

DATE: June 13, 2011

MEMORANDUM TO: Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the 2008-2009
Administrative Review of Circular Welded Non-Alloy Steel Pipe
from the Republic of Korea

SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the 2008-2009 administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea ("Korea"). As a result of our analysis, we have made certain changes in the margin calculation. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues for which we received comments by parties:

GENERAL ISSUES

- Comment 1** Zeroing-Out Negative Dumping Margins
- Comment 2** Application of the Cost Recovery Test
- Comment 3** Time for Parties to Comment on Methodology
- Comment 4** Grade Classification
- Comment 5** Universe of Home Market and U.S. Sales for Margin Analysis

SEAH ISSUES

- Comment 6** Double Counting the Major Input Adjustment
- Comment 7** Letters of Credit Charges

NEXTEEL ISSUES

- Comment 8** Programming Revisions

BACKGROUND

Following publication of Circular Welded Non-Alloy Steel Pipe From the Republic of Korea:

Preliminary Results of the Antidumping Duty Administrative Review, 75 FR 77838 (December 14, 2010) (“Preliminary Results”) in the Federal Register, we invited parties to comment on the Preliminary Results. On January 10, 2011, we received a request from United States Steel Corporation (“U.S. Steel”) to extend the deadline for submitting case briefs. We agreed to extend the deadline to January 31, 2011. We received case briefs from SeAH Steel Corporation (“SeAH”); Husteel Co., Ltd. (“Husteel”); Nexteel Co., Ltd. (“Nexteel”); and U.S. Steel. Nexteel’s initial case brief contained new factual information, and was thus not accepted. Nexteel removed the new factual information and resubmitted its case brief on February 16, 2011. We received rebuttal briefs from Nexteel; Allied Tube and Conduit and TMK IPSCO (“Allied Tube Group”); SeAH; and U.S. Steel.

On March 1, 2011, the Department of Commerce (the “Department”) sought further information from all interested parties regarding grade classification, particularly with respect to ASTM A-53 Grade A and ASTM A-53 Grade B pipe. We received information from SeAH; Nexteel; Nexteel’s U.S. customer; U.S. Steel; Allied Tube Group; and Hyundai HYSCO. The Department allowed for further briefing regarding this grade issue, and it received submissions from SeAH; Nexteel; U.S. Steel; Allied Tube Group; and Hyundai HYSCO. None of the parties requested a hearing.

On March 22, 2011, the Department published in the Federal Register an extension of the time limit for the completion of the final results of this review until no later than June 13, 2011, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (“the Act”), and 19 CFR 351.213(h)(2). See Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Extension of the Final Results of the Antidumping Duty Administrative Review, 76 FR 15941 (March 22, 2011).

CHANGES SINCE THE PRELIMINARY RESULTS

Based on our analysis of the comments received, we made the following changes in calculating dumping margins: (1) eliminated the inadvertent double counting of the major input adjustment for SeAH; 2) changed the universe of sales to be used for margin calculation purposes for SeAH and Husteel to all U.S. sales entered for consumption during the period of review; 3) adjusted the costs for ASTM A-53 Grade B control numbers (“CONNUMs”); specifically, for ASTM A-53 Grade B CONNUMs for which there is an otherwise identical ASTM A-53 Grade A CONNUM, we have weight averaged together the costs of the ASTM A-53 Grade A and Grade B CONNUMs (a) for SeAH, all costs by quarter, using production quantity for weighting purposes, and (b) for Nexteel, the variable costs (“VCOM”) and total costs (“TCOM”) (where available) using sales quantity for weighting; however, for ASTM A-53 Grade B CONNUMs for which there is no identical ASTM A-53 Grade A CONNUM, we continue to use the cost as reported for ASTM A-53 Grade B, including where other steel grades were reported in the same CONNUM as ASTM A-53 Grade B; 4) for Nexteel, changed the CONNUM of ASTM A-53 Grade B sales to reflect the change in classification of ASTM A-53 Grade B from “pressure” to “ordinary” for product comparison purposes. For further details, see “Final Results Calculation Memorandum for SeAH Steel Corporation;” “Final Results Calculation Memorandum for Husteel Co. Ltd.,” and “Final Results Calculation Memorandum for Nexteel Co. Ltd.,” all dated June 13, 2011.

DISCUSSION OF THE ISSUES

GENERAL ISSUES

Comment 1 Zeroing-Out Negative Dumping Margins

SeAH and Husteel argue that in the Preliminary Results, the Department unlawfully zeroed-out negative dumping margins when calculating SeAH's and Husteel's weighted-average margins. SeAH and Husteel contend that the Department's interpretation of section 771(35) of the Act as permitting zeroing in administrative reviews but not in investigations cannot be sustained as reasonable under Chevron,¹ and continued application of zeroing is inconsistent with the Department's new interpretation of section 771(35) of the Act that was made in Final Modification of Zeroing Methodology.² SeAH and Husteel assert that there is nothing in the statutory language of section 771(35) of the Act indicating that a different meaning was intended, and that the Court of Appeals for the Federal Circuit ("CAFC") previously rejected the claim that section 771(35) of the Act has a different meaning in investigations and reviews.³

SeAH and Husteel assert that the U.S. Supreme Court's decision in Clark is on point.⁴ There the court found that giving the same words a different meaning would be to invent a statute rather than interpret one, and SeAH and Husteel assert that the legal principle set out in Clark applies with even greater force here because of the CAFC's decision in Corus I.⁵ Specifically, SeAH and Husteel contend that in Corus I, the plaintiffs argued that, notwithstanding the CAFC's prior decision upholding the Department's discretion to zero-out negative dumping margins in administrative reviews in Timken,⁶ the Department's use of zeroing in antidumping investigations was not permissible.⁷ SeAH and Husteel note that the CAFC held that there was no statutory basis for distinguishing between investigations and reviews with respect to zeroing.⁸

U.S. Steel and Allied Tube Group argue that the Department should continue to zero in calculating SeAH's and Husteel's dumping margins in the final results. U.S. Steel and Allied Tube Group argue that zeroing is required by sections 751(a)(2) and 777A(d) of Act. U.S. Steel assert that by not zeroing, section 777A(d) of the Act will be rendered meaningless. U.S. Steel maintains that Congress intended for the Department to use zeroing. U.S. Steel argues that even if zeroing is not required by the statute, it is a reasonable interpretation of it as the courts have found.⁹ Allied Tube Group notes that, as found in Corus I, the dumping margin calculation differs between investigations and reviews because investigations use average U.S. prices while reviews use transaction-specific U.S. prices.¹⁰ Allied Tube Group notes that the difference is

¹ See Chevron v. Natural Res. Def. Council, 467 U.S. 837 (1984) ("Chevron").

² See Antidumping Proceedings: Calculation of the Weighted-Averaged Dumping Margin During an Antidumping Investigation: Final Modification, 71 FR 77722 (December 27, 2006) ("Final Modification of Zeroing Methodology").

³ See Corus Staal BV v. U.S. Department of Commerce, 395 F.3d 1343, 1347 (Fed. Cir. 2005) ("Corus I").

⁴ See Clark v. Martinez, 543 U.S. 371 (2005) ("Clark").

⁵ See Corus I, 395 F.3d at 1347.

⁶ See Timken Co. v. United States, 354 F.3d at 1334, 1341-42 (Fed. Circ. 2004) ("Timken").

⁷ See Corus I, 395 F.3d at 1347.

⁸ Id.

⁹ See e.g., Timken, 354 F.3d at 1342-45, JTEKT Corp. v. United States, Slip Op. 09-147 (CIT Dec. 18, 2009) at 3-4

¹⁰ See Corus I, 395 F.3d at 1347.

provided in sections 751(a)(2)(A) and (C) of the Act and reiterated at sections 777A(d)(1) and (2) of the Act. U.S. Steel reasons that Final Modification of Zeroing Methodology has no bearing on the Department's use of zeroing in administrative reviews, as upheld by the CAFC in Corus II.¹¹

Allied Tube Group argues that the CAFC rejected zeroing in reviews in Timken, which stated that it was not the intention of Congress to require the U.S. government to owe U.S. importers an amount for transactions where the U.S. import transaction price was above normal value ("NV"). Allied Tube Group contends that the practice advocated by SeAH would add a new condition for the imposition of antidumping duties that is not present under the U.S. law, namely, in order to impose duties, the weighted-average price of an aggregate of U.S. import transactions must be less than the NV.

Department's Position

We have not changed the methodology for calculating the weighted-average dumping margin, as suggested by SeAH and Husteel, in these final results. Section 771(35)(A) of the Act defines "dumping margin" as the amount by which the NV exceeds the export price ("EP") or constructed export price ("CEP") of the subject merchandise. Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when NV is greater than EP or CEP. As no dumping margins exist with respect to sales where NV is equal to or less than EP or CEP, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The CAFC has held that this is a reasonable interpretation of section 771(35) of the Act.¹²

Section 771(35)(B) of the Act defines weighted-average dumping margin as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate EPs and CEPs of such exporter or producer." The Department applies these sections by aggregating all individual dumping margins, each of which is determined by the amount by which NV exceeds EP or CEP, and dividing this amount by the value of all sales. The use of the term aggregate dumping margins in section 771(35)(B) of the Act is consistent with the Department's interpretation of the singular "dumping margin" in section 771(35)(A) of the Act as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which EP or CEP exceeds the NV permitted to offset or cancel out the dumping margins found on other sales.

This does not mean that non-dumped transactions are disregarded in calculating the weighted-

¹¹ See e.g., Corus Staal BV v. United States, 502 F.3d 1370, 1374 (Fed. Cir. 2007) ("Corus II"); See also SKF USA, Inc. v. United States, 537 F.3d 1373, 1381-82 (Fed. Cir. 2008); Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part, 72 FR 58053 (Oct. 12, 2007) and accompanying Issues and Decision Memorandum ("IDM") at Comment 1, aff'd, SKF USA Inc. v. United States, 659 F. Supp. 2d 1338 (CIT Oct. 27, 2009), aff'd, SKF USA Inc. v. United States, 2011 U.S. App. Lexis 324 (Fed. Cir. 2011); Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of the Antidumping Duty Administrative Review, 72 FR 28676 (May 22, 2007) and accompanying IDM at Comment 4.

¹² See Timken, 354 F.3d at 1342; Corus I, 395 F.3d at 1347-1349.

average dumping margin. It is important to note that the weighted-average margin will reflect any non-dumped transactions examined during the period of review (“POR”); the value of such sales is included in the denominator of the weighted-average dumping margin, while no dumping amount for non-dumped transactions is included in the numerator. Thus, a greater amount of non-dumped transactions results in a lower weighted-average margin.

The CAFC explained in Timken that denial of offsets is a “reasonable statutory interpretation given that it legitimately combats the problem of masked dumping, wherein certain profitable sales serve to mask sales at less than fair value.”¹³ As reflected in that opinion, the issue of so-called masked dumping was part of the policy reason for interpreting the statute in the manner interpreted by the Department. No U.S. court has required the Department to demonstrate “masked dumping” before it is entitled to invoke this interpretation of the statute and deny offsets to dumped sales.¹⁴

We disagree with SeAH and Husteel that the Department’s interpretation of section 771(35) of the Act, with respect to zeroing, is inconsistent. In Chevron, the U.S. Supreme Court explained that, when the language and congressional intent behind a statutory provision is ambiguous, an administrative agency has discretion to reasonably interpret that provision, and that different interpretations of the same provision in different contexts is permissible.¹⁵

The CAFC has found the language and congressional intent behind section 771(35) of the Act to be ambiguous.¹⁶ Furthermore, antidumping investigations and administrative reviews are different proceedings with different purposes. Specifically, section 777A(d)(1) of the Act specifies particular types of comparisons that may be used in investigations to calculate dumping margins and the conditions under which those types of comparisons may be used, while for administrative reviews these comparisons are reflected in section 777A(d)(2) of the Act. The Department’s regulations further clarify the types of comparisons that will be used in each type of proceeding.¹⁷ In antidumping investigations, the Department generally uses average-to-average comparisons, whereas in administrative reviews the Department generally uses average-to-transaction comparisons.¹⁸ The purpose of the dumping margin calculation also varies significantly between antidumping investigations and reviews. In antidumping investigations, the primary function of the dumping margin is to determine whether an antidumping duty order will be imposed on the subject imports.¹⁹ In administrative reviews, in contrast, the dumping margin is the basis for the assessment of antidumping duties on entries of merchandise subject to the antidumping duty order.²⁰ Because of these distinctions, the Department’s limiting of the Final Modification of Zeroing Methodology to antidumping investigations involving average-to-average comparisons does not render its interpretation of section 771(35) of the Act in administrative reviews inconsistent. Therefore, because section 771(35) of the Act is

¹³ See Timken, 1354 F.3d at 1343.

¹⁴ See, e.g., Timken at 1343; Corus I, 395 F.3d at 1343; Corus II, 502 F.3d at 1375; and NSK Ltd. v. United States, 510 F.3d 1375 (Fed. Cir. 2007).

¹⁵ See Chevron, 467 U.S. at 864.

¹⁶ See Timken, 354 F.3d at 1341-2.

¹⁷ See 19 CFR 351.414.

¹⁸ See 19 CFR 351.414(c).

¹⁹ See sections 735(a) and (c), and 736(a) of the Act.

²⁰ See section 751(a) of the Act.

ambiguous, pursuant to Chevron, the Department may interpret that provision differently in the context of antidumping investigations involving average-to-average comparisons than in the context of administrative reviews.

Finally, SeAH and Husteel's reliance on Corus I is misplaced. The CAFC in Corus I did not hold, as SeAH and Husteel allege, that section 771(35) of the Act could not be interpreted differently in antidumping investigations and administrative reviews. Rather, after acknowledging that antidumping investigations and administrative reviews were different proceedings, the CAFC held that the Department's zeroing methodology was equally permissible in either context.²¹ Moreover, the CAFC has affirmed the Department's denial of offsets in the context of administrative reviews.²² Specifically, the CAFC found that the Final Modification of Zeroing Methodology had no effect on the Department's ability to deny offsets in administrative reviews and that, thus, the judicial precedent upholding the Department's zeroing methodology in administrative reviews remains binding.²³ Following that precedent, the CIT rejected in Union Steel v. United States, Union Steel's identical interpretation of Corus I in the context of the thirteenth administrative review of that case.²⁴

Comment 2 Application of the Cost Recovery Test

Although SeAH and Husteel support the Department's use of quarterly costs, they argue that the Department did not apply the requisite cost-recovery test and, as a result, excluded sales regardless of whether such sales were above the POR weighted-average cost of production ("COP"). SeAH and Husteel state that, pursuant to sections 773(b)(1)(A) and (B) of the Act, the Department may disregard sales which "have been made within an extended period of time in substantial quantities" which "were not at prices which permit recovery of all costs within a reasonable period of time." SeAH and Husteel also argue that section 773(b)(2)(D) of the Act mandates that prices which are above the POR weighted-average COP "shall be considered to provide for recovery of costs within a reasonable period of time" even if priced below cost at the time of sale. Because Congress intended the cost-recovery test to be based on POR weighted-average costs exclusively, SeAH and Husteel maintain that the Department does not have the authority to rely on other time periods.²⁵

Citing Chevron and Allied Pacific,²⁶ SeAH and Husteel argue that the Department must follow the plain language of the Act and apply the cost-recovery test. Additionally, citing Acciai,²⁷ SeAH and Husteel argue that the CIT has recognized that the Department must give effect to the unambiguous congressional intent that section 773(b)(2)(D) of the Act specifies when particular prices provide for cost recovery within a reasonable period of time. Moreover, citing SeAH

²¹ See Corus I, 395 F.3d at 1347.

²² See Corus II, 502 F.3d at 1370.

²³ Id.

²⁴ See Union Steel v. United States, 645 F. Supp. 2d 1298, 1309 (CIT 2009) ("Union Steel").

²⁵ See Statement of Administrative Action accompanying the URAA, H.R. Doc. 103-316, Vol. 1 (1994) ("SAA") at 832.

²⁶ See Chevron, 467 U.S. at 843; See also Allied Pacific Food (Dalian) Co. Ltd. v. United States, 587 F. Supp. 2d 1330, 1354-1361 (CIT 2008) ("Allied Pacific").

²⁷ See Acciai Speciali Terni S.P.A. v. United States, 142 F. Supp. 2d 969, 997 (CIT 2001) ("Acciai").

Steel,²⁸ SeAH and Husteel assert that the CIT has stated that, because section 773(b)(2)(D) of the Act requires that prices above the POR weighted-average COP be considered to provide for the recovery of costs within a reasonable period of time, the Department may not compare prices to a weighted-average per-unit COP for a different time period. Accordingly, SeAH and Husteel conclude that, for these final results, the Department should apply the cost-recovery test to sales which were excluded as below cost and, if such sales are above the POR weighted-average per-unit COP, include them in the dumping margin calculation.

U.S. Steel argues that, because the Department's methodology complies with statutory requirements, the Department should continue to apply the methodology for the final results. U.S. Steel explains that the Department combined the annual weighted-average coil costs which had been adjusted to reflect significantly changing coil costs with the annual weighted-average costs for all other cost elements to derive a CONNUM-specific COP for use in the cost-recovery test. Citing the Final Results of Redetermination Pursuant to Court Remand,²⁹ U.S. Steel argues that the use of an adjusted POR weighted-average per-unit COP in the cost-recovery test avoids the distortive effects that the significant change in raw material costs would otherwise have on the dumping margin calculations. U.S. Steel argues that the Department's methodology not only complies with all statutory requirements but, citing Lasko Metals,³⁰ also fulfills the Department's duties to use the best information available and determine margins as accurately as possible.

U.S. Steel argues that SeAH and Husteel are wrong to argue that "sales that were found to be below the quarterly average COP were excluded as below cost regardless of whether those excluded sales were above the weighted average per-unit COP for the period of review." Indeed, citing CORE 15,³¹ U.S. Steel states that the Department has explained that the purpose of comparing sales prices to an adjusted POR weighted-average COP rather than the quarterly average COP is that the "methodology addresses the statute's requirement of weighted-average costs for the period (i.e., recovery of cost test) while preserving the indexed differences between quarters resulting from the significant price level changes."

U.S. Steel also argues that, because the Department has considered all of SeAH's and Husteel's sales to provide for the recovery of costs within a reasonable period of time if they were priced above the adjusted POR weighted average COP, the Department's methodology is consistent with Acciai. U.S. Steel also argues that SeAH and Husteel's reliance on SeAH Steel is misplaced. Specifically, citing SeAH Steel,³² U.S. Steel explains that the CIT, rather than rule that the Department's cost-recovery methodology was inconsistent with statutory requirements, remanded the issue to the Department for an explanation of how the methodology comported with statutory requirements.

²⁸ See SeAH Steel Corp. v. United States, 704 F. Supp. 2d 1353, n. 18 (CIT 2010) ("SeAH Steel").

²⁹ See Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States, Slip Op. 09-55 (CIT 2009) at 19-20 ("Final Results of Redetermination Pursuant to Court Remand")

³⁰ See Lasko Metals Prods. v. United States, 43 F.3d 1442, 1443 (Fed. Cir. 1999) ("Lasko Metals").

³¹ Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part, 75 FR 10207 (March 5, 2010) ("CORE 15") and accompanying IDM at Comment 3.

³² See SeAH Steel, 704 F. Supp. 2d at 1369.

Department's Position

The Department applied a lawful cost-recovery test in the Preliminary Results. As explained in the Preliminary Results, the Department determined that it was appropriate to use quarterly costs to calculate SeAH's and Husteel's antidumping margins.³³ The Department also explained that, pursuant to sections 773(b)(1), 773(b)(2)(B), 773(b)(2)(C), and 773(b)(2)(D) of the Act, the Department disregarded below-cost sales which were made within an extended period of time in "substantial quantities" at prices which would not permit the recovery of all costs within a reasonable period of time.³⁴ Additionally, the Department explained that, consistent with the requirements of section 773(b)(2)(D) of the Act, when determining whether sales were made at prices which would permit the recovery of all costs within a reasonable period of time, the Department restated quarterly costs on a year-end basis, calculated an annual weighted-average cost for the POR and then restated it to each respective quarter.³⁵

The "below cost" and "cost recovery" tests used in the Department's calculations stem from section 773(b)(1) of the Act, which authorizes the Department to disregard, for the purposes of determining NV, "sales made at less than cost of production" that "(A) have been made within an extended period of time in substantial quantities; and (B) were not at prices which permit recovery of all costs within a reasonable period of time." The Department normally calculates the COP using a single weighted-average cost for the entire POR.³⁶ Accordingly, consistent with section 773(b)(1) of the Act, the Department usually compares a respondent's sales prices against a single weighted-average COP for the POR to determine whether sales were made at less than the COP and whether the sales prices permit recovery of all costs within a reasonable period of time. Because the use of a single POR average properly captures the cost of production, the Department departs from its normal methodology only in certain situations where, as here, unadjusted cost and price averages calculated over the entire period do not permit proper comparison.

Cost changes for both SeAH and Husteel were significant throughout the POR (i.e., SeAH's and Husteel's changes in costs during the POR were more than the threshold set by the Department) and sales during the shorter cost averaging period were reasonably linked with the COM during the same averaging period. Indeed, both SeAH and Husteel support the use of quarterly costs in this review.³⁷ The Department has explained previously that, during a period of significant cost change, as was the case with both SeAH and Husteel in this review, a single annual average cost does not reasonably reflect costs associated with sales of the merchandise under review and leads to skewed results.³⁸ Accordingly, consistent with the Department's practice, to avoid inappropriate and skewed results, the Department deviated from its normal methodology of using a single unadjusted weighted-average cost period and compared SeAH's and Husteel's home-market sales prices to indexed POR weighted-average per-unit COPs.³⁹ Importantly, because the Department compared sales prices to indexed weighted-average per-unit COPs for the POR

³³ See Preliminary Results, 75 FR at 77844.

³⁴ Id. at 77845.

³⁵ Id.

³⁶ See Thai Pineapple Canning Indus. Corp. v. United States, 273 F.3d 1077, 1084 (Fed. Cir. 2001).

³⁷ See SeAH's January 31, 2011, case brief at 14 and Husteel's January 31, 2011, case brief at 3.

³⁸ See, e.g., CORE 15 and accompanying IDM at Comment 3.

³⁹ Id.

(stated in terms of each quarter's materials price level), SeAH and Husteel are mistaken in their contention that "sales that were found to be below the quarterly average COP were excluded as below cost regardless of whether those excluded sales were above the {unindexed} weighted average per unit cost of production for the period of review."

We disagree with SeAH and Husteel that for purposes of the cost-recovery test, the Department should compare home market prices to the same single period-wide average COP the Department determined was distortive for purposes of the sales below cost test. As we have discussed above, due to the significant change in COM throughout the POR, the use of an annual average cost becomes meaningless when used to test sales prices throughout the year. In the alternative, as detailed below, the Department used an annual average cost calculation approach that incorporates an indexing method that neutralizes the distortive effects that the significant change in cost has on the calculations.

Although we agree that Congress intended that the Department should normally use the single period average cost for the period of investigation or POR, we disagree that Congress mandated the use of a single unadjusted period of review weighted-average cost when it leads to distortions.⁴⁰

In light of the statutory requirement that costs must reasonably reflect the costs associated with the production and sale of the merchandise, Congress provided the Department with discretion to adjust a respondent's costs, as appropriate, in response to significant variations in unit costs.⁴¹ For example, the SAA gives an illustration of when unit costs may be significantly changed during the period when a major maintenance is performed and depressed in other years. While the list of illustrative examples in the SAA is not exhaustive, they illustrate that Congress intended that the Department should have discretion to adjust annual weighted-average costs, as appropriate, to address significant variations in per unit costs.

In this case, the Department reasonably exercised this discretion to address significant variations in the cost of a major input that dramatically changed the per-unit cost of manufacturing during the period of review. The magnitude of cost changes from quarter to quarter during the POR was so significant that the Department deviated from its normal methodology because it would have resulted in a cost that does not reasonably reflect the costs associated with the production and sales of the merchandise. If we were to adjust for the distortion in performing the sales below cost test, but fail to adjust for the distortion in performing the recovery of costs test, it would lead to similarly distorted results.

In calculating costs for purposes of section 773(b)(1) of the Act, the Department is required use the costs that reasonably reflect the costs associated with the production and sale of the merchandise. Relying upon an unadjusted single annual average cost during a period of significant cost change does not meet this requirement. Consequently, the Department adopted an alternative cost calculation approach. As requested by the Department, SeAH and Husteel

⁴⁰ See section 773(f)(1)(A) of the Act (explaining that the costs must reasonably reflect the costs associated with the production and sale of the merchandise); see also SAA at 832 (stating that the determination of cost recovery is based on an analysis of actual weighted average prices and costs during the POR or period of investigation).

⁴¹ See SAA at 832.

reported quarterly coil costs, the primary driver of the significant changes in cost of manufacturing (“COM”) through the POR, and annual weighted average costs for all other cost elements. In the margin calculation program used for the preliminary analysis, the Department indexed the quarterly coil costs to a common period cost level, thereby neutralizing the effect of the significant cost changes for the input between quarters. Then, consistent with the antidumping statute and our normal practice in high inflation cases, the Department calculated a weighted-average per-unit cost for the POR.⁴² Finally, the weighted average per-unit cost for the POR for the coil input was indexed back to the appropriate quarter to keep the weighted-average per-unit cost consistent with the main input’s significantly changing price levels occurring between quarters. This methodology addresses the statute’s requirement of weighted-average costs for the period (*i.e.*, recovery of cost test) while preserving the indexed differences between quarters resulting from the significant price level changes.

Under the Department’s indexing methodology, the CONNUM-specific costs reflect the POR weighted average of other materials, conversion costs, and average usage rates for the significantly changing input. The only cost component adjusted to reflect price level changes throughout the year is the price of the input experiencing significant cost change. Thus, the Department’s methodology relies upon the SeAH and Husteel’s actual weighted-average costs for the entire POR, while also neutralizing the distortion caused by the significant cost changes for the input at issue.

The rationale for the Department’s methodology is consistent with the intent of the statute. If the Department were to use an unadjusted weighted-average per unit cost for the POR for purposes of the cost recovery test, sales prices which were determined to be below cost may be erroneously considered to have recovered costs based simply on the law of averages and timing of the sale. It is undisputed that the cost of the primary input, steel coils, significantly changed within the POR. In addition, a reasonable linkage between sales prices and costs has been established. When costs change significantly, and prices follow such cost changes, using an unadjusted annual average cost in performing the recovery of cost test will result in virtually all sales during the highest cost periods passing the recovery of cost test simply due to the timing of the sale in relation to the cost change cycle. Such results say little about true cost recovery; rather it simply shows which sales were made during high cost periods. Even if the company were to expend cash daily from unprofitable below-cost sale prices that never catch up with rapidly raising costs, prices during the highest cost period will still almost always be higher than the annual average costs. Accordingly, the test would show that the costs have been recovered,

⁴² See *e.g.* Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia, 64 FR 73164, 73169-73171 (December 29, 1999); Silicomanganese From Brazil: Final Results of Antidumping Duty Administrative Review, 69 FR 13813 (March 24, 2004), and accompanying IDM at Comment 4; Certain Pasta From Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review, 69 FR 47876, 47878 (August 6, 2004), unchanged in Certain Pasta from Turkey: Final Results of Antidumping Duty Administrative Review, 70 FR 6834 (February 9, 2005); Certain Steel Concrete Reinforcing Bars From Turkey: Final Results of Antidumping Duty Administrative Review and Determination To Revoke in Part, 73 FR 66218 (November 7, 2008), and accompanying IDM at Comment 2; and Light-Walled Rectangular Pipe and Tube from Turkey: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 69 FR 19390 (April 13, 2004), unchanged in Light-Walled Rectangular Pipe and Tube From Turkey: Notice of Final Determination of Sales at Less Than Fair Value, 69 FR 53675 (September 2, 2004) for our practice in high inflation cases.

regardless of the true pricing behavior of the company.

Furthermore, the antidumping statute does not require the Department to blindly rely upon unadjusted annual average costs in an environment of significant cost change. SeAH's and Husteel's unadjusted annual average costs do not reasonably reflect the costs associated with the production and sale of the merchandise as required by the antidumping statute.⁴³ Due to the significant change in the COM the product throughout the year, using an unadjusted annual average cost, where low cost periods are inflated by the highest cost periods, and highest cost periods are deflated by low cost periods, the comparison of individual prices during the highest and lowest cost periods to an unadjusted single average cost becomes meaningless, including for cost recovery purposes. Finally, because the litigation at issue in SeAH Steel is ongoing, SeAH and Husteel's reliance on SeAH Steel is premature because a final and conclusive determination has not been reached.

Comment 3 Time for Parties to Comment on Methodology

The Department notes that the factual information deadline in the instant review was April 19, 2010. The Department published CWP from Korea 07-08⁴⁴ on June 10, 2010, in which the Department revised its model match criteria based on analysis that took place after the CWP from Korea 07-08 Prelim.⁴⁵ On December 23, 2010, the Department published its Preliminary Results for the instant review and followed the revised model match as set forth in CWP from Korea 07-08.

Nexteel states that as a result of a previous review of which Nexteel was not a part and the facts of which are not on this record, the Department unfairly reclassified its ASTM A-53 Grade B pipe for model matching purposes. Citing to previous court decisions, Nexteel argues that it had no opportunity to reply, factually or otherwise, which is not in accordance with law,⁴⁶ violates the obligation of fairness,⁴⁷ and violates WTO obligations.⁴⁸

Nexteel argues that CWP from Korea 07-08 came after the factual information deadline in this review, did not provide enough notice (to make it clear to future respondents) of an issue upon which to provide evidence (citing Transcom), and was based on information specific to SeAH in that review.

⁴³ See section 773(f)(1)(A) of the Act.

⁴⁴ See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review, 75 FR 34980 (June 21, 2010) ("CWP from Korea 07-08") and accompanying IDM at Comment 5.

⁴⁵ See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results and Rescission in Part of the Antidumping Duty Administrative Review, 74 FR 64670 (December 8, 2009) ("CWP from Korea 07-08 Prelim").

⁴⁶ See Sigma Corp. v. United States, 841 F. Supp. 1255, 1261-64 and 1267 (CIT 1993); British Steel PLC v. United States, 879 F. Supp. 1254, 1317 (CIT 1995); Transcom, Inc. v. United States, 182 F.3d 876 (Fed. Cir. 1999) ("Transcom"); and Olympic Adhesives Inc. v. United States, 899 F.2d 1565 (Fed. Cir. 1990).

⁴⁷ See China Kingdom Import & Export Co., Ltd.; Yancheng Yaou Seafood Co., Ltd.; and Qingdao Zhengri Seafood Co., Ltd. v. United States, 31 CIT 1329; 507 F. Supp. 2d 1337 at 1351-52 at n 11; NTN Corp v. United States, 587 F. Supp. 2d 1313, 1316 (2008); and Bowen v. City of New York, 476 U.S. 467, 476 (1986).

⁴⁸ See A. Judith Czako, Johann Human, and Jorge Miranda, A Handbook on Antidumping Investigations, 2003 at 13 (WTO Publication); and China Kingdom Import & Export v. United States, 31 CIT at 1340 fn. 6 (2007).

Hyundai HYSCO argues that the Department's practice is to solicit comments regarding model match at the outset of the investigation so that the information may be incorporated into questionnaire responses. Hyundai HYSCO contends that the Department did not follow its practice in the instant review.

Allied Tube Group and U.S. Steel argue that the Department should reject Nexteel's claims. Allied Tube Group argues that the methodology was incorporated in the previous review and that the Department has applied the same practice of matching ASTM A-53 Grade A and ASTM A-53 Grade B in other orders.⁴⁹ U.S. Steel argues that the Department's questionnaire requested ASTM A-53 Grade A and ASTM A-53 Grade B to be reported together, that Nexteel submitted factual information for a supplemental questionnaire five months after CWP from Korea 07-08, and that the International Trade Commission ("ITC") has recognized ASTM A-53 Grade A and ASTM A-53 Grade B as substantially identical. As a result, U.S. Steel asserts, Nexteel cannot claim a lack of notice. Referencing several court cases, U.S. Steel states that the Department may make changes to its methodologies as long as it fully explains and justifies the change,⁵⁰ and when a change is made, the Department may retroactively apply a change in classification as long as parties are able to comment before the final determination is made.⁵¹

Department's Position

On March 1, 2011, following publication of the Preliminary Results and submission of the parties' initial briefs, the Department invited the parties to submit factual information and additional argument regarding the classification of ASTM A-53 Grade B pipe.⁵² As indicated in Comment 4, below, the submissions by parties in response have been given full consideration for these final results. Therefore, all parties have had a full opportunity to address the issue in this review and any timing concerns raised by Nexteel and Hyundai HYSCO in their initial briefs (i.e., filed prior to March 1, 2011) have been addressed.

Comment 4 Grade Classification

The domestic parties support the Department's preliminary decision to treat ASTM A-53 Grade A ("Grade A") and ASTM A-53 Grade B ("Grade B") as identical grades, i.e., as "ordinary" pipe. The responding parties⁵³ do not support the Department's Preliminary Results, claiming that Grade A is "ordinary" pipe, but that Grade B should be treated as "pressure pipe." The parties' comments focus on: (i) the legal standard for finding products to be identical for matching purposes; (ii) past practice; (iii) the physical and chemical properties of the two products; (iv) the hot coil used in the production of the two products; (v) heat treatment (or not) of the seams of the two products; (vi) differences in the prices and costs of the two products; (vii) consumer uses and expectations of the two products.

⁴⁹ See Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty New Shipper Review, 75 FR 4530 (January 28, 2010) ("Welded Pipes from Thailand").

⁵⁰ See Habas Sina ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States, 625 F.Supp. 2d 1339, 1355 (CIT 2009) (citing NSK Ltd. v. United States, 510 F.3d 1375, 1381 (Fed. Cir. 2007)); see also SKF USA Inc. v. United States, 491 F. Supp. 2d 1354, 1362 (CIT 2007).

⁵¹ See Koyo Seiko Co., Ltd. v. United States, 516 F. Supp. 2d 1323, 1334 (CIT 2007).

⁵² See Letter from the Department to All Interested Parties, dated March 1, 2011, "Request for Information Related to Product Grade Classification."

⁵³ We note that Husteel, a mandatory respondent, did not provide comments on the grade classification issue.

Legal Standard for Finding Products to be Identical for Matching Purposes:

Citing Union Steel,⁵⁴ SeAH asserts that the Department may not treat two products as identical unless the differences between them are minor and commercially insignificant. Hyundai HYSCO states that the Department's practice is to ensure that its product definitions reflect "commercially meaningful physical characteristics." To determine whether a physical characteristic is "meaningful," Hyundai HYSCO says that the Department must examine whether the physical differences have an impact on the cost and price of the subject merchandise.⁵⁵

Citing Pesquera, U.S. Steel asserts that the Department may consider products identical for matching purposes even if the products are not physically the same in all respects, so long as the differences are not commercially significant.⁵⁶ U.S. Steel claims that, in this context, "commercially significant" refers to industry standards, not customer preferences. Thus, according to U.S. Steel, the Department may properly find that the physical differences are not commercially significant where there are no industry standards distinguishing the products.⁵⁷ Citing Fagersta, U.S. Steel states that absent significant physical differences, a difference in price does not mean products cannot be classified in the same category.⁵⁸

U.S. Steel argues that Union Steel, on which SeAH relies, is clearly distinguishable from the instant review. According to U.S. Steel, the Court of International Trade ("CIT") ruled in Union Steel that the physical differences between the products at issue were not "minor or commercially insignificant" because the record of that case did not contain sufficient evidence to support that conclusion. Moreover, U.S. Steel claims, the CIT determined that in order to show that physical differences are "minor and commercially insignificant" requires evidence that the products are "essentially equal or interchangeable." U.S. Steel points to evidence on the record of this review which, in its view, meets that standard with respect to Grade A and Grade B (the ITC's determination on the issue, affidavits from experts in the industry, respondents' information such as product brochures, price and cost data, and mill test certificates, and specific examples from third parties' construction/building manuals). Citing NTN Bearing and JTEKT,⁵⁹ Allied Tube states that the Department has been granted considerable discretion to classify products into groups of identical products, and that changes in the classification of the physical characteristics of subject merchandise have been lawful in other proceedings.

⁵⁴ See Union Steel v. United States, 753 F. Supp. 2d 1317 (CIT 2011) ("Union Steel") (citing Pesquera Mares Australes Ltda. v. United States, 266 F.3d 1372, 1383-1384 (Fed. Cir. 2001) ("Pesquera").

⁵⁵ See Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Spain, 67 FR 35482 (May 20, 2002) and accompanying IDM at Comment 2; see also New World Pasta Co. v. United States, 316 F. Supp. 2d 1338, 1354 (CIT 2004).

⁵⁶ See Pesquera, 266 F.3d at 1384.

⁵⁷ See Pesquera at 1384-85 and Fagersta Stainless AB v. United States, 577 F. Supp. 2d 1270, 1278-1279 (CIT 2008) ("Fagersta").

⁵⁸ See Fagersta, 577 F. Supp. 2d at 1238-1281; see also Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From

Germany: Final Results of Antidumping Administrative Review, 64 FR 43146 (August 9, 1999) and accompanying IDM at Comment 1 ("Hot Rolled Lead Steel from Germany").

⁵⁹ See NTN Bearing Corp. of America v. United States, 747 F. Supp. 726 (CIT 1990) ("NTN Bearing") and JTEKT Corp. v. United States, Slip Op. 10-17 (CIT 2010) ("JTEKT").

Past Practice

According to Hyundai HYSCO, the questionnaire does not require respondents to classify their products only as ordinary, conduit, or structural pipe, nor does it require them to assign specific grades to specific categories. SeAH argues that its inclusion of an additional category for pressure pipe is fully consistent with the questionnaire. Moreover, SeAH contends, the Department's reference in the questionnaire to "A53 ordinary pipe" makes no distinction between Grade A and Grade B, and appears to contemplate only Grade A as there is a reference to "low pressure" applications.

SeAH and Hyundai HYSCO state that it was not until comments by the petitioners in CWP from Korea 07-08 that the Department changed its classification of the products physical characteristics, which previously had treated Grade A and Grade B separately. According to Nexteel, the Department noted in CWP from Korea 07-08⁶⁰ that, because some standards are overlapping, Grade A and Grade B can be combined, but offered no explanation as to why this was so. Moreover, responding companies state that the determination to combine Grade A and Grade B, treating both as "ordinary" pipe, was based on facts of the previous review, rather than on information submitted in this review. SeAH argues that since the Department stated in CWP from Korea 07-08⁶¹ that it would continue to examine the issue of product grade, the Department's determination was provisional. Therefore, SeAH states that U.S. Steel must provide compelling evidence for the Department to determine that Grade B is "ordinary" and to match it with Grade A.

U.S. Steel points to Welded Pipes from Thailand in which the Department combined Grade A and Grade B for product matching purposes.⁶² According to U.S. Steel, the model match criteria for this review were established in CWP from Korea 07-08 and the Department is not required to make a change unless there are compelling reasons to do so.⁶³

Hyundai HYSCO argues that Welded Pipes from Thailand was based on limited information and was not contested by parties, which is in contrast to this review.

Physical and Chemical Properties

Hyundai HYSCO, Nexteel, and SeAH argue that the most significant factor that distinguishes Grade B from Grade A is the strength of the Grade B product, as measured by its tensile and yield strengths. Specifically, the required tensile and yield strengths of Grade B exceed those of Grade A by 25 and 17 percent, respectively, making Grade B pipe able to withstand more pressure. According to SeAH and Nexteel, using Grade A pipe rather than Grade B pipe in higher pressure applications could lead to dangerous failures and, therefore, customers specify Grade A or Grade B.⁶⁴ SeAH further claims the strength of the Grade B product means that it is commonly dual-stenciled and triple-stenciled as A53B/API 5LB/API X-42 line pipe that meets stringent high pressure requirements, whereas Grade A pipe cannot be. Similarly, Nexteel points

⁶⁰ Id.

⁶¹ See CWP from Korea 07-08 and accompanying IDM at Comment 5.

⁶² See Welded Pipes from Thailand.

⁶³ See Pesquera, 266 F.3d at 1382, fn. 7 and Fagersta, 577 F. Supp. 2d at 1276-77.

⁶⁴ See e.g., Letter from Nexteel to the Department, March 16, 2011 ("Nexteel FIS") at Exhibit 4; see also SeAH's March 15, 2011, letter at Exhibit B-31.

to the ITC's discussion of stenciling API 5L Grade B pipe with Grade B, contending that the ITC's report does not mention Grade A dual stenciling because Grade A's standards are not overlapping with API 5L standards.⁶⁵

Nexteel argues that Grade B pipe has mechanical properties similar to those of KSD 3562 SPPS 380 and JIS 3454 STPG 370 (both of which Nexteel reported as pressure service pipe). Therefore, Grade B pipe should be matched with SPPS 380 and STPG 370. Nexteel dismisses as unexplained and unsupported (and based solely on SeAH's pipe and proprietary information), the Department's position in CWP from Korea 07-08⁶⁶ that the physical and chemical differences between Grade A and Grade B are insufficient to assign them to different categories. Nexteel states that the fact that buyers differentiate between Grade A and Grade B pipe indicates that the differences are significant. According to Nexteel, this differentiation is also supported by the Fundamentals of Steel Pipe.⁶⁷

Nexteel continues that line pipe, such as the API 5L Grade B standard, must have higher strength than standard pipe in order to withstand pressure, and that Grade B's strength characteristics are similar to this API standard. Nexteel states that if the Department is to treat both Grade A and Grade B as ordinary pipe, the Department must then make changes to the coding categories to reflect the differences in tensile and yield strengths between Grade A and Grade B.

According to the responding parties, the differences in yield and tensile strength are achieved, in part, by the chemical requirements for Grade B. Specifically, the higher maximum amounts of carbon and manganese for Grade B (20 percent higher for carbon and 26 percent higher for manganese) result in stronger pipe.

U.S. Steel claims that comparisons of products sold by the respondents in this review blur the bright line that the respondents are attempting to draw between the physical and chemical properties of Grade B and Grade A. According to U.S. Steel, the differences in tensile strength and yield strength minimums between Grade A and Grade B pipe are no different than differences found among grades in different industry standards and Grade A pipe often meets the minimum tensile and yield strengths of Grade B.⁶⁸ U.S. Steel and Allied Tube also argue that only two of nine chemical elements have different maximum requirements for Grade A versus Grade B and the differences in the maximum requirements are very small. U.S. Steel contends that the Department considered the very same evidence regarding differences in yield and tensile strength requirements, as well as carbon and manganese requirements, in CWP from Korea 07-08 and determined that the differences were not sufficient to distinguish Grade B from Grade A.⁶⁹

SeAH rebuts the arguments of U.S. Steel and Allied Tube that the differences in chemical and physical properties between Grade A and Grade B are minor and that the grades are substantially identical. SeAH argues that U.S. Steel has compared information submitted by SeAH with

⁶⁵ See Certain Circular Welded Carbon Quality Line Pipe from China, Korea, and Mexico, Investigations Nos. 731-TA-1073-1075 (Preliminary), USITC Publication 3687, April 2004, at I-7.

⁶⁶ See CWP from Korea 07-08 and accompanying IDM at Comment 5.

⁶⁷ The Fundamentals of Steel Pipe is a training manual distributed by the United States-based trade association, the National Steel Pipe Distributors. This manual was cited in Nexteel's FIS at Exhibit 3, page 8.

⁶⁸ See Letter from U.S. Steel to the Department, March 15, 2011 ("U.S. Steel FIS") at Exhibit A.

⁶⁹ See CWP from Korea 07-08 and accompanying IDM at Comment 5.

information submitted by Nexteel, picking a comparison of random samples from two different companies. Instead, SeAH notes, a comparison of two of SeAH's sales shows that the tensile strength of Grade B pipe exceeds the tensile strength of Grade A pipe. Likewise, SeAH contends, a comparison between its own merchandise shows that, with the exception of one line item, the yield strengths of Grade B are greater than the yield strengths for Grade A. In any case, according to SeAH, even if there is overlap in chemical and physical properties, this does not mean that the differences between Grade A and Grade B pipe are minor and commercially insignificant.

In further support of their position, Allied Tube and U.S. Steel point to a finding by the ITC that Grade A and Grade B pipes are "substantially identical in inherent or intrinsic characteristics."⁷⁰

SeAH and Hyundai HYSCO assert that the reliance on the ITC report⁷¹ is of limited relevance because the ITC's discussion addressed the question of whether Grade A and Grade B pipe can be treated as part of the same "like product," which is a less stringent standard than the issue before the Department. Hyundai HYSCO also points out that the Department relies on more characteristics than grade in distinguishing between products, such as outer diameter, wall thickness, surface finish, and end finish, which the ITC does not. Hyundai HYSCO notes that each of these characteristics must match for the Department to consider two products as identical, however, the ITC report does not mention these characteristics. Thus, according to Hyundai HYSCO, if the Department were to accept the domestic parties' logic, it would have to disregard the additional criteria irrelevant. Thus, Hyundai HYSCO contends, the ITC's determination has no relevance with regard to categorization of these products in the grade characteristic.

Hot Coil

SeAH argues that it uses SPHT2 hot coil in the production of Grade A and SPHT3 hot coil for the production of Grade B. SeAH states that the physical and chemical characteristics of the hot coil are reflected in the pipe. Hyundai HYSCO states that the average unit cost of input materials for Grade B pipe is higher than for Grade A. SeAH states that the cost difference between SPHT2 and SPHT3 further confirms that Grade A and Grade B are different and should be treated separately.

U.S. Steel argues that SeAH has not explained why the use of SPHT2 and SPHT3 hot coil offers a meaningful distinction between the two products or that SPHT3 hot coil is always more expensive than SPHT2 hot coil. U.S. Steel states that neither SeAH nor Hyundai HYSCO has provided complete information regarding their costs for the types of coil, nor offered evidence that the hot coil used to produce Grade A and Grade B result in significant product differences.

⁷⁰ See Circular Welded Non-Alloy Steel Pipe from China, USITC Publication 3807, Inv. No. TA-421-6 (October 2005) at 12.

⁷¹ See e.g., Certain Pipe and Tube Argentina, Brazil, India, Korea, Mexico, Taiwan, Thailand, and Turkey, Investigation Nos. 701-TA-253 and 731-TA-132, 252, 271, 273, 409, 410, 532-534 and 536 (Second Review), USITC Pub. 3867 (July 2006) at 7. The ITC considers all grades of standard pipe (ordinary, pressure, structural, conduit) to be the same "like product," but the Department does not treat all these grades as "identical" products in its model match.

Heat Treatment

Nexteel, SeAH, and Hyundai HYSCO state that Grade B is subject to a heat treatment on the seam, unlike Grade A. Hyundai HYSCO states that this allows the pipe to withstand more pressure. Nexteel and Hyundai HYSCO state that Grade A and Grade B pipes go through a hydrostatic test, and Nexteel argues that Grade B must be tested to withstand more pressure. Nexteel argues that the heat treatment and hydrostatic testing discussed in the CWP from Korea 07-08⁷² are specific to SeAH's production process and not to Nexteel's.

U.S. Steel argues that record evidence does not support the claim that only Grade B pipe undergoes heat treatment. U.S. Steel states that it does not perform heat treatment on Grade A or Grade B pipe.⁷³ In addition, U.S. Steel cites to the verification of CWP from Korea 07-08⁷⁴ where the Department found, and SeAH admitted, that heat treatment is performed for all pressure and ordinary pipe. U.S. Steel points to an affidavit and to an ITC report that state that Grade A and Grade B have an identical manufacturing process.⁷⁵ In any case, U.S. Steel argues, the Department bases its model match on physical characteristics of the product, not production processes used to attain those characteristics.⁷⁶

Price/Costs

SeAH and Nexteel argue that the average price of Grade B pipe is higher than the average price for Grade A pipe, except, SeAH contends, for its sales during the third quarter in the home market, in which Grade A with a plain end was sold at a higher average price because of small quantities. SeAH and Hyundai HYSCO state that analysis shows the direct material cost for Grade A is always lower than Grade B. SeAH contends that price differences identified by U.S. Steel are a function of timing and are not representative, or are explained by the fact the sales were to different customers and resulted from individual price negotiations. In any case, SeAH argues that the pricing data is not dispositive of the issue, as the Department has previously recognized.⁷⁷

U.S. Steel claims that the respondents' argument that Grade B is distinct because it has higher costs and prices is not supported by record evidence. U.S. Steel argues that Grade B pipe is not always more expensive than Grade A pipe and that SeAH tries to dismiss this fact by saying this is only true in the third quarter in the home market due to sales quantities of Grade A being smaller. U.S. Steel argues that the costs and prices of Grade A and Grade B pipe vary and that there is no indication that the costs and prices for one are always higher than the other. Citing Fagersta and Hot Rolled Lead Steel from Germany, U.S. Steel states that in the absence of physical differences between products, price and/or cost differences do not mean that products cannot be classified in the same category for model matching purposes.⁷⁸ For further

⁷² See CWP from Korea 07-08 and accompanying IDM at Comment 5.

⁷³ See U.S. Steel's March 15, 2011, letter at Exhibit A.

⁷⁴ Id.

⁷⁵ See U.S. Steel FIS at Exhibit A; see also Circular Welded Non-Alloy Steel Pipe from China, USITC Pub. 3807, Investigation No. TA-421-6 (October 2005) at 10-11.

⁷⁶ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From France, 64 FR 30820, 30828 (June 8, 1999) ("Stainless Steel Sheet from France") and accompanying IDM at Comment 4.

⁷⁷ See Hot Rolled Lead Steel from Germany, 64 FR at 43147.

⁷⁸ See, e.g., Fagersta, 577 F. Supp. 2d at 1281 and Hot Rolled Lead Steel from Germany and accompanying IDM at

summarization and discussion, see Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Matthew Jordan, International Trade Compliance Analyst, AD/CVD Operations, Office 1, dated June 13, 2011, re: “Business Proprietary Information Memorandum for the Final Results of Review: Comment 4 – Grade Classification” (“BPI Memo”).

Consumer Uses and Expectations of the Two Products

U.S. Steel states that the product brochures of both SeAH and Nexteel show that Grade A and Grade B pipes are not marked as distinct products, thus indicating that they are interchangeable for nearly all applications, and that there is no industry standard distinguishing Grade A as ordinary pipe and Grade B as pressure pipe. U.S. Steel asserts that Nexteel has ignored that its product brochure lists the same application for both Grade A and Grade B, “Carbon Steel Pipes for Ordinary Piping,” while describing the application for KSD 3562 and JIS G 3454 as “Pressure Service.”⁷⁹ In addition, U.S. Steel argues, SeAH’s product brochure markets both Grade A and Grade B as ordinary pipe.

SeAH argues that the product brochures of Nexteel and SeAH are targeted to Korean domestic customers, who predominantly use pipe produced to Korean and Japanese standards. Therefore, according to SeAH, it is not surprising that the brochures do not always reference ASTM standards in connection with pressure pipe. More importantly, SeAH argues, it is not product brochures that determine whether products can be treated as identical; it is their chemical and physical properties.

Nexteel argues its product brochure establishes Grade A and Grade B as distinct and significantly different products, based on different physical characteristics and properties reflecting different uses and producer/customer expectations. Nexteel states that in its product brochure, pressure pipe is a distinct category from other ordinary pipe with KSD 3507, JIS G 3452, and Grade A pipes identified as ordinary pipes and KSD 3562, JIS 3454, and Grade B identified as pressure service pipe. Nexteel contends that in CWP from Korea 07-08,⁸⁰ the Department treated another respondent’s Grade A and Grade B pipe as ordinary pipe based on that company’s product brochure. On this basis, Nexteel contends that its products should be treated as different in this review.

U.S. Steel further argues that construction and building manuals show that where ASTM A-53 pipe is required, Grade A or Grade B will suffice.⁸¹ U.S. Steel states that claims made in affidavits filed by Nexteel are based on an underlying assumption that Grade A pipe categorically has a “significantly inferior physical and chemical composition” than Grade B pipe and, thus, cannot be substituted for Grade B pipe. According to U.S. Steel, there is no evidence on the record to support that assumption. The fact that Grade A and Grade B pipe are perfectly interchangeable in the marketplace is established by extensive record information, argues U.S. Steel.

Comment 1.

⁷⁹ See Letter from U.S. Steel to the Department, March 25, 2011, at Exhibit 2, page 7.

⁸⁰ See CWP from Korea 07-08 and accompanying IDM at Comment 5.

⁸¹ See U.S. Steel’s FIS at Exhibits H-Q.

Hyundai HYSCO states that the petitioners have made clear that distinctions between Grade A and Grade B result in different applications for the two products. In particular, Grade B is acceptable, and Grade A is not, for very high buildings.⁸² Therefore, Hyundai HYSCO says, the petitioners have identified the structural standard A-500 B as most interchangeable with Grade B.⁸³ SeAH states that U.S. Steel's information shows that customers can substitute Grade B pipe for Grade A pipe, but it does not demonstrate that customers can substitute Grade A pipe for Grade B pipe. As for the examples of requirements in the construction and building manuals, SeAH states that this overlap in use is not surprising given that the pipe is being used as structural pipe in those instances. According to SeAH and Nexteel, U.S. Steel has shown only that some customers will use Grade B pipe for Grade A applications, but this does not lend itself to a determination that the grades are interchangeable. Nexteel states that customers that demand Grade B attributes regarding pressure and yield strength cannot and do not accept Grade A pipe. Nexteel and Hyundai HYSCO argue that separate industry standards for Grade A and Grade B pipe demonstrate a commercially significant difference between the two grades.

Department's Position

While the Department's general practice is not to change its classification of the products' physical characteristics once it is established absent a compelling reason to do so,⁸⁴ the results of each review must be based on that record of the review. As explained above in Comment 4, the Department invited parties to this review to submit information regarding the treatment of Grade B pipe for matching purposes and, having carefully reviewed that information, we continue to determine that ordinary and pressure pipe are distinct grades for purposes of this review, but that Grade A and Grade B are properly treated as ordinary pipe.

Legal Standard for Finding Products to be Identical for Matching Purposes

Pesquera explains that the Department has the ability to consider products identical even if the products are not physically the same in all respects, so long as the differences are not commercially significant, or, as detailed by Pesquera, the products are "essentially equal or interchangeable."⁸⁵

As discussed below, we have determined that the record evidence shows that there are only minor and commercially insignificant differences between Grade A and Grade B pipe. Union Steel further confirms that the Department may match products under Section 771(16)(A) of the Act as long as they are "essentially equal or interchangeable."⁸⁶ In this review, record evidence discussed below indicates that Grade A and Grade B pipe can be considered essentially equal or interchangeable throughout the industry.

Hyundai HYSCO relies on New World Pasta for support of its argument that the Department must determine whether physical differences have an impact on the cost and price of subject

⁸² See U.S. Steel's FIS at Exhibit D, page A-43.

⁸³ See Hyundai HYSCO's April 5, 2011, letter at 5.

⁸⁴ See Fagersta, 577 F. Supp. 2d 1276-77.

⁸⁵ See Pesquera, 266 F.3d at 1382-83.

⁸⁶ See Union Steel, 753 F. Supp. 2d at 1328: "[L]anguage in the Pesquera opinion suggests that physical differences are minor and commercially insignificant if the two products under consideration can be described as 'essentially equal or interchangeable.' "

merchandise. However, New World Pasta simply notes that the Department has described, in reference to the term “meaningful,” that it looks to “both price differences in the marketplace and cost differences which may reflect different production processes.”⁸⁷ New World Pasta described that the price and cost differences can be used to help determine whether there is a different production process. However, as the Department noted in Stainless Steel Sheet from France, level of processing is not determinative as to what is a best match for model match purposes.⁸⁸

Past Practice

The Department has the discretion to change the classification of the physical characteristics of the subject merchandise over time if it has compelling reasons to do so. In the most recent review of this order, CWP from Korea 07-08, following specific and detailed comments on the issue, the Department determined that the evidence on the record provided compelling support to treat Grade B pipe as “ordinary,” a change from the earlier segments of the proceeding. We invited parties to comment on this issue in this review, and following extensive comment, we again conclude that Grade B pipe should be treated as “ordinary.” As explained below, the evidence on the record does not provide compelling reasons to reclassify Grade B as pressure pipe. Instead, the evidence on the record of this review is consistent with, and builds upon, the evidence relied upon in CWP from Korea 07-08.

The issue of Grade B’s classification does not appear to have been challenged in Welded Pipes from Thailand. While we do not rely on that precedent for our decision in this review, we note that our treatment of Grade B in both proceedings is consistent.

Physical and Chemical Properties

The specifications for ASTM A-53 piping show the differences between Grade A and Grade B. Grade A has a minimum tensile strength of 48,000 pounds per square inch (“psi”), while Grade B has a minimum tensile strength of 60,000 psi for Grade B.⁸⁹ The minimum yield strength of Grade A is 30,000 psi while the minimum yield strength of Grade B is 35,000 psi.⁹⁰

It is not unusual for an industry standard to include more than one grade and the differences between the tensile and yield strengths of Grade A and Grade B are no different than the differences between grades within other standards.⁹¹ For example, the specifications for ASTM A-252 pipe have a 32 percent difference in tensile strength across grades and a 50 percent difference in yield strength across grades.⁹² The specifications for ASTM A-500 pipe have a 29 percent difference in tensile strength across grades and a 40 percent difference in yield strength across grades.⁹³

⁸⁷ See New World Pasta, 316 F. Supp. 2d at 1353.

⁸⁸ See Stainless Steel Sheet from France, 64 FR at 30828.

⁸⁹ See SeAH’s October 26, 2010, supplemental questionnaire response at Exhibit A-43 (“ASTM A-53 Specifications”) at 3.

⁹⁰ Id.

⁹¹ ASTM A-53 is the only specification for which the respondents have categorized the grades within the specification separately for model match purposes.

⁹² Id.

⁹³ See Nexteel’s November 3, 2010, supplemental questionnaire response at Exhibit SD1-5(B).

The ITC report noted that parties had reported that Grade A and Grade B pipe “can be used for any fence or sprinkler application and are interchangeable for approximately 90 percent of the plumbing, HVAC, and mechanical applications in nonresidential construction.”⁹⁴ Moreover, the ITC states that “there is little difference in end use applications given these differences in requirements {between yield strength and tensile strength}.”⁹⁵ An affidavit of U.S. Steel’s Manager of Market Analysis and Strategy with its tubular products business states that Grade A and Grade B are “perfectly interchangeable for nearly all market applications” and that “they are just variations within the same standard of pipe.”⁹⁶

Further, the ITC describes and lists the end uses of steel pipes and tubes both subject and non-subject. These uses include standard pipe, line pipe, structural pipe and tubing, mechanical tubing, pressure tubing, and oil country tubular goods.⁹⁷ While there is a pressure tubing category, it is unclear if this category would include merchandise subject to the order. The ITC report states that standard pipe is made primarily to ASTM A-53, A-135, etc., as well as to other industry standards, such as BS-1387. While respondents asserted that Grade B is an example of pressure pipe and Grade A is an example of ordinary pipe, there is no distinction in the ITC report between the two products. All ASTM A-53 is listed under standard pipe. The only separate reference in the ITC report to Grade B is in an example regarding dual stenciled products. There it states that pipe in conformance with API 5L Grade B (which requires higher test pressures and more restrictive weight tolerances than standard pipe) is automatically in conformance with the less restrictive pipe specifications of ASTM A-53 Grade B.

While SeAH and Hyundai HYSCO argue that we should not rely on information in the ITC reports, the information in ITC reports is just one aspect in our analysis of Grade B pipe. We acknowledge that the ITC focuses on like product and injury determinations. However, in doing so, the ITC studies and analyzes the products under investigation, and the information the Commission develops regarding product characteristics and uses can be equally relevant for our purposes.

U.S. Steel has provided 10 construction or building manuals that show that where ASTM A-53 pipe is required, Grade A or Grade B is acceptable. For example:

- The Connecticut Department of Transportation’s Drilled Shaft Specification states that “Access tubes for crosshole acoustic logging shall consist of Schedule 40 steel pipe conforming to ASTM A 53, Grade A or B.”⁹⁸
- The City of Abilene’s specifications for Traffic Signal Pole Assemblies requires for Luminaire Arms to be ASTM A53 Grade A or B.⁹⁹

⁹⁴ See U.S. Steel’s FIS at Exhibit C, page 11.

⁹⁵ See U.S. Steel’s FIS at Exhibit C, page D3.

⁹⁶ See U.S. Steel’s FIS at Exhibit B.

⁹⁷ See Circular Welded Carbon-Quality Steel Pipe from China: Investigation Nos. 701-TA-447 and 731-TA-1116 (Final) at I-11-I-12.

⁹⁸ See U.S. Steel’s FIS at Exhibits K, page 2.

⁹⁹ See U.S. Steel’s FIS at Exhibits N, item 686.6.

- The specifications for recommended dewatering improvements in the Calle Del Barco Landslide Improvement District calls for Column Pipe to “be standard wall thickness, minimum ASTM A53 grade (A or B).”¹⁰⁰

The respondents have given no specific examples or situations that constitute “high pressure applications” that demand the use of Grade B pipe rather than Grade A pipe beyond affidavits filed by SeAH and Nexteel that state Grade B pipe is used for the high pressure transmission of gas, air, water, and steam and for piling, heat exchangers, boiler pipes and for machining in industrial environments.¹⁰¹ We can find no industry standard that determines what constitutes “high pressure.” In addition, we note the range of the specifications for ASTM A-53, which encompasses Grade A and Grade B describes the pipes manufactured to that standard as “intended for mechanical *and pressure applications* and is also acceptable for ordinary uses in steam, water, gas, and air lines.”¹⁰² The ASTM A-53 standard does not delineate between “pressure” and “high pressure,” nor does it specify that only Grade B pipes are used in pressure applications.

Nexteel likens Grade B pipe to KSD 3562 and JIS 3454, which are described in their written descriptions as for use in pressure service. The title for JIS 3454 is “Carbon steel pipes for pressure service,” and the scope states: “This Standard specifies the carbon steel pipes ... used for pressure service at an approximate maximum temperature of 350 degrees C. The pipes for high pressure service shall be in accordance with JIS G 3455.”¹⁰³ Thus, JIS 3454 does not identify itself as high pressure pipe. Instead, the description of JIS 3454 references another standard, JIS G 3455, as being for high pressure service. Consequently, Nexteel’s attempt to show that Grade B is suitable for high pressure applications fails.

As noted above, the ITC has distinguished between “standard pipe” and “pressure tubing,” and provided descriptions of the physical characteristics and uses of both. These descriptions help to clarify the differences between JIS 3454 and Grade B. As the ITC defines “pressure tubing,” it is used to convey fluids at elevated temperatures or pressures, or both, and is suitable to be subjected to heat applications. The specifications for JIS 3454 allow for the transportation at temperatures up to 350 degrees C, while the specifications for Grade B pipe say nothing of its ability to withstand high-temperature applications, or to be able to be used with fluids at elevated temperatures.

In addition, according to Husteel’s product brochure, JIS 3454 is listed as having a “pressure service” application.¹⁰⁴ Further, JIS 3454 does not have the zinc coating requirement typically present for ordinary pipe such as Grade A and Grade B.¹⁰⁵ Moreover, the tolerances of the KSD 3562 pipe are tighter with respect to outside diameter and wall thickness.¹⁰⁶

¹⁰⁰ See U.S. Steel’s FIS at Exhibits O, part 709.10.

¹⁰¹ See SeAH’s March 15, 2011, letter at Exhibit B-31; see also Nexteel FIS at Exhibit 4.

¹⁰² See ASTM A-53 Specifications at 1 (emphasis added).

¹⁰³ See SeAH’s October 26, 2010, supplemental questionnaire response, at Exhibit 43.

¹⁰⁴ See Husteel’s March 26, 2010, Section A questionnaire response at Exhibit 18.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* These differences also indicate that Grade B is more similar to Grade A than to JIS 3454 and KSD 3562. For further discussion, see the BPI Memo.

While responding parties argue that higher maximum carbon and manganese results in stronger pipe, Grade A pipe contains the exact same maximum carbon content and a slightly higher manganese content, yet still provides a lower minimum tensile and lower minimum yield strength compared to JIS 3454 Grade STPG 370.¹⁰⁷ Thus, carbon and manganese content are not always indicative of stronger pipe. Furthermore, carbon and manganese are not the only two alloy specifications of Grade A and Grade B pipe. There are nine alloy specifications, according to the ASTM A-53 standard. Each of the other seven specifications (*i.e.*, phosphorous, sulfur, copper, nickel, chromium, molybdenum, and vanadium) holds the same maximum requirements across both Grade A and Grade B.¹⁰⁸

Nexteel argues that because Grade A cannot be dual stenciled with the Grade B and API 5L Grades, Grade A is different, and the Department should acknowledge this through differences in the classification of the products' physical characteristics. We acknowledge the Grade A and Grade B are not identical in every aspect, however, as noted above, they do not need to be identical when the physical differences are minor and commercially insignificant. Hyundai HYSCO has argued the petitioners' evidence suggests Grade B is most interchangeable with structural standard ASTM A-500 Grade B. The petitioners' comment Hyundai HYSCO cites to indicates in limited applications (*e.g.*, high rise buildings or construction support) that Grade B would be required (and not Grade A) and, thus, in these situations, Grade B is most interchangeable with the ASTM A-500 standard. The petitioners note that in most structural applications, rectangular A-500 Grade B is used. Therefore, circular welded Grade B pipe could not be used. Furthermore, we find this comment unavailing, as in this case, no party has argued that Grade B should be matched to a structural standard.

These differences are not sufficient to give rise to a separate grade classification, and they appear to be typical of the differences one would find between the many products that fall within the same industry standard. For example, chemical requirements are set in terms of minimums and maximums for the elements, giving the producer flexibility in meeting the requirements. This does not make the products different. Grade A and Grade B are both standard pipe for conveyance of liquids and gases. Therefore, based on the physical and chemical attributes of the two products, the Department sees no basis for treating Grade B differently from Grade A by classifying the former as pressure pipe.

Hot Coil

We agree with U.S. Steel. SeAH has not explained why the use of SPHT2 coil specifically for the production of Grade A and SPHT3 coil specifically for the production of Grade B provides a meaningful distinction between Grade A and Grade B. In examining the specifications for JIS 3132 hot coil, and specifically grades SPHT2 and SPHT3, there is no obvious reason why Grade A specifically requires SPHT2 hot coil only and Grade B specifically requires SPHT3 hot coil only. The maximum alloy specifications of both SPHT2 and SPHT3 qualify them for use in either Grade A or Grade B pipe. The minimum tensile requirement of SPHT2 is higher than that of Grade A, but the minimum tensile requirement of SPHT3 is lower than required by Grade B. The chemistries of both SPHT2 and SPHT3 set certain alloy limitations, which result in

¹⁰⁷ The Department notes that in addition to the carbon and manganese requirements, there are other minor chemical element criteria required by the ASTM A-53 specification that isn't noted in the specification of JIS 3454.

¹⁰⁸ See ASTM A-53 Specifications at 2.

limitations on the performance specifications of each grade. However, the alloy limitations are only specific to certain chemistries and the performance specifications are only minimums. Hence, a manufacturer has much flexibility in how it can meet the minimum requirements, and has flexibility to produce products that can significantly exceed the minimum performance requirements defined by the JIS 3132 standard. Although the minimum performance specifications of the SPHT2 and SPHT3 hot coil would suggest that the SPHT3 hot coil can meet the performance specifications of both Grade A and Grade B, and the SPHT2 hot coil can meet the performance specifications of only Grade A, because these standards are governed by minimum performance specifications, one cannot conclude that SPHT2 hot coil cannot be used for Grade B applications. We also agree with U.S. Steel that we do not have full information on the hot coil costs and why SPHT3 is always more expensive than SPHT2. For more discussion with respect to the hot coil inputs, see the BPI Memo.

Heat Treatment

While the ASTM A-53 standard gives the option for heat treatment of the weld seam for Grade B, it does not require it. Instead, the only difference in specifications for the Grade B pipe is removal of untempered martensite. The ASTM A-53 standard states that pipe produced to the Grade B specifications must have untempered martensite removed by any process.¹⁰⁹ In fact, an affidavit supplied by U.S. Steel states that it does not perform heat treatment on Grade A or Grade B pipe.¹¹⁰ In addition, Husteel does not make any reference to heat treatment of its weld seam in its questionnaire responses.¹¹¹

In the previous review, the Department found that SeAH performed three tests, including a heat treatment procedure on all pressure and ordinary pipe.¹¹² Therefore, there is no difference in production for SeAH with regard to heat treatment of pipes, leaving its argument otherwise unavailing. Moreover, an ITC report shows that Grade A and Grade B are manufactured through the same process.¹¹³ Even assuming, arguendo there was a minor difference in the production process, the Department relies on the physical characteristics of the product, not the production process used, to attain those characteristics.¹¹⁴

In addition, SeAH's Section D questionnaire response at page 9, under "Testing and Finishing," makes no mention of heat treatment of any weld seam. The only tests mentioned are hydrostatic and ultrasonic, which are required by the ASTM A-53 specifications.¹¹⁵ Also of note, there is no mention of heat treatment as a process in the SeAH product brochure, though both ultrasonic and hydrostatic testing are listed.¹¹⁶

Hydrostatic testing and a non-destructive test (i.e., ultrasonic) are required for Grade A and Grade B pipes.¹¹⁷ The minimum hydrostatic test pressures vary slightly between Grade A and

¹⁰⁹ See ASTM A-53 Specifications at 2.

¹¹⁰ See U.S. Steel's FIS at Exhibit A.

¹¹¹ See Husteel's April 20 questionnaire response at Vol. II, pages 3-5, and Exhibit D-4.

¹¹² See CWP from Korea 07-08 and accompanying IDM at Comment 5.

¹¹³ See Circular Welded Non-alloy Steel Pipe from China, Investigation No. TA-421-6 (October 2005) at 10-11.

¹¹⁴ See e.g., Stainless Steel Sheet from France, 64 FR 30820 (June 8, 1999) and accompanying IDM at Comment 4.

¹¹⁵ See ASTM A-53 Specifications at 4.

¹¹⁶ See SeAH March 26, 2010, Section A response at A-26.

¹¹⁷ See ASTM A-53 Specifications at 4.

Grade B pipe. However, like the minimum tensile and minimum yield strength requirements discussed earlier, we determine that these minor differences can be expected among grades within a given standard, rather than indicative of an entirely separate classification. In fact, for small diameter pipe (i.e., under 2.375 inches in outside diameter), the hydrostatic test pressures are “assigned arbitrarily” and are equal across Grade A and Grade B.¹¹⁸ In addition, for certain size pipe, specifically an outside diameter of 2.875 inches, the test pressure is equal between Grade A and Grade B.¹¹⁹

Price/Costs

Due to the proprietary nature of much of the price and cost arguments raised by interested parties, see the BPI Memo.

Consumer Uses and Expectations of the Two Products

The information in Nexteel’s and SeAH’s product brochures is mixed. The following is relevant information from Nexteel’s product brochure:

- On the Main Products page, Nexteel lists four classifications of pipe: Oil Pipe, Structural Purpose, Mechanical Tubing, and Ordinary Pipe. Under the heading for “Ordinary Pipe,” Nexteel lists “Carbon steel pipes for ordinary piping” (including Grade A, KSD 3507, and JIS 3452) and “Carbon steel pipes for pressure service” (including Grade B, KSD 3562, and JIS 3454).
- On the page for Size Ranges for Main Products, under “DOM & ETC (Mechanical (DOM) & Others,” Grade A and Grade B (“A53 A/B”) are listed along with API and ASTM A500 as “Carbon Steel Tube for Mechanical Structural Purposes.” Grade A and Grade B were not listed under the Mechanical Tubing classification on the Main Products page, which described the classification as “Tubes for mechanical structural purpose.”
- On the page for the 16” Heavy Wall Tube Mill (#2 Plant): Nexteel states that this plant is specialized in producing OCTG Casing, API Line Pipe, DOM Tube, ASTM A53, and ASTM A500. On the page for the 8” Tube Mill (#1 Plant), Nexteel states that this plant specializes in producing structural and ordinary pipe, ASTM A53 Gr.A/B, ASTM A500, the exact same specialization as listed on the following page, for the 3” Tube Mill (#1 Plant).
- A Nexteel product brochure submitted by U.S. Steel identifies the application for Grade A and Grade B as “Carbon Steel Pipes for Ordinary Piping,” and the application for KSD 3562 and JIS 3454 as “Pressure Service.” Moreover, the same product brochure, at pages 18 and 19, provides measurements for “ASTM A53 Carbon Steel Pipes for Ordinary Piping,” and provides requirements for Grade A and Grade B.

¹¹⁸ Id at 15.

¹¹⁹ Id at 12.

Relevant information from SeAH's product brochure follows:

- On page 4, SeAH lists its "Main Products." Under "Carbon Steel Pipes for Ordinary Piping," SeAH produces pipe to the following specifications: KS, JIS, BS, and ASTM. SeAH does not produce ASTM specification pipe for "Carbon Steel Pipes for Pressure Service," according to its product brochure. This category lists only KS and JIS standards.
- On page 14, SeAH lists specifications for ASTM A53 under the category "Pipe, Steel, Black, and Hot-Dipped Zinc-Coated Welded and Seamless." Grades A and B each have a column under Test Pressure.
- On page 52-53, SeAH discusses its stretch reducing mill, and lists its "Main Products." ASTM A53, with no grade indication, is listed under "Ordinary Piping."
- On pages 59-62, the SeAH product brochure shows a breakdown of the specifications for ERW Tubes and Pipes for Piping. In this chart, under standard specification, is ASTM A53. This specification is broken down into A and B. The application column lists that both are "Steel Pipe for General Purposes." None of the remaining columns note anything with regard to heat treatment.

On balance, we view the product brochures as highlighting the similarities of Grade A and Grade B pipe rather than providing compelling evidence for treating Grade A as ordinary pipe and Grade B as pressure pipe. We find unavailing SeAH's argument that the brochures are marketed specifically to Korean customers and, thus, missing ASTM references are not surprising. If the brochures are targeted specifically to Korean customers, who according to SeAH, use Japanese or Korean standards, it is unclear why SeAH or Nexteel would reference ASTM standards at all. Since ASTM standards are mentioned, it does not make sense that they would be inaccurately portrayed in some instances, as SeAH would have us believe.

The Department's decision in CWP from Korea 07-08 was based, in part, on a review of the product brochure of SeAH, which was on the record of the review. In this review, we have product brochures for each of the three mandatory respondents, as well as significant amounts of additional information that has been referenced herein. We disagree with Nexteel that we based our classification of the products' physical characteristics in the last review mainly on SeAH's product brochure in the last review and, therefore, we should base our decision for Nexteel on Nexteel's product brochure in this review. Product brochures of each party are just one piece of evidence in this and the last review. Furthermore, we have received additional record evidence in this review and have fully considered all evidence in our decision.

In summary, we determine that the differences between Grade A and Grade B are minor and commercially insignificant. The minimum tensile and minimum yield strength differences between the products, as well as the chemical differences, are to be expected of grades within a given industry standard, and are within standard differences as evidenced by reviewing other industry standards. Construction and building manuals provide record evidence that the end uses of Grade A and Grade B are nearly identical, which is supported by reports from the ITC. The necessity of heat treatment on the weld seam is not evident by a review of record information, and the inconsistent treatment of Grade A and Grade B pipe in product brochures serves to

indicate the similarities between the grades. Further, Grade A and Grade B are governed by the ASTM A-53 standard, and there are minimal differences between the two products under those specifications. Both Grade A and Grade B pipes are manufactured in the same sizes, receive the same coatings, have the same end finishes, are manufactured with the same wall thicknesses and outer diameters, and are subject to the same types, number, and method of testing. In addition, they are subject to the same tolerances on weight and dimensions, the same workmanship, finish, and appearance specifications, and are in accordance with the same length specifications.¹²⁰ The only differences are minor and commercially insignificant differences in the physical and chemical specifications of the products. But, as noted above, this would be expected between grades within a given industry standard. This does not make them so different as to justify different treatment. Therefore, we are continuing to classify Grade B as ordinary pipe, while leaving the other products reported as pressure pipe as classified as such for the final results. See discussion in the BPI Memo.

With regard to DIFMER and the cost test, for SeAH's ASTM A-53 CONNUMs where all other physical characteristics are the same, and both Grade A and Grade B are reported, we will weight average the costs together by quarter for SeAH, using the reported production quantity for weighting purposes.

For Nexteel, where both Grade A and Grade B are reported, we will weight average the variable costs ("VCOM") and total costs ("TCOM") using the reported sales quantity for weighting purposes.

For Grade B CONNUMs for which there is not a Grade A CONNUM where all of the other physical characteristics are the same, we will use the cost as reported for Grade B, including where other steel grades were reported in the same CONNUM as Grade B. We are taking this approach because for those certain CONNUMs where other steel grades were reported, we have no way of breaking out Grade B costs from the cost of other steel grades reported under the "pressure" category.

Comment 5 Universe of Home Market and U.S. Sales for Margin Analysis

SeAH argues that in the Preliminary Results, the Department's margin program erroneously defined the universe of sales based on U.S. sales with a date of sale during the November 1, 2008 to October 31, 2009 POR. SeAH notes that, in accordance with the original Questionnaire instructions¹²¹ and its reporting methodology in prior reviews,¹²² it reported U.S. sales entered for consumption during the POR. SeAH notes this error limited the universe of home market and U.S. sales used in the margin analysis. SeAH asserts the Department should correct the error by using the entire universe of U.S. and home market sales based on U.S. sales with entry dates during the POR.

Department's Position

¹²⁰ See, generally, ASTM A-53 Specifications.

¹²¹ See the Department's February 19, 2010 Antidumping Duty Questionnaire at page C-2 (emphasis in original).

¹²² See, e.g., Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Administrative Review, 66 FR 18747 (April 11, 2001) and accompanying IDM at Comment 2; Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 63 FR 32833, 32836 (June 16, 1998) at Comment 2.

We agree with SeAH and have changed our margin calculation program accordingly. The questionnaire asks companies to:

Report each U.S. sale of merchandise entered for consumption during the POR, except: (1) for EP sales, if you do not know the entry dates, report each transaction involving merchandise shipped during the POR; and (2) for CEP sales made after importation, report each transaction that has a **date of sale** within the POR. Do not report canceled sales. If you believe there is a reason to report your U.S. sales on a different basis, please contact the official in charge before doing so.¹²³

We have made this correction for SeAH and Husteel. They reported sales entered during the POR because they had constructed export price sales made before importation. We have not made the change for Nexteel, because it did not have entry information for all its sales.

SEAH ISSUES

Comment 6 Double Counting of the Major Input Adjustment

SeAH argues that in the Preliminary Results, the Department inadvertently double counted the major input adjustment that was made to SeAH's direct material costs for the first and second quarters of the POR. SeAH concludes that, in these final results, the Department should correct the margin program to eliminate the double counting.

Department's Position

We agree with SeAH and have corrected SeAH's margin calculation program accordingly.

Comment 7 Letters of Credit Charges

U.S. Steel argues that the Department should apply partial adverse facts available ("AFA") with respect to bank charges for letters of credits ("LOC") that SeAH incurred. U.S. Steel further argues that SeAH failed to properly report these bank charges as direct selling expenses despite clear instruction to do so.

U.S. Steel asserts that the Department's regulations state that the Department will treat as direct selling expenses all expenses that "result from, and bear a direct relationship to, the particular sale in question."¹²⁴ U.S. Steel states that pursuant to its regulations, it is the Department's well-established practice to treat charges for LOCs as direct selling expenses when such charges can be tied to specific sales.¹²⁵ U.S. Steel argues that the sales documentation provided by SeAH in

¹²³ See Questionnaire at page C-2.

¹²⁴ See 19 CFR 351.410(c).

¹²⁵ See, e.g., CWP from Korea and accompanying IDM at Comment 6; Certain Polyester Staple Fiber From Korea: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review and Preliminary Notice of Intent To Revoke, in Part, 69 FR 32497, 32501 (June 10, 2004) (treating LOC charges as direct selling expenses), unchanged in Certain Polyester Staple Fiber From Korea: Final Results of Antidumping Duty Administrative Review and Final Determination To Revoke the Order in Part, 69 FR 61341 (Oct. 18, 2004); Notice of Preliminary Results, Partial Rescission of Antidumping Duty Administrative Review and Preliminary

its supplemental questionnaire responses in the instant review shows that the LOC charges at issue here can be tied to specific U.S. sales,¹²⁶ and accordingly, these charges should be treated as direct selling expenses. U.S. Steel notes that the Department found in the last administrative review that if LOC charges can be tied to specific sales, it does not matter if the sales involve both subject and non-subject merchandise, and the LOC charges would be direct expenses.

U.S. Steel states that SeAH has misconstrued the Department's decision in Resin from Thailand by using that case as support for its assertion that the Department would include bank charges as part of indirect selling expenses when they relate to both subject and non-subject merchandise.¹²⁷ U.S. Steel notes that in that case, the bank charges could not be directly attributed to a specific sale, and that is the reason the Department treated the bank charges as indirect selling expenses.¹²⁸ U.S. Steel concludes that because SeAH's LOC charges can be tied to specific sales, consistent with the Department's regulations and well-established practice, the Department should treat all of SeAH's LOC charges as direct selling expenses for these final results.

U.S. Steel concludes that the Department should apply AFA here because SeAH failed to act to the best of its ability to provide the necessary information and impeded the proceeding.¹²⁹ U.S. Steel asserts that the Department should use the highest LOC charge related to the sales of the subject merchandise on the record as the appropriate bank charges to include as direct selling expenses for all of SeAH's U.S. sales.

SeAH states that the Department correctly treated PPA's¹³⁰ LOC charges as U.S. indirect selling expenses in the Preliminary Results. SeAH asserts that the sales documentation that was provided shows that there is no direct tie between the LOC charges and specific U.S. sales, and that to the extent they could be tied it would be overly burdensome for SeAH because (i) a large number of LOCs PPA used during the POR were for the purchase of both subject and non-subject merchandise, and (ii) the LOC charges cannot be linked in PPA's computer system.

SeAH contends that PPA's LOC charges are insignificant, and PPA incurs two types of bank charges: (i) bank charges to cover normal bank loans for its general operations; and (ii) bank charges associated with opening and amending LOCs that are used for purchasing both subject and non-subject merchandise. SeAH explains that the first type of bank charges associated with its normal bank loans are properly classified as indirect selling expenses, because they do not relate to specific U.S. sales but are instead related to the general operation of PPA. SeAH states

Determination to Revoke Order in Part: Canned Pineapple Fruit From Thailand, 67 FR 51171, 51175 (Aug. 7, 2002) unchanged in Notice of Final Results of Antidumping Duty Administrative Review, Rescission of Administrative Review in Part, and Final Determination to Revoke Order in Part: Canned Pineapple Fruit from Thailand, 67 FR 76718 (Dec. 13, 2002); Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From South Korea, 65 FR 41437 (July 5, 2000) and accompanying IDM at Comment 31.

¹²⁶ See SeAH's Second Supplemental Section C Questionnaire Response (Nov. 12, 2010) at 1 and Exhibit C-32 ("SeAH Second Supplemental QR"); SeAH's Third Supplemental Questionnaire Response (Nov. 19, 2010) at 1 and Exhibit C-33.

¹²⁷ See Notice of Final Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate Resin From Thailand, 70 FR 13453 (Mar. 21, 2005) ("Resin from Thailand") and accompanying IDM at Comment 7 ("Resin from Thailand").

¹²⁸ Id.

¹²⁹ See section 776(b) of the Act.

¹³⁰ Pusan Pipe America ("PPA") is SeAH's U.S. sales affiliate.

that the second type of bank charges, the LOC charges, were reported as indirect selling expenses because they cannot practically be directly tied to specific U.S. sales. SeAH argues that as part of its normal operations, PPA opens LOCs for the purchase of all of its merchandise, both subject and non-subject merchandise, purchased from SeAH and from unaffiliated suppliers. SeAH argues that due to the volume of transactions, the number of LOCs used during the POR, and the amendments to those LOCs that would further complicate the link, it was simply not practical for PPA to track every purchase to each LOC and segregate them between subject and non-subject merchandise. SeAH asserts PPA's computer system does not link PPA's invoice and the LOC.¹³¹ SeAH contends that PPA was only able to tie sales to the particular LOCs through a manual review of invoices from suppliers of the subject merchandise. SeAH argues that the sales documents that it provided in its supplemental questionnaires confirm the fact that the LOC charges cannot be directly tied to specific sales without undertaking a laborious and time consuming manual process.

SeAH states that it was theoretically possible for PPA to have manually reviewed each and every LOC that was used during the POR and then attempted to match them to the suppliers' commercial invoices, but that that exercise would have been overly burdensome given the number of LOCs involved and the number of sales. SeAH further states that instead of doing this, PPA treated these bank charges as part of its indirect selling expenses. SeAH argues this was consistent with prior cases where the Department has included bank charges (including LOC charges) as part of indirect selling expenses when they related to both subject and non-subject merchandise and could not practicably be tied to specific sales.¹³²

SeAH asserts that U.S. Steel's characterization of the facts is wrong and there is no basis for applying partial AFA. SeAH argues that the Department confirmed SeAH's claims by issuing supplemental questionnaires until it was satisfied that the LOC charges could not be directly tied to sales of subject merchandise without PPA undertaking a burdensome and time consuming manual process. SeAH asserts that facts available, adverse or otherwise, is inappropriate in this case because SeAH has not impeded the proceeding and has fully cooperated with the Department's information requests regarding bank charges.

Department's Position

SeAH reported in its original questionnaire response that PPA incurred bank charges but did not report them as direct selling expenses.¹³³ In a supplemental questionnaire, we asked SeAH to demonstrate that these charges were all indirectly rather than directly related to sales of subject merchandise.¹³⁴ SeAH's response was that it was not practical and would be overly burdensome for it to tie its bank charges to specific sales because the large number of LOCs it used during the POR are used for the purchase of both subject and non-subject merchandise.¹³⁵ Furthermore, SeAH stated that PPA opens LOCs for the purchase of all of its merchandise, subject and non-subject, from SeAH and from unaffiliated suppliers, and that any link to a PPA invoice would

¹³¹ SeAH notes that PPA's invoice does not contain the LOC number, and LOCs often relate to multiple sales.

¹³² Citing to section 77A(a)(2) of the Act and 19 CFR 351.413.

¹³³ See SeAH's Section C Questionnaire Response (April 12, 2010) at Exhibit C-19.

¹³⁴ See Department's Supplemental A-C Questionnaire (September 27, 2010) at Questions 41-42.

¹³⁵ See SeAH's Section A-C Supplemental Questionnaire Response (October 26, 2010) at 31-32 and Exhibit C-25.

require manual tracing of the bank charge invoice to the PPA invoice.¹³⁶ SeAH explained that the LOC number is not shown on PPA's commercial invoice but is shown on the vendor's commercial invoice. SeAH further explained it is not possible to automatically trace the vendor's invoice to PPA's invoice, which is the reason why PPA cannot trace LOC numbers in its computer system and must do so manually.¹³⁷ Thus, for the Preliminary Results, we included SeAH's bank charges in the calculation of its indirect selling expenses.

Pursuant to 19 CFR 351.401(c), the Department will treat as direct selling expenses all expenses that result from, and bear a direct relationship to, the particular sale in question. In presenting the documentation, SeAH clarified that LOC charges relate to specific sales, but it would be impractical to segregate bank charges between subject and non-subject merchandise. While we agree with U.S. Steel that the LOC charges are specific to U.S. sales, unlike in the previous review SeAH has established that it would be burdensome to report LOC charges on a transaction-specific basis. Therefore, the question then becomes how specifically these expenses can reasonably be allocated to U.S. sales. In this case, the most precise calculation that can be done is to allocate the LOC charges over all of PPA's sales (subject and non-subject). This is the same methodology used to calculate PPA's indirect selling expenses. Given the small amount of bank charges, it would not affect the calculation if we moved those expenses from direct selling expenses to indirect selling expenses. Thus, we have left the bank charges in the indirect selling expense calculation consistent with our Preliminary Results.

NEXTEEL ISSUES

Comment 8 Programming Revisions

U.S. Steel argues that the Department correctly classified ASTM-A53 Grade B pipe as ordinary pipe, but inadvertently failed to properly update the programming used to calculate Nexteel's margin. U.S. Steel states that the Department modified the product grade field in both the comparison market and margin programs but failed to make corresponding changes to the control numbers in the comparison market and margin programs.

Department's Position

We have changed the control number of ASTM A-53 Grade B sales to reflect the change in classification for these sales from "pressure" to "ordinary" for product comparison purposes.

¹³⁶ Id. at 32.

¹³⁷ See SeAH Second Supplemental QR at 1.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions. If accepted, we will publish the final results of this review and the final weighted-average dumping margins in the Federal Register.

AGREE_____ DISAGREE_____

Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

Date