the period for which Hyundai Steel and five other Korean steel producers were punished for their bid-rigging schemes was before the POR of this instant review, these decisions by the KFTC provide ample evidence that strategic alliances and price fixing schemes are prevalent in the Korean market, and may have created distortions in the prices of HRC in the

¹⁴⁴ *Id.* at 12 (citing PMS Clarification at Attachment 40: Hyundai’s Letter, “Certain Hot-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-884: Response to New Subsidies Questionnaire,” dated June 13, 2018).

¹⁴⁵ *Id.* at 12-13 (citing *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, 2016*, 83 FR 55517 (November 6, 2018), and accompanying PDM at 30, unchanged in *HRS from Korea CVD AR 2016*).

¹⁴⁶ *Id.* at 13 (citing PMS Clarification at Attachment 1).

¹⁴⁷ *Id.* at 12 (citing PMS Clarification at Attachment 2 and Attachment 50).

¹⁴⁸ *Id.*

past, and may continue to impact HRC pricing in a distortive manner during the instant POR and in the future.

This factor of non-competitive behavior alone is not definitive of a PMS, but it is an integral part of Commerce’s reasonable totality approach in evaluating the full effect of all of these elements on the Korean HRC market.

Distorted Electricity Input Costs

We continue to 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. As the record demonstrates, the GOK acts as the majority shareholder in KEPCO.¹⁴⁹ Further, KEPCO has indicated that it “acts as an intermediate holding company in a vertical control structure involving the Government, us, and our generation subsidiaries....”¹⁵⁰ This GOK control of KEPCO allows the GOK to exercise control over the prices that KEPCO charges.¹⁵¹ Based upon the foregoing, we agree with the petitioners that the prices charged by KEPCO are set by the GOK and that electricity in Korea is “a tool of the government’s industrial policy.”¹⁵²

Further, we find that consistent with the 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.¹⁵³ Considering the government control over KEPCO, it is notable that KEPCO reported its first operating loss in six years for 2018, and a 2.4 trillion won loss is expected for 2019.¹⁵⁴

It is implausible that losses of this magnitude, associated with KEPCO’s pricing, would have occurred without government control, particularly when KEPCO explicitly states that its costs are submitted to the GOK to establish the electricity rate.¹⁵⁵ Moreover, electricity constitutes a significant portion of the cost of manufacturing (COM) of CORE. Based on these facts, we find that the GOK’s interest in, and involvement with, the electricity market in Korea, contributes to the distortion of the COM by placing continued downward pressure on the price of electricity in Korea and the COM of CORE.

¹⁴⁹ *Id.* at 14; and PMS Allegation at Exhibits 13-14.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *See* SAA at 822.

¹⁵⁴ *See* PMS Memorandum at 14 (citing PMS Allegation at 24-29).

¹⁵⁵ *Id.*

Comment 3: Quantifying the PMS Adjustment

Petitioners' Comments

The beta coefficient should be applied differently:¹⁵⁶

- The manner that the beta coefficient (*i.e.*, the elasticity) was used to derive the adjustment is not theoretically sound, because the elasticity relates a *logarithmic difference* in the independent variable to a *logarithmic difference* in the dependent variable. The petitioners urge Commerce to use Equation 3 in the attachment to calculate the adjustment.

Capacity utilization rate should be at least 85 percent:¹⁵⁷

- Rather than being unrealistic, the fact that the global utilization rate was lower than 85 percent during the years considered in the regression model (2008-2017) demonstrates how long the overcapacity crisis has plagued the steel industry. The global utilization was 85 percent in 2007 before China precipitated the overcapacity crisis in 2008.¹⁵⁸
- Commerce fails to recognize that all the years in the regression model took place after the start of the overcapacity crisis in 2008; that is, the data that Commerce used to reach this conclusion were from years where utilization had been depressed by the crisis. It is not possible to draw a conclusion regarding a healthy rate from such a sample.¹⁵⁹
- The record indicates that an optimal utilization is higher than the minimum 80 percent. McKinsey & Company assumes an ideal utilization of 90 percent for the global steel industry. The Boston Consulting Group considers healthy capacity-utilization to be around 92 percent while the Centre for European Policy Studies and Steel Manufacturers Association suggest 85 percent utilization is necessary.¹⁶⁰
- The section 232 investigations established 80 percent as minimum threshold for viability of the U.S. industry, whose utilization rates trail those of the global steel industry in 2016 and 2017. The majority of U.S. steel industry is EAF-based mills whereas most of the steel industry outside of North America is BOF-based mills that operate at higher capacity utilization to remain viable. Accordingly, a minimum target of 80 percent for U.S. industry necessarily implies a larger minimum target for the global industry.¹⁶¹

The costs of self-produced HRC should be adjusted:¹⁶²

- Commerce has consistently stated that PMS applies to the entire Korean HRC market.¹⁶³ In the post-preliminary decision, Commerce recognizes that the factors distorting the Korean

¹⁵⁶ See Petitioners PMS Case Brief at 9.

¹⁵⁷ *Id.* at 3-9.

¹⁵⁸ *Id.* at 3-4.

¹⁵⁹ *Id.* at 4.

¹⁶⁰ *Id.* at 6.

¹⁶¹ *Id.* at 7-8.

¹⁶² *Id.* at 10-20.

¹⁶³ *Id.* at 10 and 16-19 (citing *Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 84 FR 64041 (November 20, 2019) (CWP from Thailand AR 17-18); *CORE from Korea AR 16-17*; and *Welded Line Pipe From Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 1023 (January 9, 2018) (WLP from Korea AR 15-16)).

market for HRC are a market-wide phenomenon. Given that the PMS applies to the entire Korean market, Commerce should make a PMS adjustment to self-produced HRC consumed by Hyundai.¹⁶⁴

- PMS concerns the distortion in the cost of HRC as a component of the COP, not solely the purchase price of HRC input. Cost and price are inextricably linked in a market economy. There is no advantage to self-producing HRC when purchasing HRC costs less, and thus the implicit value of the self-produced HRC is likewise distorted by the PMS.¹⁶⁵
- By the very nature of K-IFRS's inventory valuation principles, Hyundai's self-produced HRC is valued at either the distorted net market value or at an even lower cost value, both of which are logically impacted by the PMS in Korea.¹⁶⁶
- The self-produced and purchased HRC are subject to the same market forces as they are part of the exact same market. The self-produced HRC would be subject to the major input rule and would be considered to have been purchased if Hyundai were legally structured as an HRC subsidiary selling HRC to another subsidiary for production of CORE, instead of as a vertically integrated entity.
- Commerce has previously applied PMS adjustments to self-produced HRC. The basis of the PMS adjustment (*e.g.*, a regression analysis or a subsidy rate) is not dependent on the source of the HRC (*e.g.*, self-produced or purchased).¹⁶⁷ The regression analysis estimates the impact of the global overcapacity on the HRC price which is irrevocably linked to HRC cost in Korea. Limiting the PMS adjustment to purchased HRC leads to a perverse outcome where the PMS is only applicable to a limited segment of the Korean HRC market.

The petitioners' regression analysis correctly and adequately quantified the PMS:¹⁶⁸

- The alleged "wild swings" is a result of running a series of different regression models contrived by the respondents, who engineered an alternative series of flawed models and argued that faults in those alternative models indicate faults in the petitioners' model. The respondents fail to present a better model in terms of its predictive value as measured by R² and in terms of the economic arguments underpinning variable, data set, and time period selection.
- Including data for periods after June 2018, whether standalone or averaged with the 2017 model results, would inaccurately capture trends and costs that did not occur during the POR, because uneconomic capacity is not a direct function of production in a given year due to issues of endogeneity. Uneconomic capacity is defined as excess capacity based on production experienced prior to that year.
- Commerce should not alter the time period of 2008 to 2017,¹⁶⁹ the HRC import AUVs,¹⁷⁰ or inputs utilized in the regression model.¹⁷¹ The respondents provided no additional evidence

¹⁶⁴ *Id.* at 11-12.

¹⁶⁵ *Id.* at 13.

¹⁶⁶ K-IFRS is the abbreviation of the Korean version of International Financial Reporting Standards (IFRS). *Id.* at 15 (citing Hyundai's March 21, 2019 Sections B-E Questionnaire Response at D-14).

¹⁶⁷ *Id.* at 19.

¹⁶⁸ See Petitioners PMS Rebuttal Brief at 48-61.

¹⁶⁹ *Id.* at 54.

¹⁷⁰ *Id.* at 56.

¹⁷¹ *Id.* at 58-61.

in their respective briefs after the PMS Memorandum, which addressed issues with respect to HRC import AUVs, coke, aluminum, iron ore price, and energy.

The beta coefficient from *CWP from India AR 16-17* should not be used (Rebuttal Comment):¹⁷²

- Using the beta coefficient from *CWP from India AR 16-17* would be unsupported by the record evidence as neither the regression model nor data used to derive that beta coefficient are on this record.

Respondents' Comments

The beta coefficient should not be applied differently:¹⁷³

- The petitioners' argument with respect to applying the coefficient to a regular percentage change instead of calculating all values in natural logs is ironic, considering that the PMS adjustment it advocated was calculated by comparing a regression value to an actual value.
- Commerce's preliminary adjustment is consistent with the petitioners' overall framework, calibrated to a more appropriate 80 percent global utilization rate.

The beta coefficient from *CWP from India AR 16-17* should be used:¹⁷⁴

- The record of this review similarly demonstrates that: (1) import penetration of foreign-produced HRC in Korea was only nine percent of the domestic demand; (2) imports of HRC were underpriced, on average, relative to domestic prices of HRC; (3) the ratio of HRC imports has never been significant in comparison to the domestic production; (4) this review covers a similar POR.

Capacity utilization rate should be 80 percent:¹⁷⁵

- The petitioners have presented no data showing that an 85 percent rate is necessary for global producers to achieve sustained profitability. In contrast, the record shows that global producers including those in Korea have been profitable at rates lower than the 80 percent. Commerce has rejected the 85 percent in multiple proceedings.¹⁷⁶
- The American Iron and Steel Institute and Commerce Secretary Wilbur Ross have stated that an 80 percent utilization level is needed to make the industry viable over the long term.¹⁷⁷
- While complaining that Commerce did not consider global utilization prior to 2008, the regression model that the petitioners themselves presented to Commerce also did not consider production, capacity, and pricing prior to 2008.¹⁷⁸

¹⁷² *Id.* at 51.

¹⁷³ See Dongkuk PMS Rebuttal Brief at 7; and Hyundai PMS Rebuttal Brief at 12.

¹⁷⁴ See Dongkuk PMS Case Brief at 67.

¹⁷⁵ See Dongkuk PMS Rebuttal Brief at 3-6.

¹⁷⁶ *Id.* at 3.

¹⁷⁷ *Id.* at 4; see also Joint Rebuttal Comments at Regression Appendix II, Attachment T: World Trade Online News Article, dated February 25, 2019: "Statistics from the American Iron and Steel Institute show U.S. capacity utilization levels have risen from 76 percent last April to above 80 percent last week. The report called that level 'roughly' what was needed to make the industry viable over the long term," and "The Secretary has determined that the only means of removing the threat of impairment is to reduce imports to a level that should, in combination with good management, enable U.S. steel mills to operate at 80 percent or more of the rated production capacity.,

¹⁷⁸ See Dongkuk PMS Rebuttal Brief at 4.

- Major global producers including the respondents are also EAF-based mills. The combined capacity utilization rate in China and Japan (whose exports represent over 90 percent of all Korean HRC imports) was 86.49 percent during the POR.¹⁷⁹
- Having agreed that 80 percent more accurately reflects a historic rate, Commerce should conclude in the final results that no adjustment to address the alleged overcapacity is necessary because the 2018 rate is 81 percent.¹⁸⁰

The costs of self-produced HRC should not be adjusted:¹⁸¹

- Pursuant to the statute, the relevant inquiry is whether “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 PMS allegation hinged on HRC pricing that is irrelevant to Hyundai’s reported cost of inputs, nearly all of which are iron ore, coal and scrap that share none of the HRC market forces. By seeking to expand the allegation, the petitioners completely disregarded Hyundai’s actual production operations, which begin at producing slab, which is then converted to steel plate, hot-rolled steel, cold-rolled steel and finally to CORE.
- The petitioners argued that Commerce should increase “the cost of the respondent’s hot-rolled inputs by 49.38 percent,” and thus the allegation pertains only to “hot-rolled inputs,” not the cost to produce hot rolled steel or the inputs used in the integrated production of CORE. The regression analysis has nothing to do with Hyundai’s costs of self-produce HRC.
- The petitioners had ample opportunity to submit a PMS allegation relevant to Hyundai’s inputs and production, but instead chose to submit an allegation that said nothing as to Hyundai’s inputs.
- In the instant review, the adjustment is not based on Hyundai’s input costs or subsidy experience. In *CORE from Korea AR 16-17* and *WLP from Korea AR 15-16*, Commerce adjusted Hyundai’s production cost based on Hyundai’s CVD rate assigned in *HRS from Korean CVD Inv.* Although Hyundai disagrees with Commerce’s decision in those proceedings, at least there was a colorable link between a subsidy rate and a producer’s cost of production. Further, in *WLP from Korea AR 15-16*, Commerce adjusted costs of the HRC input but not the CTL plate input.

The petitioners’ regression model and methodology do not yield meaningful or reasonable results:

- The petitioners’ regression model is subject to wild swings.¹⁸² The fact that small changes to the data significantly alter the results indicates that the analytical framework is simply too volatile to rely on any single permutation or adjustment factor. The assumptions were designed solely to generate the highest possible PMS adjustment.
- The petitioners’ regression analysis contains significant flaws: (1) 2017 data was revised in July 2019; (2) POR 2018 data was not included while data for 9.5 years prior to the POR was included; (3) outlier data from the 2008-2009 great recession are included; (4) HTS codes for

¹⁷⁹ *Id.* at 6.

¹⁸⁰ *See* Hyundai PMS Case Brief at 52.

¹⁸¹ *See* Hyundai PMS Rebuttal Brief at 2-7.

¹⁸² *See* Hyundai PMS Case Brief at 42.

data used in the model are not specific to HRC for producing CORE; (5) the cost of energy is not included; and (6) 2008 iron ore figures are inaccurate.

- The underlying data must be corrected such that it:¹⁸³ (1) uses 2017 capacity and production data published in Annex D of OECD’s “Latest Developments in Steelmaking Capacity,” issued on July 24, 2019; (2) includes 2018 data to account for the half of the POR in 2018, a time at which global capacity utilization levels were 81 percent; (3) uses the average of 2017 and 2018 data as an alternative; (4) uses a period beginning either in 2003/2004 or 2010/2011 to mitigate the recession outliers, or removes 2008/2009 recession outliers; (5) corrects iron ore costs by using the respondent’s regression instead; (6) includes coke since it is a relevant input; and (7) excludes aluminum.

Commerce’s Position:

As an initial matter, we note that neither section 773(e), section 771(15), nor any other provision of the Act mandates either what constitutes a cost-based PMS or how Commerce may “use another calculation methodology” to establish the “cost of materials and fabrication” of the merchandise covered by the scope of an order. As a result, Commerce has established “another calculation methodology” where it has adjusted the respondent’s reported COP to account for distortions in input costs based on a determination of a cost-based PMS.

Calculation of the PMS Adjustment Based on the Beta Coefficient

The petitioners has asserted that Commerce erred in how it applied the beta for uneconomic capacity to determine the PMS adjustment. This claim has merit because both the dependent and independent variables in the regression model have been log-transformed. In its calculation of the PMS adjustment in the post-preliminary analysis, Commerce applied the beta coefficient as the change in Import AUV relative to the change in Uneconomic Capacity rather than as the change in the logarithms of these values.

The regression model is based on the following equation:

$$\ln(y_{i,t}) = \beta_0 + \sum_{k=1}^n [\beta_k \times \ln(x_{k,i,t})] + \alpha_i + \varepsilon_{i,t}$$

where y is the dependent variable, $x_1 \dots x_n$ is the set of independent variables, i is the country, t is the time period, and k is an index for the n number of independent variables. The results of the regression analysis provide the following values: a y-intercept (β_0), regression coefficients ($\beta_1 \dots \beta_n$), a country-specific, fixed-effects coefficient (α_i),¹⁸⁴ and the country-specific error term (ε_i).¹⁸⁵ Each of the regression coefficients (*i.e.*, the slope coefficient or “beta”) measures the

¹⁸³ See Dongkuk PMS Case Brief at 71; see also Hyundai PMS Rebuttal Brief at 13-14.

¹⁸⁴ The country-specific, fixed-effects coefficient captures the time-invariant variables affecting the dependent variable.

¹⁸⁵ The country-specific error term captures the unobserved factors affecting the dependent variable that are uncorrelated with the independent variables

relationship between the dependent variable and the respective independent variable where all other variables are held constant. For the regression model used in this review, the dependent variable is import AUV, and the set of independent variables are global uneconomic capacity, global aluminum prices, global iron ore prices, global scrap prices, the country-specific US\$ exchange rate, and country-specific gross fixed capital formation (GFCF).¹⁸⁶

As noted above, Commerce’s approach has been to view the beta coefficient as the linear slope of the dependent variable relative to the independent variable.¹⁸⁷ However, in the regression model used here, both the dependent variable and the independent variables are log-transformed. With all other variables held constant, for 2017 and the counterfactual situation where Uneconomic Capacity is adjusted to reflect an 80 percent capacity utilization rate, the following equality exists based on the regression model defined above:

$$\begin{aligned} \ln(AUV_{cf}) - \ln(AUV_{2017}) \\ = \beta_{UneconCap} \times \ln(UneconCap_{cf}) - \beta_{UneconCap} \times \ln(UneconCap_{2017}) \end{aligned}$$

which simplifies to

$$\ln\left(\frac{AUV_{cf}}{AUV_{2017}}\right) = \beta_{UneconCap} \times \ln\left(\frac{UneconCap_{cf}}{UneconCap_{2017}}\right)$$

$$\ln\left(\frac{AUV_{cf}}{AUV_{2017}}\right) = \ln\left(\left(\frac{UneconCap_{cf}}{UneconCap_{2017}}\right)^{\beta_{UneconCap}}\right)$$

$$\frac{AUV_{cf}}{AUV_{2017}} = \left(\frac{UneconCap_{cf}}{UneconCap_{2017}}\right)^{\beta_{UneconCap}}$$

When 1 (one) is subtracted from each side of the equation, then the relative change in the AUV is determined:

$$\frac{AUV_{cf} - AUV_{2017}}{AUV_{2017}} = \left(\frac{UneconCap_{cf}}{UneconCap_{2017}}\right)^{\beta_{UneconCap}} - 1$$

¹⁸⁶ See PMS Allegation at Exhibit 25.

¹⁸⁷ In the application of the beta to calculate the PMS adjustment in the post-prelim analysis, the equation defining this relationship was:

$$AUV_{cf} - AUV_{2017} = \beta_{UneconCap} \times UneconCap_{cf} - \beta_{UneconCap} \times UneconCap_{2017}$$

which reduces to the expected linear slope definition:

$$\beta_{UneconCap} = (AUV_{cf} - AUV_{2017}) / (UneconCap_{cf} - UneconCap_{2017})$$

The Uneconomic Capacity in year t in the regression model is defined as:

$$UneconCap_t = GlobalCap_t - GlobalProd_{max}$$

where $GlobalCap_t$ is the Global Production Capacity in year t and $GlobalProd_{max}$ is the maximum level of Global Production during the years prior to the current year for which the regression analysis is performed.

The counterfactual Uneconomic Capacity is calculated for the most contemporaneous year which does not extend past the end of the period under examination, and is defined based on a counterfactual Global Capacity for the same year. The counterfactual Global Capacity is based on a specified Capacity Utilization Rate and the Global Production in the contemporaneous year:

$$GlobalCap_{cf} = GlobalProd_{contemp} \div CapUtilRate$$

$$UneconCap_{cf} = GlobalCap_{cf} - GlobalProd_{max}$$

In the instant review, the most contemporaneous year is 2017. From the data on the record and the results of the regression analysis,¹⁸⁸

$GlobalCap_{2017}$	2251.2
$GlobalProd_{2017}$	1690.5
$GlobalProd_{max}$	1669.5
$CapUtilRate$	0.80
$\beta_{UneconCap}$	-0.5883

Using the equations defined above:

$$GlobalCap_{cf} = 1690.5 \div 0.80 = 2113.1$$

$$UneconCap_{cf} = 2113.1 - 1669.5 = 443.6$$

$$UneconCap_{2017} = 2251.2 - 1669.5 = 581.7$$

$$change\ in\ AUV = \left(\frac{443.6}{581.7} \right)^{-0.5883} - 1 = 0.1729$$

Thus, for the final results, Commerce will adjust upward respondents' cost of hot-rolled steel inputs by a rate of 17.29 percent.

¹⁸⁸ See Joint Rebuttal Comments at Exhibit CAP-2: OECD Recent Development in Steelmaking Capacity 2018; and PMS Allegation at Exhibit 28.

Beta Coefficient from CWP from India AR 17-18

We concluded that it was unreasonable to apply the beta coefficient from *CWP from India AR 17-18* in this review. Presumably Dongkuk’s argument concerns the definition of the dependent variable in the regression model - whether to use import AUVs or domestic prices – since the regression model in the *CWP from India AR 17-18* was based on domestic prices¹⁸⁹ and not import AUVs as in the post-preliminary analysis for this review. However, the respondent provided no information to support its argument to change the dependent variable. Further, the respondent: (1) incorrectly claimed that the import penetration in Korea was nine percent; (2) failed to demonstrate that India and Korea have similar positive correlation between the import price and the domestic price; and (3) asserted the ratio of imports has never been significant in comparison to domestic production. The PMS Memorandum explained that the import penetration is a ratio between the volume of imports and consumption.¹⁹⁰ The record here contains no data on Korean consumption of HRC, so we cannot determine the import penetration rate with respect to HRC. However, Commerce determined that Korean import penetration of all steel products was 32.3 percent in 2017 and 25.7 percent in 2018.¹⁹¹ Moreover, in *CWP from India AR 17-18*, we noted that the import penetration rate of nine percent, relative to domestic demand, is not an insignificant factor.¹⁹² Therefore, for the reasons explained above, we continue in these final results to rely on ArcelorMittal’s regression analysis using import AUVs as the dependent variable.

Capacity Utilization Rate

We concluded in the post-preliminary determination that an 80 percent target capacity utilization rate is reasonable. Commerce recognizes that global capacity utilization rates have been no greater than 80 percent since 2007,¹⁹³ and that all the steel production and capacity data included in the model are from a period where the prevailing capacity utilization rate was substantially lower than the level assumed by the petitioners as being “healthy.” Commerce has in the past also endorsed an 80 percent capacity utilization rate as being sufficient for profitable operations of the steel industry and has used the 80 percent target in its Section 232 Investigations.¹⁹⁴

Petitioners advocate raising the capacity utilization rate to 85 percent. However, the documentation they submitted does not support their argument. For example, one of the studies submitted by petitioners from 2002 is outdated,¹⁹⁵ particularly given respondents’ submissions

¹⁸⁹ See *CWP from India AR 17-18* IDM at Comment 7.

¹⁹⁰ See PMS Memorandum at 11.

¹⁹¹ *Id.* at 12.

¹⁹² *Id.*; see also *CWP from India AR 17-18*.

¹⁹³ See PMS Allegation at Exhibit 15: OECD Steel Market Developments 2018 Q4 report, dated January 11, 2019.

¹⁹⁴ *Id.* at Exhibit 2: U.S. Department of Commerce, Bureau of Industry and Security Office of Technology Evaluation, “The Effect of Imports of Steel on the National Security - An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, As Amended,” dated January 11, 2018.

¹⁹⁵ See PMS Clarification at Attachment 81 at 10: The Boston Consulting Group, *Breaking the Stalemate*, “Calculated on the basis of worldwide production of crude steel, global capacity utilization fluctuated between 70 and 80 percent from 1990 through 2000. (See Exhibit 3.) Given that we consider ‘healthy’ capacity-utilization levels to be around 92 percent, effective worldwide overcapacity is about 20 to 25 percent of actual production,” dated July 2002.

which contain contemporaneous support for the 80 percent figure based on statements made by major U.S. steel industry representatives in 2019.¹⁹⁶ Another study provided by petitioners relies upon data and analysis that underestimate the magnitude of the excess capacity crisis.¹⁹⁷ In addition, petitioners contend that the target capacity utilization rate in the United States is necessarily lower than the global rate, as the U.S. industry runs primarily on electric arc furnaces (EAFs), which are more efficient and less capital-intensive than the BOF used in most of the rest of the world. However, the report provided by petitioners shows that several other countries predominantly use EAFs, including Turkey, Indonesia, and Mexico.¹⁹⁸ EAF production accounts for roughly 76 percent of overall steel production in each of these countries, while EAF accounts for only 60 percent of production in the United States.¹⁹⁹

Commerce's Global Steel Report does not confirm the petitioners' assertion that U.S. utilization trails the global utilization in 2016 and 2017. The cited report does not contain utilization rates for the U.S. steel industry for any year, instead, it provided utilization rates of the North America region which trails global utilization rates in 2016 and 2017.²⁰⁰ However, the North America region includes the United States and ten other countries. Further, the report shows that the North America region's utilization rates were higher than the global utilization rates in five years (*i.e.*, 2008, 2012, 2013, 2014 and 2015). Thus, we find that the record evidence does not support the petitioners' claim.

As a result, we have determined for these final results to continue to rely on a target capacity utilization rate of 80 percent. However, we agree with petitioners that the 80 percent target is meant to be an average rate sustained over a number of years. We do not believe that data indicating the target has been reached for a single year implies that more than a decade of price suppression in the steel industry has suddenly been ameliorated. The global crisis in steel excess capacity has been severe, and its effects cannot be undone by a one-off increase in capacity

¹⁹⁶ See Dongkuk PMS Rebuttal Brief at 4; *see also* Joint Rebuttal Comments at Regression Appendix II, Attachment T: World Trade Online News Article, dated February 25, 2019: "Statistics from the American Iron and Steel Institute show U.S. capacity utilization levels have risen from 76 percent last April to above 80 percent last week. The report called that level 'roughly' what was needed to make the industry viable over the long term," and "The Secretary has determined that the only means of removing the threat of impairment is to reduce imports to a level that should, in combination with good management, enable U.S. steel mills to operate at 80 percent or more of the rated production capacity".

¹⁹⁷ See PMS Allegation at Exhibit 3 at 3: McKinsey & Company, Metals and Mining Practice, dated January 2018: The current capacity shake-up in steel and how the industry is adapting, Exhibit 1: Global demand/capacity, Million metric tons, crude steel – excluding China IF capacity and production); and PMS Clarification at Attachment 78 at Exhibit 30 at 152: Center for European Policy Studies, "Assessment of Cumulative Cost Impact For The Steel Industry, Final Report," dated June 10, 2013: "Considering that a capacity utilization of about 85% is deemed close to full capacity utilization (Ecorys, 2008), in 2007 overcapacity was not an issue in the EU."

¹⁹⁸ See PMS Allegation at Exhibit 2: Federal Ministry for Economic Affairs and Energy, G20 Germany 2017, "Global Forum Steel Excess Capacity Report," dated November 30, 2017: Annex 1, Table 2 GFSEC figures for crude steelmaking capacities by production process in GFSEC member economies: 2016.

¹⁹⁹ *Id.*

²⁰⁰ See PMS Clarification at Attachment 69: U.S. Department of Commerce, International Trade Administration, Global Steel Trade Monitor, Global Steel Report, dated September 2018, at 7: "Global Capacity Utilization Rate," at 8 "Regional Capacity Utilization Rates;" and at 14 "Region definitions," "North America: Canada, Costa Rica, Cuba, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Panama, Trinidad and Tobago, United States."

utilization. Thus, we will continue in future proceedings to refine and adapt our methodology for quantifying the impact of a cost-based PMS.

Self-produced HRC

The PMS finding is based on distortions in the acquisition price of HRC in Korea. The petitioners correctly contend that the PMS affects the entire Korean market for HRC. However, we find their argument that self-produced HRC, which is not bought or sold in the market, is somehow subject to the same market forces as purchased HRC to be unavailing. The record shows that Hyundai's actual production operations for most of its CORE begins with producing slab, which is then converted to steel plate, hot-rolled steel, cold-rolled steel, and finally to CORE. We agree that the PMS allegation hinged on HRC pricing that is not relevant to Hyundai's reported cost of inputs, nearly all of which are made from iron ore, coal and scrap, sharing none of the market forces that distort the acquisition costs of HRC. While the record shows that Hyundai values the inventories at year-end, including inventories of these self-produced HRC intermediate goods at the lower of cost and net realizable value, this does not mean that the reported costs were based on these lower-of-cost-or-market (LCM) values. The LCM adjustment is to a contra inventory account and the reported costs are not affected by this adjustment.²⁰¹ Given that the PMS finding and PMS adjustment here are based on distortions in the acquisition price for HRC in Korea, the method by which Hyundai values the inventory of the self-produced intermediate products, including HRC, is irrelevant to our PMS finding.

The petitioners argue that the major input rule would apply in this case if the respondent had a different corporate structure. However, the major input rule clearly does not apply here. If the corporate structure were different these would not be self-produced HRC, and therefore arguments relating to how a PMS might affect this rule are moot.

Further, the petitioners' reliance on *CORE Korea AR 16-17* and *WLP Korea AR 15-16* is misplaced. The subsidy-based PMS adjustment used in those cases was derived from several subsidy programs (*e.g.*, loans, tax exemptions, provision of electricity for LTAR) that provided benefits to the production of HRC. For that reason, we applied the subsidy-based PMS adjustment to both purchased and self-produced HRC. As noted above the PMS adjustment used in the instant case is based on distortions in the acquisition price of HRC in Korea.

Regression Analysis

We continue to find that the regression analysis submitted by the petitioners is a reasonable method to quantify the relationship between global uneconomic capacity and the price of HRC inputs. We continue to find that the adjustment factor resulting from the regression analysis, with certain adjustments adopted by Commerce, appropriately quantifies the impact of the PMS

²⁰¹ See *OCTG from Korea AR 16-17* IDM at Comment 8 (“On the balance sheet, the adjustments are recorded to separate contra-inventory accounts which, as SeAH pointed out, do not impact the item-specific raw material and WIP values that are ultimately used to calculate product-specific costs.”).

concerning the distortion in cost of HRC that we find to have existed in Korea during the POR.²⁰²

Specifically, Commerce finds that use of the regression coefficient for uneconomic capacity as the basis for the PMS adjustment is directly related to the principal cause for a cost-based PMS in the Korean HRC market. The adjustment proposed by the petitioners is based on calculating a counterfactual HRC import AUV, which is dependent upon changes in uneconomic capacity as well as the other independent variables which are not directly related to the alleged cost-based PMS. Therefore, in order to isolate the factors contributing to the cost-based PMS in the Korean HRC market, and in order to capture the *ceteris paribus* effect (*i.e.*, holding all other factors constant) for global uneconomic capacity in the steel industry on HRC AUVs in Korea, Commerce has relied on the regression coefficient associated with uneconomic capacity to quantify the PMS adjustment to the respondents' reported HRC costs.

Although it would be preferable to use updated data for 2017, the only regression on the record that includes the updated data from 2017 is not usable because it also includes data from 2018. Since the POR ended on June 30, 2018, the 2018 data includes information that falls well beyond the POR and thus does not reflect the cost of goods that were sold during the POR. Therefore, based on the models available to us on the record, we have accepted the model using data up to and including 2017.

With respect to respondents' argument that the model should include a price for coking coal as an input, rather than aluminum, we note that the model the petitioners submitted does include prices for inputs (scrap and iron ore), and that aluminum is included in order to account for the effects of the costs of steel substitutes.²⁰³

Respondents argue that data from 2008 and 2009 should not be included in the analysis because they correspond to the global financial crisis. However, Commerce finds that the financial crisis of 2008-2009 is the main event of interest in the analysis, because the subsequent decline in global steel demand resulting from the crisis instigated the Chinese stimulus, and increased GOC investment and spending to boost the steel industry.²⁰⁴ Therefore, omitting 2008-2009 from the analysis fails to account for the volatile period and price fluctuations in the defining years of the global overcapacity crisis that still affect steel import prices today. Inclusion of these years is essential to fully capture the nature of the relationship.

Respondents argue that the data should include 2018, which overlaps with the second half of the POR. However, using data from all of 2018 would clearly reflect costs associated with production beyond the POR, and even much of the production in the first half of 2018 would likely relate to sales occurring outside the POR. Therefore, we agree with the petitioners that the use of data up to 2017 is appropriate.

²⁰² See Memorandum, "2017-2018 Antidumping Duty Administrative Review of Corrosion-Resistant Steel Products from the Republic of Korea, Post-Preliminary Calculation Memorandum for Dongkuk Steel Mill Co., Ltd. (Dongkuk)," dated January 27, 2020; and Memorandum, "Antidumping Duty Administrative Review of Corrosion-Resistant Steel Products from the Republic of Korea; 2017-2018, Post-Preliminary Margin Calculation for Hyundai Steel Company," dated January 28, 2020.

²⁰³ See PMS Memorandum at 17.

²⁰⁴ *Id.*

Concerning prices for iron ore, we note that neither the correction for the 2008 average iron ore price nor the correction for the price conversion factor from short tons to MT significantly changes the nature of the relationship between iron ore prices and import AUVs over the course of ten years.

We note that the record does not contain sufficient information justifying the use of the respondents' alternative regression models based on more detailed six-digit level HTS data. The import AUVs should reflect as closely as possible the market for the HRC input to produce CORE, the market for which Commerce has found that a PMS existed during the POR. While the range of products encompassed by the four-digit HTS subchapter may be overinclusive of the HRC used to produce CORE, the individual six-digit subheading product groups used by the respondents exclude many products that may be used to produce the CORE. If the six-digit HTSUS headings for all HRC potentially imported and used to produce CORE in Korea were reported by the respondents clearly on the record and then appropriately analyzed by the respondents, Commerce might have been able to consider and address the merits of the respondents' arguments. However, the record does not reflect such a comprehensive and complete reporting and analysis of imported HRC used in the production of CORE from Korea. Accordingly, the regression analysis where the dependent variable is the import AUV at the four-digit HTS level is the more appropriate model to quantify the relationship between uneconomic capacity and the prices of all of the HRC products which may be used to produce CORE.

Finally, as for energy costs, the respondents submitted an analysis that includes various combinations of coking coal, natural gas, and Brent crude oil. It is not clear, based on the record, which of these three energy costs is the most appropriate to consider when analyzing the costs of producing HRC. Further, we note that these analyses all include data from 2018, which, for the reasons described above, is not appropriate for this POR as it reflects costs incurred beyond the POR.

Therefore, we have determined that the regression analysis submitted by the petitioners is a reasonable method to quantify the relationship between global uneconomic capacity and the price of steel inputs, and, using the methodology described above, have used it to calculate an adjustment for the purchase price of HRC to reflect the distortions in the HRC market that we found to exist during the POR.

Comment 4: Dongkuk's Constructed Export Price (CEP) Offset

ArcelorMittal's Comments:

Commerce should deny a CEP Offset to Dongkuk.²⁰⁵

- Dongkuk's export indirect selling expense worksheet contradicts its claim that multiple selling functions performed in the home market are not performed for U.S. sales.
- Based on their frequency, the claimed intensities of certain sales activities are overstated. The record demonstrates that the actual selling functions performed in the two markets are equivalent.

²⁰⁵ See ArcelorMittal Petitioners Case Brief at 2-12.

- The record of this review with regard to selling functions is nearly identical to the record of the immediately preceding review, in which Commerce appropriately denied Dongkuk a CEP offset. Therefore, Commerce’s preliminary determination in this segment to grant a CEP offset is inconsistent with its past practice and is arbitrary.

Dongkuk’s Comments:

Commerce should continue to grant a CEP Offset.²⁰⁶

- As ArcelorMittal concedes, Dongkuk documented twenty-five selling functions in connection with its home market sales that are not performed in connection with its U.S. sales. Those functions alone justify the finding that the home-market LOT was “at a more advanced stage of distribution” than the CEP LOT.
- ArcelorMittal ignored the stark differences in intensity and frequency of the reported selling functions. ArcelorMittal’s contention that Dongkuk overstated the intensity of certain home market selling functions is based on its misunderstanding of Commerce’s instructions for quantifying intensity.
- ArcelorMittal has ignored the meaningful differences between the records of this review and the prior review. ArcelorMittal failed to acknowledge that Commerce issued a new seven-part questionnaire and presented a new format for quantifying selling functions in this review. In response, Dongkuk provided a seventy-page response including documentation supporting thirty different selling function activities. Thus, the factual record of this review is in fact meaningfully different from that of the prior review.

Commerce’s Position:

As an initial matter, we note that Commerce is not necessarily bound by its determinations in a prior segment of a proceeding because each segment has its own unique factual record.²⁰⁷ Commerce must examine each record on its own merits. The decision to grant a CEP offset is a fact-specific inquiry that must be made based on the record.²⁰⁸ In order to grant a CEP offset adjustment, Commerce must first determine that the NV LOT is more remote from the factory than the CEP LOT by examining whether sales are made at different marketing stages, as set forth in section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). Once this determination is made, Commerce examines whether there is available data to permit a LOT adjustment, in accordance with section 773(a)(7)(B) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of CEP but the data available do not provide a basis to determine whether the difference in LOTs is demonstrated to affect price comparability (*i.e.*, no LOT adjustment is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.²⁰⁹

²⁰⁶ See Dongkuk Rebuttal Brief at 2-10.

²⁰⁷ See, e.g., *Pakfood Public Co. v. United States*, 34 CIT 1122, 1138 (2010); *Alloy Piping Prod., Inc. v. United States*, 33 CIT 349, 358-59 (2009); and *Timken U.S. Corp. v. United States*, 434 F.3d 1345 (Fed. Cir. 2006).

²⁰⁸ See *CORE from Korea AR 16-17 IDM* at Comment 6.

²⁰⁹ *Id.*

In the prior review, we found that a CEP offset was not warranted, because: “Dongkuk’s claim that it has shown that it performs substantially more selling functions at a higher intensity for its home market sales than it does for its CEP sales is not supported by the record.”²¹⁰ In this review, as discussed below, we found the record supports a finding that Dongkuk provides substantially more selling functions at a higher intensity for its home market sales..

In the instant review, Dongkuk responded to a detailed supplemental LOT questionnaire that was not a part of the record in the prior review. Unlike the LOT questions in the prior review that had no sub-questions, the new LOT questionnaire requests that respondents provide: (1) a listing of selling activities in five categories; (2) documents demonstrating each listed activity is performed; (3) an indication of how often each activity is performed; (4) a quantitative analysis showing how the expenses assigned to POR sales made at different claimed LOT impact price comparability functions; (5) a demonstration of how indirect selling expenses vary by the different LOT claimed; (6) an explanation of how the quantitative analysis provided support the claimed levels of intensity for the reported selling activities; (7) annual historical expense data reflecting average expenses incurred during a three-year period prior to the beginning of the POR for normal expenses for a selling activity that was not performed during the POR. Dongkuk fully responded to the new LOT questionnaire.²¹¹ Because Dongkuk provided a full response to the new LOT questionnaire, the petitioners’ claim that the record of this review is largely identical to that of the prior review is incorrect.

Dongkuk’s export indirect selling expense worksheet allocates sales overhead expenses based on a rate derived from traceable expenses (*e.g.*, wages) rather than based on activities performed. Because the indirect selling expenses are not allocated based on the activities performed, ArcelorMittal’s claim that the export indirect selling expense worksheet contradicts certain selling functions listed in the Selling Functions Chart for certain activities is incorrect.²¹²

The intensity represents selling expenses associated with a sale, whereas the frequency represents how often an activity is performed. The selling functions chart in the new LOT questionnaire instructs respondents to use a scale of zero to ten in which five represents a sale with average associated selling expenses, and in relation to this baseline of five to report level of intensity. Further, the second sub-question of the new LOT question requests how often each activity is performed during the POR. Because the level of intensity does not depend on the frequency, ArcelorMittal’s claim that the intensities of certain activities are overstated is incorrect.²¹³

The selling functions chart in Dongkuk’s supplemental response lists thirty-three activities,²¹⁴ of which: (1) thirty activities are supported by documents submitted on the record,²¹⁵ and the remaining three activities are supported by the questionnaire responses (*i.e.*, sample, order

²¹⁰ *Id.*

²¹¹ See Dongkuk’s June 13, 2019 Supplemental Response Section A Question 26 (Dongkuk ASQR Q26).

²¹² See Dongkuk Final Calculation Memorandum.

²¹³ *Id.*

²¹⁴ See Dongkuk ASQR Q26 at Appendix SA-80.

²¹⁵ *Id.* at Appendix SA-81.

processing and packing); (2) seventy percent are performed exclusively for home market sales;²¹⁶ and; (3) the remaining thirty percent are performed at a higher frequency and intensity for home market sales than for CEP sales.

Further, Dongkuk's traceable expenses (*e.g.*, wages) for home market sales are seventy times of that for U.S. sales.²¹⁷ A ratio derived from the traceable expenses is used to allocate indirect selling expenses to home market sales and CEP sales. As result, the indirect selling expense ratio for home market sales is more than two times of that for U.S. sales. Thus, we find that the quantitative analysis corroborated the reported level of intensity.

Therefore, the totality of the record is sufficient to find Dongkuk's home market level of trade constitutes a more advanced stage of distribution than the CEP level of trade. Therefore, for the final results, we continue to find that a CEP offset to NV is warranted.

Comment 5: Dongkuk's Inland Freight from Plant to Port of Exportation

ArcelorMittal's Comment:

- Commerce's arm's-length analysis is inconsistent with its margin program because the expense paid by the unaffiliated vessel carrier utilized in the arm's-length test was not included in the margin program. For the final results, Commerce should include the expense paid by the unaffiliated vessel carrier in the margin program.²¹⁸

Dongkuk's Comment:

- Dongkuk did not incur the expense paid by the vessel carrier. If Commerce nevertheless includes the expense paid by the vessel carrier in the final margin program, it would be necessary for the Commerce to include the same amount as an offset to that expense.²¹⁹

Commerce's Position:

We have revised the arm's-length test for the inland freight from plant to port of export (DINLFTPU/Ulsan) for these final results. As a result of these changes, we find that this freight expense passes the arm's-length test, and thus made no change to the margin calculation with respect to these expenses.²²⁰

The record shows that Dongkuk contracted with its affiliated provider Intergis for shipping the subject merchandise from its plant to the nearest port of exportation (*i.e.*, Busan port). Occasionally, the vessel carrier wanted to pick up the subject merchandise at a remote location

²¹⁶ *Id.* at Appendix SA-80 (*i.e.*, 24 of 34 activities: 1-5, 12-15, 17-29, and 31-32).

²¹⁷ *Id.* at 4 and Appendix SA-82.

²¹⁸ *See* ArcelorMittal Case Brief.

²¹⁹ *See* Dongkuk Rebuttal Brief.

²²⁰ *See* Dongkuk Final Calculation Memorandum.

(i.e., Ulsan port), and paid additional fees to Intergis. Intergis paid unaffiliated truck subcontractors to ship the subject merchandise from Dongkuk's plant to Ulsan port.²²¹

Thus, the arm's-length test for DINLFTPU/Ulsan used in the *Preliminary Results* was not only inconsistent with the preliminary margin calculation, but also the facts on the record. In that test, the acquisition cost was Intergis' payment to the unaffiliated truck subcontractors, and the transfer price was the sum of Dongkuk's and the unaffiliated vessel carrier's payments. That test would be correct if the unaffiliated vessel carrier made payment to Dongkuk.

However, the unaffiliated vessel carrier made the payment to Intergis,²²² and that payment should be subtracted from Intergis' payment to the unaffiliated truck subcontractors to derive the acquisition cost for testing the transfer price from Intergis to Dongkuk. Accordingly, we revised the arm's-length test and found that the transfer price is still higher than the full acquisition cost (i.e., acquisition cost plus SG&A).²²³ As a result, we found that DINLFTPU/Ulsan passed the arm's-length test, and thus made no change to the preliminary margin calculation.

VIII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

Agree

Disagree

3/10/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

²²¹ See Dongkuk's March 19, 2019 Section C Response (Dongkuk CQR) at C-31 and Appendix C-11; and Dongkuk's July 29, 2019 Supplemental Section B-D Response (Dongkuk BCDSQR) at 9 and Appendix SC-4.

²²² See Dongkuk CQR at C-31 and Appendix C-11; and Dongkuk BCDSQR at 9 and Appendix SC-4.

²²³ See Dongkuk Final Calculation Memorandum.

Attachment

SCOPE OF THE ORDER

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

- (1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and
- (2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

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

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

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

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels and high strength low alloy (HSLA) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (AHSS) and Ultra High Strength Steels (UHSS), both of which are considered high tensile strength and high elongation steels.

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

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

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (terne plate), or both chromium and chromium oxides (tin free steel), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the order may also enter under the following HTSUS item

numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

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