



A-580-870

POR: 07/18/2014-08/31/2015

**Public Document**

AD/CVD Operations, OVI: DS, EK

OA: J. Y. Oh, MK

April 10, 2017

MEMORANDUM TO: Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

FROM: James Maeder  
Senior Director, Office I  
Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the  
2014-2015 Administrative Review of the Antidumping Duty Order  
on Certain Oil Country Tubular Goods from the Republic of Korea

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## I. SUMMARY

The Department of Commerce (the Department) has analyzed the comments submitted by the interested parties in the administrative review of the antidumping duty (AD) order on certain oil country tubular goods (OCTG) from the Republic of Korea (Korea) covering the period of review (POR) July 18, 2014 to August 31, 2015. This administrative review covers 50 producers or exporters of the subject merchandise. Based upon our analysis of the comments received, we made changes from the *Preliminary Results*<sup>1</sup> to the margin calculations for the two mandatory respondents, SeAH Steel Corporation (SeAH) and NEXTEEL Co., Ltd. (NEXTEEL). We continue to find that SeAH and NEXTEEL sold the subject merchandise in the United States at prices below the normal value (NV) during the POR. In addition, we continue to find that Hyundai Glovis, Hyundai Mobis, Hyundai RB, Kolon Global, POSCO Plantec, and Samsung C&T Corporation made no shipments of the subject merchandise during the POR. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

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<sup>1</sup> See *Certain Oil Country Tubular Goods from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 71074 (October 14, 2016) (*Preliminary Results*), and accompanying Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, “Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review: Certain Oil Country Tubular Goods from the Republic of Korea,” dated October 5, 2016 (Preliminary Decision Memorandum).



## **II. LIST OF ISSUES**

### **A. General Issues**

- Comment 1: Calculation of Constructed Value Profit
- Comment 2: Differential Pricing
- Comment 3: Particular Market Situation
- Comment 4: Memoranda Placed on the Record by the Department

### **B. SeAH-Specific Issues**

- Comment 5: Whether to Apply Total Adverse Facts Available to SeAH
  - A. Whether SeAH Manipulated Its Margin
  - B. U.S. Sales of Non-Prime Products
  - C. CONNUMs with Negative Costs
  - D. Cost Difference Related to Timing Differences of Production and Not to Physical Characteristics
  - E. Information on Inputs from Affiliated Parties
  - F. SeAH's Inventory Movement Schedules for OCTG
  - G. International Freight Expenses
  - H. Transaction-Specific Reporting of Certain Movement Expenses
  - I. Reporting of Payment Terms for Canadian Sales
  - J. U.S. Warehousing Expenses
  - K. Price Adjustments for Certain U.S. Sales
  - L. Korean Inland Freight
  - M. Warranty Expenses
  - N. Inventory Movement Schedules for By-Products and Scrap
  - O. Costs to Repair Damaged Products
  - P. PPA's Unconsolidated Financial Statements
- Comments 6-16: Whether to Apply Partial Adverse Facts Available to SeAH
- Comment 6: Date of Sale
- Comment 7: International Freight
- Comment 8: Canadian Inland Freight
- Comment 9: Certain Movement Expenses
- Comment 10: Packing Expenses
- Comment 11: Adjustment to SeAH's Costs Related to U.S. Non-Prime Merchandise
- Comment 12: Disregard SeAH's Revised Database Purporting to Reflect Weighted-Average Costs of HRC
- Comment 13: SeAH's Cost Variances
- Comment 14: PPA's General and Administrative (G&A) Expenses Related to Resold U.S. Products
- Comment 15: SeAH's Scrap Offset
- Comment 16: Valuation of SeAH's Non-Prime Products

- Comment 17: Interested Party Standing
- Comment 18: Timeliness of Market-Viability Allegation
- Comment 19: Reporting of Grade Codes
- Comment 20: Freight Revenue Cap
- Comment 21: International Freight for Certain Third-Country Sales
- Comment 22: SeAH's Useable Cost Database
- Comment 23: Use of Average HRC Cost by Grade for SeAH
- Comment 24: Procedural Issue Regarding Service of Case Brief
- Comment 25: Procedural Issue Regarding Sanctions for Improper Conduct

### **C. NEXTEEL-Specific Issues**

- Comment 26: Whether to Apply Total Adverse Facts Available to NEXTEEL
  - A. Lawsuit Between POSCO Daewoo and Atlas
  - B. Expenses Incurred by a Certain Affiliate
  - C. Expenses and Revenues Booked by NEXTEEL and a Certain Affiliate
  - D. Inventory Movement Schedule
  - E. Hot-Rolled Coil Grades Used to Produce OCTG
- Comment 27: NEXTEEL's Unpaid U.S. Sales to Atlas
- Comment 28: Whether the Unpaid Sales Constitute Bad Debt
- Comment 29: Upgradeable HRC
- Comment 30: Transferred Quantities of OCTG in NEXTEEL's COP Data
- Comment 31: Sales Adjustment for Certain Expenses
- Comment 32: Major Input Adjustment for Hot-Rolled Coil
- Comment 33: Cost Adjustment for Downgraded, Non-OCTG Pipe
- Comment 34: Suspended Losses
- Comment 35: Valuation Allowances of Raw Materials and Finished Goods Inventories
- Comment 36: Affiliation
- Comment 37: Universe of U.S. Sales
- Comment 38: U.S. Freight and Storage

### **III. BACKGROUND**

On October 14, 2016, the Department published the *Preliminary Results* of this administrative review.<sup>2</sup> In accordance with 19 CFR 351.309(c), we invited interested parties to comment on the *Preliminary Results* and also to submit comments and arguments on the particular market situation allegations filed by petitioner Maverick Tube Corporation (Maverick) in the instant POR.<sup>3</sup> On November 4, 2016, the Department received comments and arguments from Maverick and SeAH on the particular market situation allegations,<sup>4</sup> and on November 14, 2016, the Department received rebuttal comments on the particular market situation allegations from

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<sup>2</sup> See *Preliminary Results*, 81 FR at 71074.

<sup>3</sup> See *Preliminary Results*, 81 FR at 71075.

<sup>4</sup> See Letter from Maverick to the Department, "Certain Oil Country Tubular Goods from the Republic of Korea: Comments and Arguments on Particular Market Situation Allegations," dated November 4, 2016, and Letter from SeAH to the Department, "Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea for the –Comments on Wiley Rein's 'Particular Market Situation' Allegations," dated November 4, 2016, respectively.

Maverick, SeAH, and NEXTEEL.<sup>5</sup> On November 10, 2016, we informed interested parties that we would announce the deadlines to submit case and rebuttal briefs at a later date.<sup>6</sup> On February 1, 2017, the Department informed interested parties that we were establishing the deadlines to submit case and rebuttal briefs on all issues except the particular market situation allegations.<sup>7</sup> On February 8, 2017, the Department extended the deadline for the final results of this administrative review until March 31, 2017.<sup>8</sup> On February 9, 2017, the Department received case briefs from SeAH, NEXTEEL, and Maverick on issues other than the particular market situation allegations,<sup>9</sup> and rebuttal briefs from SeAH, NEXTEEL, and Maverick on February 16, 2017.<sup>10</sup> On February 21, 2017, the Department issued a memorandum in which we preliminarily determined that there is insufficient evidence to show that the particular market situations alleged by Maverick exist in the instant POR.<sup>11</sup> On February 22, 2017, the Department established deadlines for the submission of case and rebuttal briefs on the Department's findings with respect to the particular market situation allegations.<sup>12</sup> The Department received a case brief from Maverick regarding the Department's findings on the particular market situation allegations on March 1, 2017,<sup>13</sup> and rebuttal briefs from SeAH and NEXTEEL on March 7, 2017.<sup>14</sup> On

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<sup>5</sup> See Letter from Maverick to the Department, "Certain Oil Country Tubular Goods from the Republic of Korea: Rebuttal Comments in Response to Comments and Arguments on Particular Market Situation Allegations," dated November 14, 2016; Letter from SeAH to the Department, "Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea for the Comments on Wiley Rein's 'Particular Market Situation' Allegations," dated November 14, 2016; and Letter from NEXTEEL to the Department, "Oil Country Tubular Goods from the Republic of Korea: NEXTEEL's Rebuttal Comments on Particular Market Situation Allegations," dated November 14, 2016, respectively.

<sup>6</sup> See Letter from the Department to Interested Parties, dated November 10, 2016.

<sup>7</sup> See Letter from the Department to Interested Parties, "Briefing Schedule," dated February 1, 2017.

<sup>8</sup> See Memorandum from Deborah Scott, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, Office VI, through Scot Fullerton, Director, Antidumping and Countervailing Duty Operations, Office VI, to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Oil Country Tubular Goods from the Republic of Korea: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review," dated February 8, 2017.

<sup>9</sup> See Letter from SeAH to the Department, "Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea – Case Brief of SeAH Steel Corporation," dated February 9, 2017 (SeAH Case Brief); Letter from NEXTEEL to the Department, "Oil Country Tubular Goods from the Republic of Korea: Affirmative Case Brief," dated February 9, 2017 (NEXTEEL Case Brief); and Letter from Maverick to the Department, "Oil Country Tubular Goods from South Korea: Case Brief," dated February 9, 2017 (Maverick Case Brief), respectively.

<sup>10</sup> See Letter from SeAH to the Department, "Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea – Rebuttal Brief of SeAH Steel Corporation," dated February 16, 2017 (SeAH Rebuttal Brief); Letter from NEXTEEL to the Department, "Oil Country Tubular Goods from the Republic of Korea: Rebuttal Brief," dated February 16, 2017 (NEXTEEL Rebuttal Brief); and Letter from Maverick to the Department, "Certain Oil Country Tubular Goods from the Republic of Korea: Rebuttal Brief," dated February 16, 2017 (Maverick Rebuttal Brief).

<sup>11</sup> See Memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Carole Showers, Executive Director, Office of Policy, Policy & Negotiations, "2014-2015 Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea: Memorandum on Particular Market Situation Allegations," dated February 21, 2017 (Memorandum on Particular Market Situation Allegations).

<sup>12</sup> See Letter from the Department to All Interested Parties, "Briefing Schedule for Comments Related to Particular Market Situation Allegations," dated February 22, 2017.

<sup>13</sup> See Letter from Maverick to the Department, "Oil Country Tubular Goods from South Korea: Particular Market Situation Case Brief," dated March 1, 2017 (Maverick PMS Case Brief).

<sup>14</sup> See Letter from SeAH to the Department, "Administrative Review of the Antidumping Order on Oil Country

March 8, 2017 and March 13, 2017, the Department placed two memoranda on the record<sup>15</sup> and invited interested parties to comment on these memoranda.<sup>16</sup> On March 16, 2017, various interested parties submitted comments on the two memoranda.<sup>17</sup> Based on the requests of SeAH, NEXTEEL, and Maverick, the Department held a public hearing on March 21, 2017. Finally, on March 31, 2017, the Department further extended the deadline for the final results of this administrative review, until April 10, 2017.<sup>18</sup>

The Department conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

#### **IV. SCOPE OF THE ORDER**

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

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

The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30,

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Tubular Goods from Korea – Rebuttal Brief of SeAH Steel Corporation Concerning Wiley Rein’s “Particular Market Situation Allegation,” dated March 7, 2017 (SeAH PMS Rebuttal Brief) and Letter from NEXTEEL to the Department, “Oil Country Tubular Goods from the Republic of Korea: Particular Market Situation Rebuttal Brief,” dated March 7, 2017 (NEXTEEL PMS Rebuttal Brief).

<sup>15</sup> See Memorandum from Deborah Scott, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, Office VI, to the File, “Certain Oil Country Tubular Goods from the Republic of Korea,” dated March 8, 2017 and Memorandum from Deborah Scott, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, Office VI, to the File, “Certain Oil Country Tubular Goods from the Republic of Korea,” dated March 13, 2017, respectively.

<sup>16</sup> See Letter from the Department to All Interested Parties, “Schedule for Submission of Comments on the March 8, 2017 and March 13, 2017 Memoranda to the File,” dated March 13, 2017.

<sup>17</sup> See Letter from Maverick, TMK IPSCO, Vallourec Star, L.P., Welded Tube USA, and United States Steel Corporation to the Department, “Certain Oil Country Tubular Goods from the Republic of Korea: Comments on the Department’s March 8, 2017 and March 13, 2017 Memoranda,” dated March 16, 2017; Letter from SeAH to the Department, “Oil Country Tubular Goods from Korea – Comments on March 2, 2017, Email from Director of National Trade Council,” dated March 16, 2017; Letter from NEXTEEL, Hyundai Steel Company and Husteel Co., Ltd. to the Department, “Oil Country Tubular Goods from the Republic of Korea: Objection To The Department’s March 8, 2017 Memorandum,” dated March 16, 2017; and Letter from ILJIN Steel Corporation to the Department, “Oil Country Tubular Goods from South Korea: Comments of ILJIN Steel Corporation on the March 8, 2017 Memorandum to the File,” dated March 16, 2017.

<sup>18</sup> See Memorandum from Erin Kearney, Program Manager, Antidumping and Countervailing Duty Operations, Office VI, through Scot Fullerton, Director, Antidumping and Countervailing Duty Operations, Office VI, to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Certain Oil Country Tubular Goods from the Republic of Korea: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review,” dated March 31, 2017.

7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

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

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

## V. MARGIN CALCULATIONS

For SeAH, the Department calculated constructed export price (CEP) and NV using the same methodology as stated in the *Preliminary Results*, except as follows:

- 1) we reallocated SeAH's hot-rolled coil (HRC) costs based on the common HRC grade in order to mitigate the significant cost fluctuations reported for raw material costs (*i.e.*, HRC costs);
- 2) we adjusted SeAH's reported HRC costs to reflect the particular market situation;
- 3) we adjusted SeAH's reported cost of manufacture (COM) to reflect the arm's-length prices for affiliated services;
- 4) we included the net losses associated with damaged pipes in the reported further manufacturing costs; and
- 5) we applied Pusan Pipe America Inc. (PPA)'s general and administrative (G&A) expense ratio to the total cost of further manufactured products, that is, the further manufacturing cost plus the cost of production of the imported OCTG, because the denominator of the G&A ratio included these costs. Also, the Department allocated PPA's G&A expense to the cost of all non-further manufactured subject products resold by PPA.

For NEXTEEL, the Department calculated export price (EP), CEP, and NV using the same methodology as stated in the *Preliminary Results*, except as follows:

- 1) we adjusted NEXTEEL's reported HRC costs to reflect the particular market situation;
- 2) we updated the constructed value (CV) information used for NEXTEEL to reflect SeAH's information after adjustments for the final results;
- 3) we revised the payment dates for certain sales subject to a lawsuit, and recalculated credit expenses based on those dates;

- 4) we redefined the universe of sales to base the margin calculation on sales which entered the United States during the POR; and
- 5) we corrected a clerical error (*i.e.*, we revised the margin program to use the correct quantity variable).
- 6) we revised the calculation of certain U.S. freight and storage expenses and the universe of sales to which we applied these expenses.

## VI. RATE FOR NON-EXAMINED COMPANIES

The statute and the Department's regulations do not address the establishment of a rate to be applied to companies not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}." In this review, we calculated weighted-average dumping margins for SeAH and NEXTEEL and that are not zero, *de minimis*, or determined entirely on the basis of facts available. Accordingly, the Department assigned to the companies not individually examined a margin of 13.84 percent, which is the simple average<sup>19</sup> of SeAH's and NEXTEEL's calculated weighted-average dumping margins.

## VII. DISCUSSION OF THE ISSUES

### A. General Issues

#### Comment 1: Calculation of Constructed Value Profit

##### *Maverick's Arguments:*

- Maverick asserts that, to the extent that the Department continues to find that SeAH's Canadian market is a viable comparison market for the final results, the Department should continue to use the comparison market CV selling expenses and CV profit rates calculated for SeAH for purposes of determining CV for NEXTEEL.
- According to Maverick, the Department followed a similar approach in *OCTG from Turkey*, and this approach was sustained by the U.S. Court of International Trade (CIT).<sup>20</sup>
- If the Department does not find SeAH's Canadian market viable, Maverick contends that CV profit should be based on the Tenaris S.A. (Tenaris) 2014 audited financial statements for both SeAH and NEXTEEL.

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<sup>19</sup> We calculated the all-others rate using a simple average of the dumping margins calculated for the mandatory respondents because complete publicly ranged sales data were not available and use of the actual data would disclose business proprietary information.

<sup>20</sup> See *Maverick Case Brief*, at 77 (citing *Maverick Tube Corp. v. United States*, 163 F. Supp 1345, 1350 (CIT 2016)).

- Maverick argues that the Department should reject the financial statements proffered by SeAH, NEXTEEL, and Hyundai Steel. The financial statements of those companies demonstrate that they either operated at a loss or do not primarily produce OCTG. Further, many of those financial statements have been rejected by the Department in prior proceedings.
- According to Maverick, Tenaris' financial statements are representative of the profit produced by an experienced OCTG producer selling over a broad time period contemporaneous with the POR and with comparable operations to that of respondents.
- Regarding arguments related to disclosing business proprietary information (BPI) of SeAH, Maverick contends that the Department has successfully addressed those concerns in the remand of *OCTG from Turkey*. Accordingly, the Department should continue to use SeAH's proprietary information for CV profit for the final results.
- Maverick asserts that the Department should not revisit the profit cap analysis as requested by NEXTEEL because for the *Preliminary Results* the profit amount was selected as facts available. Moreover, NEXTEEL does not even propose a reasonable alternative for profit cap for the final results.<sup>21</sup>

*NEXTEEL's Arguments:*

- According to NEXTEEL, SeAH's proprietary data are not a suitable CV profit source as using the data discloses SeAH proprietary information. Further, it is a potential violation of the Trade Secrets Act. NEXTEEL also contends that the ongoing antidumping case in Canada against OCTG from Korea makes SeAH's Canadian data unusable for CV profit.
- NEXTEEL asserts that if the Department continues to use SeAH for CV profit, the Department should correct the double counting of selling expenses.
- NEXTEEL contends that section 773(e)(2)(B)(ii) of the Act related to CV profit states a preference for the weighted average of multiple exporters' and producers' CV profit. There are multiple other sources on the record of this proceeding, including Tenaris, that are more appropriate than SeAH's profit from sales of OCTG in a third-country market.
- The Department should apply the statutory profit cap as required under section 773(e)(2)(B)(iii) of the Act, rather than using the profit plus selling expense rates for the profit cap as the Department did in the *Preliminary Results*.
- NEXTEEL claims that the Department has found that other pipe products such as standard pipe and line pipe are in the "same general category" of products, yet excludes these products for the purposes of the CV calculation. As such, for the final results, the Department should revisit its general category determination.
- Maverick argues that if the Department does not use SeAH's data for CV profit for the final results, then it should use the Tenaris 2014 financial statements instead. NEXTEEL points out that the Tenaris 2015 financial statements are more contemporaneous with the POR than the 2014 statements. Moreover, NEXTEEL contends that Tenaris is not a suitable CV profit source because it does not operate in Korea, focuses on high-end products, and is significantly larger than NEXTEEL.
- According to NEXTEEL, the Department has profit data from the home market and there is an established preference for home market data. Alternatively, there are several third-

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<sup>21</sup> *Id.*, at 77-89 and Maverick Rebuttal Brief, at 14-17.

country profit sources available on the record that are more accurate proxies for NEXTEEL's operations than Tenaris.<sup>22</sup>

*SeAH's Rebuttal Arguments:*

- SeAH asserts that the Department should continue to calculate CV profit and selling expenses based on its experience in the Canadian market during the POR, and no change to this methodology as to SeAH is warranted in the final results.
- Maverick's argument regarding the use of Tenaris' 2014 financial data for purposes of calculating CV profit, SeAH contends, is irrelevant to it because Maverick did not challenge the viability of SeAH's Canadian market in its case brief.
- If the Department seeks an alternative basis to calculate SeAH's CV profit and selling expenses, SeAH argues that it should not use Tenaris' fiscal year 2014 financial data.
- According to SeAH, Tenaris' fiscal year 2015 financial data is the period that most closely approximates the review period and its profit experience is in line with financial data from other producers of OCTG or products within the same general category.
- If the Department determines to use a source other than actual Canadian market selling expenses and profit for SeAH, SeAH contends it should rely on the financial data of 11 known producers of OCTG or related products with positive profits during fiscal year 2014 or 2015 in addition to, or in lieu of, Tenaris' fiscal year 2015 financial data.
- SeAH claims that, as the party which designated and submitted the proprietary information, only it has the right to challenge the Department's decision to divulge its proprietary information onto the public record.
- According to SeAH, the Department decided to publicly disclose the combined CV profit and selling expense figure that was preliminarily calculated from SeAH's BPI. Before the Department took such action, it should have given SeAH an opportunity to consider the issue and explain if and why such disclosure might cause harm to SeAH.
- With respect to the information regarding SeAH's Canadian antidumping proceedings, SeAH asserts that it was not submitted in a timely manner and is not properly on the record of this proceeding. Further, the Canadian antidumping findings do not provide a basis for concluding that Canada was not an appropriate comparison market for SeAH's U.S. sales of OCTG during the review period.<sup>23</sup>

*Department's Position:*

During the POR, NEXTEEL did not have a viable home or third-country market to serve as a basis for NV; thus, NV must be based on CV, in accordance with section 773(a)(4) of the Act. Likewise, absent a viable home or third-country market, we are unable to calculate CV profit and selling expenses using the preferred method under section 773(e)(2)(A) of the Act, *i.e.*, based on the respondent's own home market or third-country sales made in the ordinary course of trade. In situations where we cannot calculate CV profit and selling expenses under section 773(e)(2)(A) of the Act, section 773(e)(2)(B) of the Act establishes three alternatives. They are:

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<sup>22</sup> See Nexteel Case Brief at 7-17 and Nexteel Rebuttal Brief at 29-35.

<sup>23</sup> See SeAH Rebuttal Brief, at 54-60.

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

The statute does not establish a hierarchy for selecting among the alternatives for calculating CV profit and selling expenses.<sup>24</sup> Moreover, as noted in the SAA, “the selection of an alternative will be made on a case by-case basis, and will depend, to an extent, on available data.”<sup>25</sup> Thus, the Department has discretion to select from any of the three alternative methods, depending on the information available on the record.

The specific language of both the preferred and alternative methods, appear to show a preference that the profit and selling expenses reflect: (1) production and sales in the foreign country; and (2) the foreign like product, *i.e.*, the merchandise under consideration. However, when selecting a profit from available record evidence, we may not be able to find a source that reflects both of these factors. In addition, there may be varying degrees to which a potential profit source reflects the merchandise under consideration. Consequently, we must weigh the quality of the data against these factors. For example, we may have profit information that reflects production and sales in the foreign country of merchandise that is similar to the foreign like product but also includes significant sales of completely different merchandise, or profit information that reflects production and sales of the merchandise under consideration but no sales in the foreign country. Determining how specialized the foreign like product is, what percentage of sales are of the foreign like product or general category of merchandise, what portion of sales are to which markets, *etc.*, judged against the above criteria, may help to determine which profit source to rely upon.

In this case, the Department is faced with several alternatives for CV profit based on available data that reflect at least one of the criteria noted above. We must, therefore, weigh the value of the available data and, in particular, determine which requirement is more relevant for this case based upon the record data before us. With each of the statutory alternatives in mind, we have evaluated the data available and weighed each of the statutory alternatives to determine which

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<sup>24</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, as reprinted in 1994 U.S.C.C.A.N. at 4177 (SAA), at 840 (“At the outset, it should be emphasized, consistent with the Antidumping Agreement, new section 773(e)(2)(B) does not establish a hierarchy or preference among these alternative methods. Further, no one approach is necessarily appropriate for use in all cases.”)

<sup>25</sup> See SAA, at 840.

surrogate data source most closely fulfills the aim of the statute. We find that the Department could not rely on alternative (i) because the other steel products produced by NEXTEEL are not in the same general category of merchandise as OCTG.<sup>26</sup> Further, the Department could not rely on alternative (ii) because there are no sales of OCTG in the home-market (*i.e.*, Korea). Therefore, the Department had to resort to the alternative under subsection (iii) *i.e.*, profit from the same general category of products as subject merchandise and under subsection (iii), *i.e.*, any other reasonable method.

On the record of this proceeding, we are faced with various alternative sources for calculating CV profit and selling expense under section 773(e)(2)(B)(iii): 1) profit associated with SeAH's Canadian market sales, costs, selling and general expenses; 2) the 2014 audited financial statements of Tenaris, a large OCTG producer that sells OCTG globally and has commercial offices in Seoul, Korea; 2) the 2015 audited financial statements of Tenaris; 3) the financial statements of other Korean pipe producers; and, 4) third-country financial statements of other pipe producers.<sup>27</sup>

In evaluating the different alternatives on the record, for the *Preliminary Results*, we found that SeAH Steel Corporation's combined calculated CV profit and selling expense rates constitutes the best information available on the record.<sup>28</sup> This combined number is based on SeAH Steel Corporation's proprietary profit number, but does not disclose the proprietary profit number publicly. SeAH's combined selling expense and profit experience reflects the profit of a Korean OCTG producer, made on comparison market sales of the merchandise under consideration that were made in the ordinary course of trade. The profit is specific to OCTG. Moreover, it represents profit from OCTG produced by a Korean producer in Korea. This alternative closely simulates the statutory preference for calculating CV profit and selling expenses. Likewise, this alternative eliminates some of the inherent flaws that occur with using surrogate financial statements (*e.g.*, profits reflecting products that are not in the same general category of products as OCTG).

Regarding the arguments for using Tenaris' fiscal year 2014 or 2015 profit information, we first note the financial statements do predominantly reflect production and sales of OCTG.<sup>29</sup> However, SeAH's profit is superior because it reflects exclusively the production and sale of OCTG. Second, we note that the Tenaris fiscal year 2015 financial statements more closely correspond to the POR, rather than the fiscal year 2014 financial statements. Again, SeAH's profit is more closely related to the POR than the alternatives. Nevertheless, although both

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<sup>26</sup> The CIT upheld this decision in the less-than-fair-value of OCTG from Korea. See *Husteel Co. v. United States*, 180 F. Supp. 3d 1330 (Ct. Int'l Trade 2016) (*Husteel*).

<sup>27</sup> The financial statements on the record are Tenaris S.A., TMK, Tubos Reunidos S.A., Welspun Corp Limited, Borusan Mannesmann, APL Apollo, Bhushan Steel Limited, Goodluck Steel Tubes, Husteel Co., Ltd, Hyundai Steel/Hyundai HYSCO, Jindal Pipes Limited, JTL Infra Limited, Rama Steel Tubes, Surya Global Steel Tubes Limited, and T.T. Swastik Pipes Limited, submitted on August 8, 2016.

<sup>28</sup> See Memorandum from Sheikh M. Hannan, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – NEXTEEL Co., Ltd.," dated October 5, 2016 (NEXTEEL Preliminary Cost Memorandum).

<sup>29</sup> See Letter from SeAH to the Department, "Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea for the 2014-15 Review Period — Response to Request for CV Profit and Selling Expense Comments and Information," dated August 8, 2016 (SeAH August 8, 2016 CV Profit Comments), at Attachment 9 (Tenaris S.A. Consolidated Financial Statements for the Years Ended 2015, 2014, and 2013).

sources reflect the same general category of products as OCTG, SeAH's profit is superior, because: (1) it is exclusive to OCTG; (2) specific to the POR; and (3) directly represents the production experience of a Korean producer in Korea and is based on profit from sale of a significant amount of OCTG in a viable market. As noted above, SeAH's combined selling expense and profit experience reflects the profit of a Korean OCTG producer on comparison market sales of the merchandise under consideration that were made in the ordinary course of trade.

With respect to using the other Korean pipe producers' data, unlike the SeAH data, the financial statements predominantly reflect the profit on sales of non-OCTG pipe products. As we determined in the *OCTG from Korea Final Determination*<sup>30</sup> and upheld by the CIT,<sup>31</sup> these non-OCTG pipe products are not in the same general category of products as OCTG.<sup>32</sup> To the extent that NEXTEEL contends that we found the standard pipe and line pipe within the same general category of products, our findings in the original investigation, which the CIT sustained as reasonable, are exactly the opposite from NEXTEEL's contentions.<sup>33</sup> Moreover, the financial statements reflect profit earned on U.S. sales of OCTG (*i.e.*, alleged dumped sales under review). Further, regarding the third-country pipe producers' data, none of them represents sales of OCTG produced in Korea. If we did not have SeAH data on the record of this case, we would analyze each financial statement in greater detail, as we did in the final determination of the investigation and in the redetermination to the CIT (*i.e.*, after reopening the record), and determine based on the Department's established criteria, as fully described in the investigation, which financial statement profit source most closely reflects OCTG products. However, in the instant case, it is clear to us that SeAH's data is superior. Because we have record information that most closely mirrors the preferred method and allows us to calculate CV profit and selling expenses using a Korean OCTG producer's comparison market sales of the merchandise under consideration that were made in the ordinary course of trade, *i.e.*, this is more precise information, we do not have to resort to this or the other alternatives.

NEXTEEL argues that SeAH's proprietary data are not a suitable CV profit source, as using the data discloses SeAH BPI. SeAH itself does not object to the Department's use of its BPI to calculate an aggregate figure and, in fact, suggests that NEXTEEL does not have standing to object to the Department's use of SeAH BPI. However, SeAH argues that the Department was required to provide it an opportunity to comment before disclosing BPI. We disagree with both SeAH and NEXTEEL, because, while the arguments differ for the two companies, both are under the incorrect assumption that the Department disclosed BPI information. In cases preceding this case, where we have used a similar methodology in calculating CV profit and selling expenses, the Department explained that the use of an aggregate figure which represents both CV selling expenses and CV profit prevents parties from discerning the portion attributable

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<sup>30</sup> See *Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014) (*OCTG from Korea Final Determination*) and Final Redetermination Pursuant to Court Remand, upheld in *Husteel*.

<sup>31</sup> See *Husteel*, 180 F. Supp. 3d at 1342.

<sup>32</sup> We disagree with NEXTEEL that the Department should revisit its general category determination. As noted earlier, the CIT upheld the Department's decision in the OCTG investigation regarding what constitutes the same general category of products as OCTG, and no new information or arguments have come to light in this proceeding that would lead the Department to revisit its earlier determination.

<sup>33</sup> See *Husteel*, 180 F. Supp. 3d at 1342.

to each individual component and, thus, protects BPI. In fact, the CIT upheld the use of an aggregate figure in *OCTG from Turkey* and found that the use of an aggregate figure “obscured the BPI” and “added a layer of protection, rendering it impossible for Yucel to ascertain which fraction of the figure was attributable to either selling expenses or CV profit.”<sup>34</sup> Here, consistent with *OCTG from Turkey*, aggregate figures were also used and BPI was not disclosed. We agree with SeAH that NEXTEEL does not have standing to object to the use of SeAH’s data. With respect to SeAH’s suggestion that it would have been appropriate for the Department to consult with SeAH before using its data, we disagree that such consultations would have been appropriate. We announce our decisions to interested parties in our determinations. It would not be appropriate to disclose to SeAH in advance of other interested parties that we would be using its combined profit and selling expenses in our calculations of NEXTEEL’s normal value.

Concerning NEXTEEL’s argument that the Department cannot use SeAH’s information for CV profit and selling expenses because SeAH is subject to an antidumping proceeding for OCTG in Canada, we approach this issue with caution, but ultimately disagree with NEXTEEL. We recognize NEXTEEL’s concerns that SeAH’s Canadian sales are allegedly dumped. However, in light of the evidence available on the record, on balance, SeAH’s sales of OCTG in a third-country market are the best information available to determine what the price of OCTG would have been, if produced and sold in Korea. These sales are specific to OCTG produced by a Korean producer in Korea and sold in a third-country market. Further, we subjected SeAH’s Canadian market sales to the cost test, and only those sales that were above the cost of production (*i.e.*, made in the ordinary course of trade) were used in constructing the aggregate CV profit and selling expenses. Hence, the Canadian market sales are being used as NV in calculating SeAH’s antidumping duty margin in this review. Therefore, it is reasonable to use the same set of sales to calculate CV profit and selling expenses for NEXTEEL.

Lastly, NEXTEEL contends that if the Department uses SeAH’s BPI for CV profit and selling expenses for the final results, then certain corrections should be made to the *Preliminary Results*: 1) eliminate double counting of selling expenses; and, 2) apply the statutory profit cap as required under section 773(e)(2)(B)(iii) of the Act. We agree with NEXTEEL that certain selling expenses in question should not be double counted and we have made those corrections in the margin calculation for the final results. For the profit cap, we find that there is no information available to calculate a profit cap for Korea as set forth under subsection (iii) because we do not have home market profit data for other exporters and producers in Korea of the same general category of products. However, the SAA makes clear that the Department may need to apply alternative (iii) on the basis of facts available. In this case, the record evidence demonstrates that there is no viable domestic market in the exporting country for merchandise that is in the same general category of products as the subject merchandise.<sup>35</sup> Accordingly, we have examined all available data in this case and conclude that, as facts available, a reasonable profit cap is the profit earned by SeAH on its viable comparison market sales of OCTG made in the ordinary course of trade.

Based on our analysis, we find that the profit earned by SeAH on its sales of OCTG to customers in Canada reflects the profit of a Korean OCTG producer, made on comparison market sales of

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<sup>34</sup> See *Maverick Tube Corp. v. United States*, 16 F. Supp. 3d 1345, 1354 (Court of International Trade 2016).

<sup>35</sup> See Preliminary Decision Memorandum, at 16.

the merchandise under consideration, in the ordinary course of trade. In fact, these same sales were used by SeAH in calculating its CV profit in accordance with section 773(e)(2)(A) of the law (i.e., the preferred method). Moreover, the remaining options have already been rejected in our determination of the best information available to calculate CV profit under the (iii) any other reasonable method section of the law. While the Tenaris financial statements were used for both CV profit and the profit cap in the redetermination before the CIT,<sup>36</sup> because it was the best available information on the record of that proceeding, here the SeAH data is now available and is considered the best information to use to calculate both CV profit and the profit cap. If we used the Tenaris financial statements as the facts available CV profit cap, and the profit from those financial statements capped SeAH's CV profit, then the resulting profit would represent flaws not present in the SeAH data such as the information not being from a Korean producer and a profit on sales that do not fully reflect products in the same general category of products as OCTG. While Tenaris' financial statements do predominantly reflect production and sales of OCTG, the Tenaris financial statements still reflect some, albeit relatively small, production and sales of non-OCTG products which do not represent the same general category of products as OCTG. The SeAH data, however, reflect only sales of OCTG. Because there is no Korean market general category profit information on the record of this proceeding, the Department is unable to calculate a profit cap in accordance with the statutory intent under section 773(e)(2)(B)(iii) of the Act, i.e., "the amount normally realized by exporters or producers . . . in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise." However, the SeAH data meet the CV profit requirements for use by SeAH under the preferred method of the law, and is not in any way distorted by the production and sale of products not considered to be in the same general category of products as OCTG. As such, as facts available, the Department reasons that SeAH's profit data are the best suitable data to use as the basis for the calculation of the profit cap.

In summary, for the final results, after considering the record evidence and the arguments raised in the parties' case and rebuttal briefs we have continued to use different components of SeAH's BPI Canadian market sales, costs, selling and general expenses as the data source to calculate NEXTEEL's CV profit and selling expenses.

#### Comment 2: Differential Pricing

##### *NEXTEEL's Arguments:*

- The Department should not conduct a differential pricing analysis for the final results.
- The Department applied the average-to-average method to all of NEXTEEL's sales in the *Preliminary Results* and should continue to do so for the final results, as there is no evidence on the record suggesting the need to resort to alternative calculation methodologies.
- The use of zeroing in the final results would violate U.S. law.

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<sup>36</sup> See *Husteel*, 180 F. Supp. 3d at 1337.

- Recent World Trade Organization (WTO) decisions<sup>37</sup> have found that the use of zeroing in the differential pricing test, as well as the differential pricing analysis itself, violate the WTO Antidumping Agreement.

*SeAH's Arguments:*

SeAH contends that the Department's use of the "differential pricing analysis" is mathematically and legally improper. It offers the following five arguments for this position:

*A. The Department Is Required to Justify the Numerical Thresholds Used in the Differential Pricing Analysis Based on Substantial Evidence on the Record*

- The Department has not pointed to evidence on the record showing that the analysis is appropriate for this particular case.
- The CIT and Court of Appeals for the Federal Circuit (CAFC) require the Department to provide substantial evidence when applying the *de minimis* rule. SeAH cites *Carlisle Tire* and *Washington Red Raspberry*.<sup>38</sup>

*B. The 0.8 Cut-Off Used in the "Cohen's d Test" Portion of the Differential Pricing Analysis Is Not Supported by the Substantial Evidence on the Record*

- The Department's use of the "widely adopted" statistical test is improper and out of the context for which it was proposed.
- Professor Cohen made clear that cut-offs should only be used where "samples, each of n cases, have been randomly and independently drawn from normal populations, and where the two samples do not have "substantially unequal variances" or "substantially unequal sample sizes (whether small or large)." These conditions have not been satisfied.
- The Department is taking a cut-off for a specific situation and inappropriately applying it here.
- Neither mathematics nor substantial evidence supports the Department's use of Cohen's cut-offs simply because the Department is analyzing an entire population rather than a sample.
- The mathematical principles of normal distributions, whether populations or samples, are necessary for Cohen's cut-offs to be properly applied. SeAH provided analyses showing that when these conditions are not met, the *d* statistic is no longer a useful measure of effect sizes. The Cohen's *d* statistic will not state anything meaningful if the data are not normal, regardless of size.

*C. The 33- and 66-Percent Cut-Offs Used in the "Ratio Test" Are Not Supported by the Substantial Evidence on the Record*

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<sup>37</sup> See NEXTEEL Case Brief, at 30 (citing *United States -Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea*, WT/DS464/AB/R (September 26, 2016) (*U.S. – Washers (Korea)*)).

<sup>38</sup> See SeAH Case Brief, at 22-23 (citing *Carlisle Tire v. United States*, 634 F. Supp. 419, 423 (Ct. Int'l Trade 1986) (*Carlisle Tire*) and *Washington Red Raspberry Commn. v. United States*, 859 F.2d 898, 903 (Fed. Cir. 1988) (*Washington Red Raspberry*)).

- The Department never explained why the numbers 33 and 66 should be the thresholds for this test, or why sales above this range call for the application of the transaction-to-average methodology.
- Without justification, this threshold is arbitrary and improper. The Department has provided no mathematical justifications for the cut-offs.

*D. The Differential Pricing Analysis Fails to Explain Why Patterns of Prices That Differ Significantly Were Not, or Could Not Be, Taken into Account Using the Average-to-Average Method*

- The statute allows the Department to depart from the average-to-average method for targeted dumping only if it “explains why such differences cannot be taken into account using” the average-to-average method or transaction-to-transaction method.
- The Department only showed that the weighted-average dumping margin developed using the alternate comparison is meaningfully different than that calculated with the standard comparison methodology. The existence of different results does not satisfy the statute’s requirement.
- These differences are a result of zeroing or not zeroing.

*E. Under the Relevant Provisions of the Statute, the Department Is Not Permitted to Utilize an Average-to-Transaction Comparison Methodology for Any of SeAH’s U.S. Sales*

- In general, the statute does not allow the Department to compare an average normal value to U.S. prices for individual transactions. The exception for this only applies if there is a pattern of prices that differ significantly, and the Department explains why such differences cannot be taken into account using the average-to-average method or the transaction-to-transaction method.
- Neither the petitioners nor the Department satisfies the two criteria for application of the exceptional comparison methodology, such that the Department is required to use the average-to-average methodology.
- If the Department utilizes the average-to-transaction method, its application should be limited to transactions within the pattern of prices that differ significantly.
- The Department should not zero the comparison results of non-dumped sales found in its comparisons.
- The WTO has held that an authority must apply an average-to-transaction method only to the transactions which are part of the differing prices pattern.
- The WTO has held also that zeroing is not permitted when applying the average-to-transaction method.

*Maverick’s Rebuttal Argument to NEXTEEL’s Arguments:*

- The Department may make adjustments to NEXTEEL’s margin calculation for the final results. If the Department does so, it may be the case that enough of NEXTEEL’s U.S. sales pass the Cohen’s *d* test to reflect a pattern of price differences, and, thus, the Department should reject NEXTEEL’s request to disregard the differential pricing analysis.

*Maverick's Rebuttal Arguments to SeAH's and NEXTEEL's Arguments:*

- The WTO Appellate Body's determination in *U.S. – Washers (Korea)* has no effect on the Department's determination, as WTO reports do not have instant operation in U.S. law.
- Specifically, the Uruguay Round Agreements Act (URAA) established that a WTO decision has no effect on U.S. law by itself.<sup>39</sup>
- The Department recently explained that "... Congress did not intend for WTO reports to automatically supersede the exercise of the Department's discretion in applying the statute."<sup>40</sup>

*Maverick's Rebuttal Arguments to SeAH's Arguments:*

*The Department Should Dismiss SeAH's Attacks on the Numerical Thresholds of its Differential Pricing Analysis*

- All of SeAH's arguments have been rejected previously by the Department, and the Department should continue to disregard them.
- SeAH is claiming that the Department did not follow the notice-and-comment requirements of the Administrative Procedure Act (APA), but the Department has already rejected this claim and found the thresholds reasonable and consistent with the requirements.
- SeAH offered no new meaningful arguments to support its claim.
- The Department found in *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Korea* that "'critical assumptions' of normal distributions and homoscedasticity are only ideal assumptions which are never present in reality." The Department should reject SeAH's claim that the thresholds should not apply in the absence of normal distributions.
- The Department previously explained its use of the 33- and 66-percent thresholds in *OCTG from India* and should reject SeAH's claim that the thresholds are arbitrary.

*The Department's Differential Pricing Analysis Properly Explains Why the Average-to-Average Method Cannot Take Into Account Patterns of Differential Pricing*

- The Department rejected the argument that different results are primarily a result of zeroing or not zeroing in *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Korea*.

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<sup>39</sup> See Maverick Rebuttal Brief, at 50 (citing 19 U.S.C. § 3538(b)(4)).

<sup>40</sup> *Id.*, at 49 (citing *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China*, 82 FR 4853 (January 17, 2017), and accompanying Issues and Decision Memorandum at Comment 5, citing *Corus Staal BV v. Dep't Commerce*, 395 F.3d 1343, 1349 (Fed. Cir. 2005); 19 U.S.C. § 3533, 3538 (sections 123 and 129 of the URAA); and 19 U.S.C. §§ 3538(b)(4)).

- The CIT found the Department’s “meaningful difference” analysis using zeroed and non-zeroed methods lawful in *Apex II*.<sup>41</sup>
- The Department explained in the *Preliminary Results* that the average-to-average methodology cannot account for such differences, and the Department has rejected SeAH’s claims in other proceedings. Thus, the Department should continue to apply the average-to-transaction methodology for the final results.

*Contrary to SeAH's Claims, the Department Applied Its Differential Pricing Methodology Consistent with the Statute*

- In the *Preliminary Results*, the Department explained that, if the difference between weighted-average dumping margins from the average-to-average method and average-to-transaction method is meaningful, then this indicates that the average-to-average method cannot account for the differences, and an alternative comparison is thus appropriate. This satisfies both statutory criteria.

*Department’s Position:*

As an initial matter, the Department notes that there is nothing in section 777A(d) of the Act that mandates how the Department measures whether there is a pattern of prices that differs significantly or explains why the A-to-A method or the transaction-to-transaction (T-to-T) method cannot account for such differences. On the contrary, carrying out the purpose of the statute<sup>42</sup> here is a gap filling exercise properly conducted by the Department.<sup>43</sup> As explained in the *Preliminary Results*, as well as in various other proceedings,<sup>44</sup> the Department’s differential pricing analysis is reasonable, including the use of the Cohen’s *d* test as a component in this analysis, and it is in no way contrary to the law.

The Department disagrees with the entire basis of the arguments set forth by both SeAH and NEXTEEL regarding the effect that the WTO panel and Appellate Body findings in *US –*

<sup>41</sup> *Id.*, at 52 (citing *Apex Frozen Foods Private Ltd. v. United States*, 144 F. Supp. 3d 1308, 1322 (Ct. Int’l Trade 2016) (*Apex II*)).

<sup>42</sup> See *Koyo Seiko Co., Ltd. v. United States*, 20 F. 3d 1156, 1159 (Fed. Cir. 1994) (“The purpose of the antidumping statute is to protect domestic manufacturing against foreign manufacturers who sell at less than fair market value. Averaging U.S. prices defeats this purpose by allowing foreign manufacturers to offset sales made at less-than-fair value with higher priced sales. Commerce refers to this practice as ‘masked dumping.’ By using individual U.S. prices in calculating dumping margins, Commerce is able to identify a merchant who dumps the product intermittently—sometimes selling below the foreign market value and sometimes selling above it. We cannot say that this is an unfair or unreasonable result.” (internal citations omitted)).

<sup>43</sup> See *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984) (recognizing deference where a statute is ambiguous and an agency’s interpretation is reasonable); see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286, 1302 (Ct. Int’l Trade 2014) (*Apex I*), (applying *Chevron* deference in the context of the Department’s interpretation of section 777A(d)(1) of the Act).

<sup>44</sup> See, e.g., *Welded Line Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) (*Line Pipe from Korea*) and the accompanying IDM at Comment 1; *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32937 (June 10, 2015), and the accompanying Issues and Decision Memorandum at Comments 1 and 2; and *Welded ASTM A-312 Stainless Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 46647 (July 18, 2016), and accompanying Issues and Decision Memorandum at Comment 4.

*Washing Machines (Korea)* has on the Department’s methodology utilized in AD proceedings. As a general matter, the CAFC has held that WTO reports are without effect under U.S. law, “unless and until such a {report} has been adopted pursuant to the specified statutory scheme” established in the URAA.<sup>45</sup> In fact, Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.<sup>46</sup> Indeed, the SAA noted that “WTO dispute settlement panels will have no power to change U.S. law or order such a change. Only Congress and the Administration can decide whether to implement a WTO panel recommendation and, if so, how to implement it.”<sup>47</sup> As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department’s discretion in applying the statute.<sup>48</sup> The Department has not revised or changed its use of the differential pricing methodology, nor has the United States adopted changes to its methodology pursuant to the URAA’s implementation procedure.

To date, the United States has fully complied with all adverse panel and Appellate Body reports adopted by the Dispute Settlement Body with regards to Article 2.4.2 of the Antidumping Agreement. With regard to the A-to-T method, specifically, as an alternative comparison method and the use of zeroing under the second sentence of Article 2.4.2 of the WTO Antidumping Agreement, the Department has issued no new determination and the United States has adopted no change to its practice pursuant to the statutory requirements of sections 123 or 129 of the URAA.

#### A. APA Rulemaking Is Not Required

The Department disagrees with SeAH. The notice and comment requirements of the APA do not apply “to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.”<sup>49</sup> Further, the Department normally makes these types of changes in practice (*e.g.*, the change from the targeted dumping analysis to the current differential pricing analysis) in the context of our proceedings, on a case-by-case basis.<sup>50</sup> As the CAFC has recognized, the Department is entitled to make changes and adopt a new approach in the context of its proceedings, provided it explains the basis for the change, and the change is a reasonable interpretation of the statute.<sup>51</sup> Moreover, the CIT in *Apex II* recently held that the Department’s change in practice (from targeted dumping to its differential pricing analysis) was exempt from the APA’s rule making requirements, stating:

Commerce explained that it continues to develop its approach with respect to the use of {A-to-T} “as it gains greater experience with addressing potentially hidden

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<sup>45</sup> See *Corus Staal BV v. U.S. Dep’t of Commerce*, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005), *cert. denied* 126 S. Ct. 1023 (2006); *accord Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007).

<sup>46</sup> See, *e.g.*, 19 U.S.C. § 3533, 3538 (sections 123 and 129 of the URAA).

<sup>47</sup> See SAA at 659.

<sup>48</sup> See, *e.g.*, 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary).

<sup>49</sup> See 5 U.S.C. § 553(b)(3)(A).

<sup>50</sup> See *Differential Pricing Analysis; Request for Comments*, 79 FR 26720, 26722 (May 9, 2014) (*Differential Pricing Comment Request*).

<sup>51</sup> See *Saha Thai Steel Pipe Company v. United States*, 635 F.3d 1335, 1341 (CAFC 2011); and *Washington Raspberry*, 859 F.2d at 902-03. See also *Carlisle Tire*, 634 F. Supp. at 423 (discussing exceptions to the notice and comment requirements of the APA).

or masked dumping that can occur when the Department determines weighted-average dumping margins using the {A-to-A} comparison method.” Final I&D Memo at 18 (internal quotations omitted). Commerce additionally explained that the new approach is “a more precise characterization of the purpose and application of {19 U.S.C. § 1677f-1(d)(1)(B)}” and is the product of Commerce’s “experience over the last several years, . . . further research, analysis and consideration of the numerous comments and suggestions on what guidelines, thresholds, and tests should be used in determining whether to apply an alternative comparison method based on the {A-to-T} method.” Request for Comments, 79 Fed. Reg. at 26,722. Commerce developed its approach over time, while gaining experience and obtaining input. Under the standard described above, Commerce’s explanation is sufficient. Therefore, Commerce’s adoption of the differential pricing analysis was not arbitrary.<sup>52</sup>

Moreover, as we noted previously, as the Department “gains greater experience with addressing potentially hidden or masked dumping that can occur when the Department determines weighted-average dumping margins using the average-to-average comparison method, the Department expects to continue to develop its approach with respect to the use of an alternative comparison method.”<sup>53</sup> Further developments and changes, along with further refinements, are expected in the context of our proceedings based upon an examination of the facts and the parties’ comments in each case.

#### B. The Application of the Cohen’s *d* Coefficient and the Threshold of 0.8 for the Cohen’s *d* Coefficient Is Reasonable

As stated in the *Preliminary Results*, the purpose of the Cohen’s *d* test is to evaluate “the extent to which the net prices to a particular purchaser, region, or time period differ significantly from the net prices of all other sales of comparable merchandise.”<sup>54</sup> The Cohen’s *d* coefficient is a recognized measure which gauges the extent (or “effect size”) of the difference between the means of two groups and provides “a simple way of quantifying the difference between two groups and has many advantages over the use of tests of statistical significance alone.”<sup>55</sup> “Effect size quantifies the size of the difference between two groups, and may therefore be said to be a true measure of *the significance of the difference*.”<sup>56</sup> Coe’s Paper points out that the precise purpose for which the Department relies on the Cohen’s *d* test to satisfy the statutory language, to measure whether a difference is significant.

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<sup>52</sup> See *Apex II*, 144 F. Supp. 3d at 1322 .

<sup>53</sup> See *Differential Pricing Analysis; Request for Comments*, 79 FR 26720, 26722 (May 9, 2014).

<sup>54</sup> See Preliminary Decision Memorandum at 5.

<sup>55</sup> See Coe, Robert, “It’s the Effect Size, Stupid: What effect size is and why it is important,” Paper presented at the Annual Conference of British Educational Research Association (Sept. 2002) (Coe’s Paper), included in letter from SeAH to the Department, “Information Relating to ‘Differential Pricing Analysis’” (May 9, 2016), Attachment II.

<sup>56</sup> *Id.*

Further, in describing “effect size” and the distinction between effect size and statistical significance, the Department stated in *Shrimp from Vietnam*:<sup>57</sup>

Dr. Paul Ellis, in his publication *The Essential Guide to Effect Sizes*, introduces effect size by asking a question: “So what? Why do this study? What does it mean for the man on the street?” Dr. Ellis continues:

A statistically significant result is one that is unlikely to be the result of chance. But a practically significant result is meaningful in the real world. It is quite possible, and unfortunately quite common, for a result to be statistically significant and trivial. It is also possible for a result to be statistically nonsignificant and important. Yet scholars, from PhD candidates to old professors, rarely distinguish between the statistical and the practical significance of their results.

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

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

The Department further stated in *Shrimp from Vietnam*:<sup>58</sup>

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

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<sup>57</sup> See *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2014-2015*, 81 FR 62717 (September 12, 2016) (*Shrimp from Vietnam*) and the accompanying Issues and Decision Memorandum at 16-17 (citations omitted), quoting Ellis, Paul D., *The Essential Guide to Effect Sizes*; Cambridge University Press (2010) (*Ellis*) at 3-5.

<sup>58</sup> *Id.*, quoting VASEP Case Brief at 22.

Lastly, in *Shrimp from Vietnam*, the Department again pointed to Dr. Ellis, where he addresses populations of data:

Dr. Ellis also states in his publication that the “best way to measure an effect is to conduct a census of an entire population but this is seldom feasible in practice.”<sup>59</sup>

There two separate concepts and measurements when analyzing whether the means of two sets of data are different. The first measurement, when these two sets of data are samples of a larger population, is whether this difference is statistically significant, as measured by a t-test. This will determine whether this difference rises above the sampling error (or in other words, noise or randomness) in selecting the sample. This will answer the question of whether picking a second (or third or fourth) set of samples will result in a different outcome than the first set of samples. When the t-test results in determining that the difference is statistically significant (*i.e.*, the null hypothesis is false), then these results rise above the sampling error and are statistically significant.

The second measurement is whether there is a practical significance of the difference between the means of the two sets of data, as measured by an “effect size” such as Cohen’s *d* coefficient. As noted above, the measures the real-world relevance of this difference “and may therefore be said to be a true measure of the significance of the difference.”<sup>60</sup> This is the basis for the Department’s determination whether prices in a test group differ significantly from prices in a comparison group.

SeAH claims that the Department’s use of Cohen’s stated thresholds to determine whether Cohen’s measurement of effect size is significant is not appropriate. SeAH states that these thresholds, and consequently Cohen’s *d* coefficient

could only appropriately be applied in specific circumstances – where “samples, each of *n* cases, have been randomly and independently drawn from normal populations,” {sic} and where the two samples do not have “substantially unequal variances” or “substantially unequal sample sizes (whether small or large).”<sup>61</sup>

The Department finds SeAH’s claim misplaced. SeAH’s quotation is from section 2.1 of Dr. Cohen’s text, “Introduction and Use” of the “T Test for Means.” As described above, this concerns the statistical significance of the difference in the means for two sampled sets of data, and is not relevant when considering whether this difference has a practical difference. This is not to say that sample size and sample distribution have no impact on the description of “effect size” for sampled data,<sup>62</sup> but that is not the basis for the Department’s analysis of SeAH’s U.S. sale price data.

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<sup>59</sup> See *Shrimp from Vietnam* at 17, quoting *Ellis*.

<sup>60</sup> See *Coe’s Paper*.

<sup>61</sup> See SeAH’s Case Brief at 24, quoting Cohen, Jacob, *Statistical Power Analysis for the Behavioral Sciences, Second Edition* (1988) (*Cohen*) at 19-20, included in letter from SeAH to the Department, “Information Relating to ‘Differential Pricing Analysis’” (May 9, 2016), Attachment I.

<sup>62</sup> See, for example, *Cohen* at 21-23, section 2.2.1, where Dr. Cohen quantifies the “nonoverlap” of sampled sets of data. The calculation of the overlap must rely on certain assumptions, such as normal distributions and equal variances in order to determine the common or non-common overlap of the two datasets.

Further, the subject for Dr. Cohen’s book and the discussion therein is “statistical power analysis.” Power analysis involves the interrelationship between statistical and practical significance to attain a specified confidence or “power” in the results of one’s analysis. Indeed, the beginning of the “Introduction and Use” of the “T Test for Means,” including SeAH’s first quotation is:

The arithmetic mean is by far the most frequently used measure of location by behavioral scientists, and hypotheses about means the most frequently tested. The tables have been designed to render very simple the procedure for *power analysis* in the case where two samples, each of n cases, have been randomly and independently drawn from normal populations, and the investigator wishes to test the null hypothesis that their respective population means are equal...<sup>63</sup>

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

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

Deosen’s claim that the Cohen’s *d* test’s thresholds of “small,” “medium,” and “large” are arbitrary is misplaced. In “Difference Between Two Means,” the author states that “there is no objective answer” to the question of what constitutes a large effect. Although Deosen focuses on this excerpt for the proposition that the “guidelines are somewhat arbitrary,” the author also notes that the guidelines suggested by Cohen as to what constitutes a small effect size, medium effect size, and large effect size “have been widely adopted.” The author further explains that Cohen’s *d* is a “commonly used measure{” to “consider the difference between means in standardized units.” At best, the article may indicate that although the Cohen’s *d* test is not perfect, it has been widely adopted. And certainly, the article does not support a finding, as Deosen contends, that the Cohen’s *d* test is not a reasonable tool for use as part of an analysis to determine whether a pattern of prices differ significantly.<sup>64</sup>

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<sup>63</sup> See Cohen at 19 (emphasis in italics, SeAH’s quotation underlined)

<sup>64</sup> See *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) at Comment 3 (quoting Dave Lane et al., “Effect Size,” Section 2 “Difference Between Two Means”); see also *Certain Activated Carbon From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013), and accompanying

As the Department explained in the Preliminary Decision Memorandum, the magnitude of the price differences as measured with the Cohen's *d* coefficient

can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.<sup>65</sup>

The Department has relied on the most conservative of these three thresholds to determine whether the difference in prices is significant. Dr. Cohen further provided examples which demonstrate "real world" understanding of the small, medium and large thresholds where a "large" difference "is represented by the mean IQ difference estimated between holders of the Ph.D. degree and typical college freshmen, or between college graduates and persons with only a 50-50 chance of passing an academic high school curriculum. These seem like grossly perceptible and therefore large differences, as does the mean difference in height between 13- and 18-year-old girls..."<sup>66</sup> In other words, Dr. Cohen was stating that it is obvious on its face that there are differences in intelligence between highly educated individuals and struggling high school students, and between the height of younger and older teenage girls. Likewise, the "large" threshold is a reasonable yardstick to determine whether price differ significantly.

Therefore, the Department disagrees with SeAH arguments that its application of the Cohen's *d* test in this review is improper. As a general matter, the Department's finds, contrary to SeAH's claims,<sup>67</sup> that the U.S. sales data which SeAH has reported to the Department constitutes a population, unless SeAH has failed to report all of its U.S. sales during the POR, as requested. As such, sample size, sample distribution, and the statistical significance of the sample are not relevant to the Department's analysis. Furthermore, the Department finds that Dr. Cohen's thresholds are reasonable and the use of the "large" threshold is reasonable and consistent with the requirements of section 777A(d)(1)(B) of the Act.

Finally, the Department notes that, in the Preliminary Decision Memorandum, it requested that interested parties "present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for

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Issues & Decision Memorandum at Comment 4 (same); *Certain Steel Nails From the People's Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014), and accompanying Issues & Decision Memorandum at Comment 7 (same).

<sup>65</sup> Nonetheless, these thresholds, as with the approach incorporated in the differential pricing analysis itself, may be modified given factual information and argument on the record of a proceeding. See, e.g., *Preliminary Determination*, and accompanying Preliminary Decision Memorandum at 8-9.

<sup>66</sup> See *Cohen* at 27.

<sup>67</sup> See case brief at 25 ("SeAH's U.S. sales data is not 'drawn from normal populations.'").

modifying the group definitions used in this proceeding.”<sup>68</sup> SeAH has submitted no factual evidence or argument that these thresholds should be modified or that any other aspects of the differential pricing analysis should be changed for SeAH in this review. Accordingly, SeAH’s arguments at this late stage of the review are unsupported by the record and appear to only convey SeAH’s disagreement with the results of the Department’s application of a differential pricing analysis in this review, rather than to truly identify some aspect of this approach which is unreasonable or inconsistent with the statute.

### C. The 33- and 66-Percent Thresholds for the Ratio Test Are Reasonable

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

In the differential pricing analysis, the Department reasonably established a 33 percent threshold to establish whether there exists a pattern of prices that differ significantly. The Department finds that when a third or less of a respondent’s U.S. sales are not at prices that differ significantly, then these significantly different prices are not extensive enough to satisfy the first requirement of the statute...

Likewise, the Department finds reasonable, given its growing experience of applying section 777A(d)(1)(B) of the Act and the application of the A-to-T method as an alternative to the A-to-A method, that when two thirds or more of a respondent’s sales are at prices that differ significantly, then the extent of these sales is so pervasive that it would not permit the Department to separate the effect of the sales where prices differ significantly from those where prices do not differ significantly. Accordingly, the Department considered whether, as an appropriate alternative comparison method, the A-to-T method should be applied to all U.S. sales. Finally, when the Department finds that between one third and two thirds of U.S. sales are at prices that differ significantly, then there exists a pattern of prices that differ significantly, and that the effect of this pattern can reasonably be separated from the sales whose prices do not differ significantly. Accordingly, in this situation, the Department finds that it is appropriate to address the concern of masked dumping by considering the application of the A-to-T method as an alternative to the A-to-A method for only those sales which constitute the pattern of prices that differ significantly.<sup>69</sup>

Although the selection of these thresholds is subjective, the Department’s stated reasons behind the 33- and 66-percent thresholds does not render them arbitrary. In its case brief, SeAH throws out several pairs of other possible thresholds but without reasoning or support to argue that these values are more appropriate than those used by the Department in this review. Likewise during

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<sup>68</sup> See Preliminary Decision Memorandum at 9.

<sup>69</sup> See *Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods From India*, 79 FR 41981 (July 18, 2014) (*OCTG from India*), and accompanying Issues and Decision Memorandum at Comment 1.

the course of this review, SeAH has submitted no factual evidence or argument that these thresholds should be modified. Accordingly, SeAH's arguments at this late stage of the review are unsupported by the record and appear only to convey SeAH disagreement with the results of the Department's application of a differential pricing analysis in this review rather than to truly identify some aspect of this approach which is unreasonable or inconsistent with the statute.

#### D. The Differential Pricing Analysis Appropriately Explains Whether the Average-to-Average Method Can Account for Significant Price Differences

The Department disagrees, in part, with SeAH that “the mere existence of different results is plainly insufficient, by itself, to satisfy the statutory requirements”<sup>70</sup> whether the A-to-A method can account for significant price differences which imbedded in SeAH's pricing behavior in the U.S. market. The Department does agree with SeAH that this difference is due to zeroing, because weighted-average dumping margins calculated using the A-to-A method without zeroing and the A-to-T method without zeroing will always yield the identical results. This is evidenced above with the calculation results for SeAH in these final results.<sup>71</sup>

The difference in the calculated results specifically reveals the extent of the masked, or “targeted,” dumping which is being concealed when applying the A-to-A method.<sup>72</sup> The difference in these two results is caused by higher U.S. prices offsetting lower U.S. prices where the dumping, which may be found on lower priced U.S. sales, is hidden or masked by higher U.S. prices,<sup>73</sup> such that the A-to-A method would be unable to account for such differences.<sup>74</sup> Such masking or offsetting of lower prices with higher prices may occur implicitly within the averaging groups or explicitly when aggregating the A-to-A comparison results. Therefore, in order to understand the impact of the unmasked “targeted dumping,” the Department finds that the comparison of each of the calculated weighted-average dumping margins using the standard and alternative comparison methodologies exactly quantifies the extent of the unmasked “targeted dumping.”

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<sup>70</sup> See SeAH's Case Brief at 30.

<sup>71</sup> See Memorandum from Deborah Scott, International Trade Compliance Analyst, AD/CVD Operations, Office VI, to the File, “Analysis of Data Submitted by SeAH Steel Corporation for the Final Results of the 2014-2015 Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea,” dated April 10, 2017 (SeAH Final Analysis Memorandum), at Attachment 2 (pages 183-185 of the SAS output), where the calculation results of the A-to-A method, the A-to-T method and the “mixed” method are summarized. The sum of the “Positive Comparison Results” and the “Negative Comparison Results” for each of the three comparison methods are identical, *i.e.*, with offsets for all non-dumped sales (*i.e.*, negative comparison results), the amount of dumping is identical. As such, the difference between the calculated results of these comparison methods is whether negative comparison results are used as offsets or set to zero (*i.e.*, zeroing).

<sup>72</sup> See *Koyo Seiko Co., Ltd. v. United States*, 20 F.3d 1156, 1159 (Fed. Cir. 1994) (“The purpose of the antidumping statute is to protect domestic manufacturing against foreign manufacturers who sell at less than fair market value. Averaging U.S. prices defeats this purpose by allowing foreign manufacturers to offset sales made at less-than-fair value with higher priced sales. Commerce refers to this practice as ‘masked dumping.’ By using individual U.S. prices in calculating dumping margins, Commerce is able to identify a merchant who dumps the product intermittently—sometimes selling below the foreign market value and sometimes selling above it. We cannot say that this is an unfair or unreasonable result.” (internal citations omitted)).

<sup>73</sup> See SAA, at 842.

<sup>74</sup> See *Union Steel v. United States*, 713 F.3d 1101, 1108 (Fed. Cir. 2013) (“{the A-to-A} comparison methodology masks individual transaction prices below normal value with other above normal value prices within the same averaging group.”).

The simple comparison of the two calculated results belies the complexities in calculating and aggregating individual dumping margins (*i.e.*, individual results from comparing export prices, or constructed export prices, with normal values). It is the interaction of these many comparisons of export prices or constructed export prices with normal values, and the aggregation of these comparison results, which determine whether there is a meaningful difference in these two calculated weighted-average dumping margins. When using the A-to-A method, lower-priced U.S. sales (*i.e.*, sales which may be dumped) are offset by higher-priced U.S. sales. Congress was concerned about offsetting and that concern is reflected in the SAA which states that “targeted dumping” is a situation where “an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions.”<sup>75</sup> The comparison of a weighted-average dumping margin based on comparisons of weighted-average U.S. prices that also reflects offsets for non-dumped sales, with a weighted-average dumping margin based on comparisons of individual U.S. prices without such offsets (*i.e.*, with zeroing) precisely examines the impact on the amount of dumping which is hidden or masked by the A-to-A method. Both the weighted-average U.S. price and the individual U.S. prices are compared to a normal value that is independent from the type of U.S. price used for comparison, and the basis for normal value will be constant because the characteristics of the individual U.S. sales<sup>76</sup> remain constant whether weighted-average U.S. prices or individual U.S. prices are used in the analysis.

Consider the simple situation where there is a single, weighted-average U.S. price, and this average is made up of a number of individual U.S. sales which exhibit different prices, and the two comparison methods under consideration are the A-to-A method with offsets (*i.e.*, without zeroing) and the A-to-T method with zeroing.<sup>77</sup> The normal value used to calculate a weighted-average dumping margin for these sales will fall into one of five scenarios with respect to the range of these different, individual U.S. sale prices:

- 1) the normal value is less than all U.S. prices and there is no dumping;
- 2) the normal value is greater than all U.S. prices and all sales are dumped;
- 3) the normal value is nominally greater than the lowest U.S. prices such that there is a minimal amount of dumping and a significant amount of offsets from non-dumped sales;<sup>78</sup>

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<sup>75</sup> See SAA at 842.

<sup>76</sup> These characteristics include may include such items as product, level-of-trade, time period, and whether the product is considered as prime- or second-quality merchandise.

<sup>77</sup> The calculated results using the A-to-A method with offsets (*i.e.*, no zeroing) and the calculated results using the A-to-T method with offsets (*i.e.*, no zeroing) will be identical. Accordingly, this discussion is effectively between the A-to-T method with offsets and the A-to-T method with zeroing. See footnote 71 above which identifies the specific calculation results for SeAH in these final results.

<sup>78</sup> As discussed further below, please note that scenarios 3, 4 and 5 imply that there is a wide enough spread between the lowest and highest U.S. prices so that the differences between the U.S. prices and normal value can result in a significant amount of dumping and/or offsets, both of which are measured relative to the U.S. prices.

- 4) the normal value is nominally less than the highest U.S. prices such that there is a significant amount of dumping and a minimal amount of offsets generated from non-dumped sales;
- 5) the normal value is in the middle of the range of individual U.S. prices such that there is both a significant amount dumping and a significant amount of offsets generated from non-dumped sales.

Under scenarios (1) and (2), either there is no dumping or all U.S. sales are dumped such that there is no difference between the weighted-average dumping margins calculated using offsets or zeroing and there is no meaningful difference in the calculated results and the A-to-A method will be used. Under scenario (3), there is a minimal (*i.e.*, *de minimis*) amount of dumping, such that the application of offsets will result in a zero or *de minimis* amount of dumping (*i.e.*, the A-to-A method with offsets and the A-to-T method with zeroing both result in a weighted-average dumping margin which is either zero or *de minimis*) and which also does not constitute a meaningful difference and the A-to-A method will be used. Under scenario (4), there is a significant (*i.e.*, non-*de minimis*) amount of dumping with only a minimal amount of non-dumped sales, such that the application of the offsets for non-dumped sales does not change the calculated results by more than 25 percent or cause the weighted-average dumping margin to be *de minimis*, and again there is not a meaningful difference in the weighted-average dumping margins calculated using offsets or zeroing and the A-to-A method will be used. Lastly, under scenario (5), there is a significant, non-*de minimis* amount of dumping and a significant amount of offsets generated from non-dumped sales such that there is a meaningful difference in the weighted-average dumping margins calculated using offsets or zeroing. Only under the fifth scenario can the Department consider the use of an alternative comparison method.

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

This example demonstrates that there must be a significant and meaningful difference in U.S. prices in order to resort to an alternative comparison method. These differences in U.S. prices must be large enough, relative to the absolute price level in the U.S. market, where not only is there a non-*de minimis* amount of dumping, but there also is a meaningful amount of offsets to impact the identified amount of dumping under the A-to-A method with offsets. Furthermore, the normal value must fall within an even narrower range of values (*i.e.*, narrower than the price differences exhibited in the U.S. market) such that these limited circumstances are present (*i.e.*,

scenario (5) above). This required fact pattern, as represented in this simple situation, must then be repeated across multiple averaging groups in the calculation of a weighted-average dumping margin in order to result in an overall weighted-average dumping margin which changes to a meaningful extent.

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

Therefore, the Department finds that the meaningful difference test reasonably fills the gap in the statute to consider why, or why not, the A-to-A method (or T-to-T method) cannot account for the significant price differences in SeAH’s pricing behavior in the U.S. market. Congress’s intent of addressing “targeted dumping,” when the requirements of section 777A(d)(1)(B) of the Act are satisfied,<sup>79</sup> would be thwarted if the A-to-T method without zeroing were applied since this will always produce the identical results when the standard A-to-A method without zeroing is applied. Under that scenario, both methods would inherently mask dumping. It is for this reason that the Department finds that the A-to-A method cannot take into account the pattern of prices that differ significantly for SeAH, *i.e.*, the Department identified conditions where “targeted” or masked dumping “may be occurring” in satisfying the pattern requirement, and the Department demonstrated that the A-to-A method could not account for the significant price differences, as exemplified by the pattern of prices that differ significantly. Thus, the Department continues to find that application of the A-to-T method, with zeroing, is an appropriate tool to address masked “targeted dumping,”<sup>80</sup> and has applied an alternative comparison methodology based on the A-to-T method to calculate the weighted-average dumping margin for SeAH in these final results.

#### E. Application of the Average-to-Transaction Method Is Supported by Record Evidence and the Department’s Analysis

The Department disagrees with SeAH that it has failed to satisfy the statutory requirements of section 777A(d)(1)(B) of the Act and consider the application of an alternative comparison method based on the A-to-T method. As set forth in the *Preliminary Results*<sup>81</sup> and as further discussed in these final results, the Department’s differential pricing analysis for SeAH in this administrative review is both lawful, reasonable, and completely within the Department discretion in executing the trade statute.

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<sup>79</sup> See SAA at 842-843.

<sup>80</sup> See *Apex I*, 37 F. Supp. 3d at 1296.

<sup>81</sup> See Preliminary Decision Memorandum at 8-10.

The Department disagrees with SeAH's claim of support for its arguments based on WTO jurisprudence, including the WTO Appellate Body's findings in *US – Washing Machines (Korea)*. The CAFC has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.<sup>82</sup> In fact, Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.<sup>83</sup> As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute.<sup>84</sup>

To date, the United States has fully complied with all adverse panel and Appellate Body reports adopted by the Dispute Settlement Body with regards to Article 2.4.2 of the Antidumping Agreement. With regard to the A-to-T method, specifically, as an alternative comparison method and the use of zeroing under the second sentence of Article 2.4.2 of the WTO Antidumping Agreement, the Department has issued no new determination and the United States has adopted no change to its practice pursuant to the statutory requirements of sections 123 or 129 of the URAA.

### Comment 3: Particular Market Situation

Maverick argues that the Department should revise its preliminary finding concerning its particular market situation allegations, and find that a particular market situation affects the respondents' cost of production of OCTG in Korea. Maverick argues that there is a legal standard for the Department to find a particular market situation because: 1) Korean imports of Chinese hot-rolled steel are distorting OCTG costs, 2) the Korea government subsidizes domestic production of hot-rolled steel, 3) strategic alliances between HRC suppliers in Korea and OCTG producers distort the cost of hot-rolled steel, 4) the involvement by the Korean government impacts Korean electricity pricing. Maverick also argues if the Department does not apply an adjustment, then it should still apply an extension of the major input rule to unaffiliated suppliers of hot-rolled steel to Korean OCTG producers.

NEXTEEL disagrees with Maverick and argues that the Department correctly determined that Maverick failed to meet the high evidentiary burden with respect to each of its particular market situation allegations. NEXTEEL states that the record has not changed since the Department's February 21, 2017, preliminary determination on a particular market situation. Therefore, the Department should continue to find that a particular market situation does not exist for OCTG from Korea.

SeAH argues that the Department had carefully considered Maverick's allegations for the preliminary determination and correctly found that a particular market situation did not exist. SeAH states that Maverick's arguments only repeat its previous arguments that were already considered and rejected by the Department. SeAH avers that there is still a lack of evidence that

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<sup>82</sup> See *Corus Staal BV v. U.S. Dep't of Commerce*, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005), cert. denied 126 S. Ct. 1023 (2006); accord *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007).

<sup>83</sup> See, e.g., 19 U.S.C. § 3533, 3538 (sections 123 and 129 of the URAA).

<sup>84</sup> See, e.g., 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary).

establishes a particular market situation; therefore, the Department should continue to find a particular market situation does not exist.

#### *A. Legal Standard for Particular Market Situation*

##### *Maverick's Arguments:*

- Section 504 of the Trade Preferences Extension Act of 2015 (TPEA)<sup>85</sup> enables the Department to address a particular market situation where “cost of materials and fabrication or other processing of any kind” fails to accurately reflect the cost of production (COP) in the ordinary course of trade.<sup>86</sup>
- The TPEA amended the definition of the “ordinary course of trade”<sup>87</sup> and the determination of CV to address the issue of a particular market situation so that now both sales and costs affected by a particular market situation should be disregarded and adjusted, respectively.<sup>88</sup>
- Through the TPEA, Congress has instructed the Department to make an adjustment whenever a particular market situation is found, and expressly expands the consideration of particular market situation to calculations of CV and accompanying cost calculations.<sup>89</sup>
- While the Act does not specifically identify when a particular market situation may exist, the SAA that accompanies the URAA had examples that addressed several types of distortions and now, with the TPEA, Congress has given the Department the authority to address distortive government intervention on either sales price or COP.<sup>90</sup>

##### *NEXTEEL's Rebuttal Arguments:*

- Maverick's claims belie the purpose of the Department's market economy (ME) dumping methodology and the plain language of the statute.
- The Department's preliminary particular market situation determination correctly recognized the purpose of the antidumping laws, as reflected in the statute, is to deviate from a respondent's costs in ME cases only in extenuating circumstances, and only when a petitioner has met its burden of proof that those circumstances exist.
- The Department's preliminary particular market situation determination was the correct interpretation of the statute, as amended by the TPEA, and nothing Maverick has pointed to warrants unprecedented adjustments or reconsideration.

##### *SeAH's Rebuttal Arguments:*

- Section 504 of the TPEA was not intended to change the Department's existing practice with respect to disregarding below-cost sales or affiliated-party transactions and applies

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<sup>85</sup> See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA).

<sup>86</sup> See Maverick PMS Case Brief, at 3.

<sup>87</sup> See section 771(15) of the Act.

<sup>88</sup> See Maverick PMS Case Brief, at 4.

<sup>89</sup> *Id.*, at 5.

<sup>90</sup> *Id.*, at 6.

only when the particular market situation affects the comparability of the U.S. sale prices to the sale prices in the comparison market.<sup>91</sup>

- Maverick’s allegations regarding HRC or electricity have nothing to do with the comparability of U.S. sale prices to SeAH’s sale prices to Canada.
- Section 504(c) of the TPEA modifies the statutory provisions concerning calculation of constructed value, but only applies as a result of a particular market situation when the “the cost of materials and fabrication or other processing of any kind does not accurately reflect the COP in the ordinary cost of trade.”<sup>92</sup>
- Section 773(f) of the Act governs the calculations of respondents’ COP data and states that the Department is required to “calculate based on the records of the exporter or producer of merchandise...” when certain requirements are met.<sup>93</sup>
- Maverick’s particular market situation allegation and proposed adjustment vastly exceed the plain language and intent of Congress in enacting Section 504 of the TPEA.<sup>94</sup>

## *B. Chinese Hot-Rolled Steel Prices*

### *Maverick’s Arguments:*

- Under the particular market situation provision in the TPEA, the Department is required to consider the degree to which conditions in a foreign market are such that supply or demand within that market make a proper comparison of price and/or cost impossible.<sup>95</sup>
- Korea has granted the People’s Republic of China (PRC) market economy status and does not impose remedies against Chinese imports, which has resulted in the PRC flooding the Korean market with unfairly traded hot-rolled steel.<sup>96</sup> The flood of Chinese steel has depressed the value of Korean hot-rolled steel as confirmed by POSCO’s CEO.<sup>97</sup>
- The Department preliminarily found that Maverick did not demonstrate that the flood of Chinese steel is unique to Korea, and that the declines in HRC prices due to Chinese imports are illustrative of recent global price declines for steel. The Department creates an artificial condition for the existence of particular market situation by insisting particular market situation exists in only one market and places undue burden on the petitioner to prove that a particular market situation is uniquely found in only a single country.<sup>98</sup>
- The Department’s preliminary decision that the prices of hot-rolled steel “are illustrative of the recent global price declines for steel products,” is unsupported by any actual indication for what conditions could cause the decline in each market.<sup>99</sup>

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<sup>91</sup> See SeAH PMS Rebuttal Brief, at 3.

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

<sup>93</sup> *Id.*, at 3-4.

<sup>94</sup> *Id.*, at 4.

<sup>95</sup> See Maverick PMS Case Brief, at 14.

<sup>96</sup> *Id.*, at 14-15.

<sup>97</sup> *Id.*, at 15.

<sup>98</sup> *Id.*, at 15-16.

<sup>99</sup> *Id.*, at 16.

- That the concept of a particular market situation contains the word “particular” should not limit the existence of a market situation to only one market, as expressly contemplated in Article 2 of the WTO’s Antidumping Agreement.<sup>100</sup>
- The restriction of a particular market situation to one that only exists in one country, or even a handful of countries, contradicts the definition of the concept in the SAA, in addition to frustrating the objectives of the new law.<sup>101</sup>
- The Department’s preliminary decision on particular market situation is an overly narrow reading of the statute, as is the Department’s conclusion that Chinese overcapacity is so pervasive that all markets were equally affected the same way, despite no evidence to support that conclusion.<sup>102</sup>
- The Department’s preliminary decision limiting a particular market situation to a single market is contradicted by the fact that AD and countervailing duty (CVD) orders on merchandise from the same country are often imposed in more than one export market, *e.g.* Korean OCTG is subject to antidumping proceedings in both the United States and Canada.<sup>103</sup>
- The Department stated that the prices cited by Maverick included various hot-rolled steel products. However, the distortive effects of Chinese excess capacity are ultimately reflected in the prices of all these products and trade distortions weigh on the whole market.<sup>104</sup>

*NEXTEEL’s Rebuttal Arguments:*

- A “market situation” has to be “particular,” *i.e.* “unique” to Korea, otherwise it ignores the plain language of the statute.<sup>105</sup>
- The fluctuating prices due to Chinese imports means that Korean market is operating efficiently and is not indicative of transactions “outside the ordinary course of trade” or evidence of a particular market situation.<sup>106</sup>
- The price declines of the Korean market are similar to the U.S. International Trade Commission’s recent findings of price declines in the U.S. market, and are not indicative of anything particular to the Korean marketplace.<sup>107</sup>
- The SAA establishes a high bar for the Department to find that a particular market situation exists, and none of Maverick’s allegations rise to that high level given that hot-rolled steel shipped from the PRC to Korea is particular.<sup>108</sup>
- The Department can use its quarterly cost methodology to address price fluctuations, and in this proceeding, the Department preliminarily determined that quarterly cost was not appropriate.<sup>109</sup>

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<sup>100</sup> *Id.*, at 16-17.

<sup>101</sup> *Id.*, at 17.

<sup>102</sup> *Id.*, at 17-18.

<sup>103</sup> *Id.*, at 18.

<sup>104</sup> *Id.*, at 18-19.

<sup>105</sup> *See* NEXTEEL PMS Rebuttal Brief, at 6.

<sup>106</sup> *Id.*, at 6-7.

<sup>107</sup> *Id.*, at 7.

<sup>108</sup> *Id.*, at 7-8.

<sup>109</sup> *Id.*, at 8.

*SeAH's Rebuttal Arguments:*

- Maverick refers to the well-known overcapacity of China's steel industry and is merely reiterating arguments that the Department has already thoroughly considered and rejected.<sup>110</sup>
- Maverick's argument about Chinese steel production overcapacity is not "particular" as defined by the statute and dictionary, but is a description of something endemic in markets around the world.<sup>111</sup>
- Low Chinese prices for items that SeAH does not use in its production of OCTG do not constitute evidence that the prices that SeAH paid do not reflect the COP in the ordinary course of trade, or that SeAH received a competitive benefit.<sup>112</sup>
- Maverick does not address the Department's finding that SeAH's largest supplier of hot-rolled coil was a Japanese company, not the Chinese producers or POSCO.<sup>113</sup>
- Maverick has provided no basis for the Department to reverse its position.<sup>114</sup>

*C. CVD Final Determination on Hot-Rolled Steel from Korea*

*Maverick's Arguments*

- The subsidies provided to Korean hot-rolled steel producers are provided for all hot-rolled steel products, including API 5CT grade hot-rolled steel.<sup>115</sup> The recent subsidy investigation on Korean hot-rolled steel indicates that Korea has an excess capacity of hot-rolled steel producers that directly impact the price of hot-rolled coil they produce.<sup>116</sup>
- The particular market situation provision is not a subsidy provision that requires a finding of financial contribution and specificity to benefit solely the Korean OCTG industry to distort cost of production of OCTG.<sup>117</sup> The particular market situation provision has no requirement that subsidies only affect those inputs that were used to produce Korean OCTG.<sup>118</sup>
- The final determination in the CVD investigation of hot-rolled steel from Korea shows that subsidies distort the cost of producing OCTG and limiting a subsidy "to HRC's role as input to OCTG" is unjustified and inconsistent with petitioner's allegation.<sup>119</sup>
- If an affirmative subsidy finding by the Department with nearly 60 percent margin on a product's primary input is not sufficient evidence that a particular market situation impacts the COP of OCTG, then the entire point of the new particular market situation

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<sup>110</sup> See SeAH PMS Rebuttal Brief, at 11.

<sup>111</sup> *Id.*, at 11-12.

<sup>112</sup> *Id.*, at 12-13.

<sup>113</sup> *Id.*, at 13.

<sup>114</sup> *Id.*, at 14.

<sup>115</sup> See Maverick PMS Case Brief, at 7.

<sup>116</sup> *Id.*, at 8 (citing *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea*, 81 FR 53439 (August 12, 2016) (*Hot Rolled Steel Flat Products from Korea*)).

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*, at 8-9.

<sup>119</sup> *Id.*

provision is unclear and the new provision's applicability in future cases is severely hampered.<sup>120</sup>

- Contrary to Department's preliminary determination, the CIT, CAFC, and WTO have all recognized that input subsidies affect the price of downstream goods.<sup>121</sup> Additionally, the Department itself has recognized the effects of input subsidies in section 129 decisions that address the potential of double remedies from the concurrent application of AD and CVD within the context that a correlation exists between input subsidies and output prices and therefore, the Department should treat Korean respondents as the same as the government of China in section 129 proceedings.<sup>122</sup>
- If the Department had requested full questionnaire responses from POSCO, as Maverick requested, then it would have had the COP data for all steel products and it could have determined the impact that POSCO's subsidies had on the cost recovery of Korean hot-rolled steel.<sup>123</sup>
- Access to significantly distorted hot-rolled steel input prices means that the COP of Korean OCTG producers are substantially lower than normal, and this distortion injures the U.S.'s domestic industry.<sup>124</sup>
- Without the subsidies, Korean hot-rolled steel would be significantly more expensive to produce under normal market conditions, which would result in higher prices as producers would be passing the unsubsidized cost on to its OCTG producing customers.<sup>125</sup>

*NEXTEEL's Rebuttal Arguments:*

- The Department correctly recognized that Maverick failed to provide evidence of a causal link between the Department's affirmative findings of CVD subsidies in *Hot Rolled Steel Flat Products from Korea* and this proceeding.<sup>126</sup>
- There is no basis for artificially increasing NEXTEEL's hot-rolled steel costs by adjusting these costs by the 60 percent adverse facts available (AFA) countervailable subsidy rate of mandatory respondent POSCO in *Hot Rolled Steel Flat Products from Korea*. Hot-rolled steel is a different product in an entirely different domestic industry.<sup>127</sup>
- NEXTEEL demonstrated that it paid market prices for its inputs purchased from POSCO, and Maverick has not done anything to rebut this presumption.<sup>128</sup>
- It is inappropriate to attribute deficiencies that merited AFA in another company's response in one proceeding to another company's calculated results in an unrelated proceeding.<sup>129</sup>

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<sup>120</sup> *Id.*, at 9.

<sup>121</sup> *Id.*, at 10.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*, at 11-12.

<sup>124</sup> *Id.*, at 12.

<sup>125</sup> *Id.*, at 12-13.

<sup>126</sup> See NEXTEEL Rebuttal Brief, at 3.

<sup>127</sup> *Id.*, at 4.

<sup>128</sup> *Id.*, at 5.

<sup>129</sup> *Id.*

- The Department was correct in its particular market situation determination that one respondent’s CVD rate in one proceeding is not a “market” situation, but more akin to a “particular supplier situation.”<sup>130</sup>

*SeAH’s Rebuttal Arguments:*

- The Department correctly found that Maverick’s arguments regarding the existence of a particular market situation in Korea, by virtue of government subsidization of HRC, was unsupported by record evidence. Maverick has not sufficiently explained how the materials from *Hot-Rolled Steel Flat Products from Korea* supported Maverick’s claim that SeAH’s production of OCTG benefitted from the subsidies in that case.<sup>131</sup>
- The Department’s determination under the CVD laws shows that a subsidy “benefit” exists, but does not determine that customers paid prices for less than the COP for the input in the ordinary course of trade.<sup>132</sup>
- The Department’s statute permits it to countervail “upstream subsidies” only when it makes an explicit finding that the upstream subsidy has bestowed a “competitive benefit” on downstream merchandise; and has had a significant effect on the cost of producing the downstream merchandise.<sup>133</sup>
- The Department has imposed CVD duties on an input is not by itself sufficient, under the statute, to justify a conclusion that the purchase of that input had given a downstream producer a competitive benefit from the subsidy.<sup>134</sup>
- The Department made its *Hot-Rolled Steel Flat Products from Korea* subsidy finding based on AFA; however, the Department made no finding that subsidies caused POSCO to sell its products to SeAH or any other customer at below-market or below-cost prices. Furthermore, Maverick has provided no such evidence.<sup>135</sup>
- Maverick has failed to explain how adjusting SeAH’s reported cost of materials is consistent with the statute, as there is nothing in the statute that suggests in a particular market situation that the Department should bring the input costs to the level of market price in Korea or any other market.<sup>136</sup>

*D. Strategic Alliances*

*Maverick’s Arguments:*

- The TPEA provides the Department with the ability to make COP adjustments for distortions caused by non-competitive strategic allegiances between suppliers and downstream producers.<sup>137</sup>

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<sup>130</sup> *Id.*, at 5-6.

<sup>131</sup> *See* SeAH PMS Rebuttal Brief, at 5.

<sup>132</sup> *Id.*, at 6.

<sup>133</sup> *Id.*, at 6-7.

<sup>134</sup> *Id.*, at 7.

<sup>135</sup> *Id.*, at 7-8.

<sup>136</sup> *Id.*, 9-10.

<sup>137</sup> *See* Maverick PMS Case Brief, at 19.

- POSCO strategically chose prices for the input of hot-rolled steel for the production of OCTG at atypical prices among certain customers, which would be considered outside the “ordinary course of trade” under the TPEA.<sup>138</sup>
- The record indicates the existence of an uncompetitive strategic alliance between POSCO and its preferred downstream customer through the difference of hot-rolled steel prices reported in questionnaire responses and an affidavit, which is contrary to the Department’s rejection of such an alliance.<sup>139</sup>
- The Department’s preliminary dismissal of the affidavit frustrates the objective of the TPEA, and established that the Department will accept nothing less than a sworn and notarized affidavit from POSCO explicitly stating that it has an uncompetitive alliance.<sup>140</sup>
- The Department confused an exclusivity agreement with a strategic alliance, and that the mere existence of other suppliers does not detract from the distortive effect that POSCO’s strategic alliance has on the overall pricing of hot-rolled steel within Korea.
- The Department’s indication that Maverick somehow failed to meet its burden as petitioner to provide the necessary hot-rolled steel cost data as it properly raised a *prima facie* case and the Department failed to follow through with the petitioner’s request for additional information.<sup>141</sup>

*NEXTEEL’s Rebuttal Arguments:*

- NEXTEEL’s relationships with its suppliers are not outside “the ordinary course of trade” or “particular” to the Korean market, such that they would warrant cost adjustments.<sup>142</sup>
- Maverick’s arguments are similar to ones raised in the investigation, where the CIT ruled that petitioner’s claims were “highly speculative and unpersuasive” and they have not sufficiently shown that a particular market situation exists.<sup>143</sup>
- Maverick’s arguments are inconsistent, because if Chinese imports were flooding the market and if the purported “strategic alliances” existed, then one would not expect members of the alliance to source inputs from anyone other than their partner.<sup>144</sup>
- Maverick’s proposed adjustment of applying a ratio derived from third party information from an investigation proceeding is an alternative arm’s-length adjustment, punitive, and arbitrary.<sup>145</sup>

*SeAH’s Rebuttal Arguments:*

- There is no evidence on the record to support Maverick’s allegation, and the affidavit provided by Maverick can hardly be considered objective and unbiased, as it is hearsay.<sup>146</sup>

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<sup>138</sup> *Id.*, at 20.

<sup>139</sup> *Id.*, at 20-21.

<sup>140</sup> *Id.*, at 21-22.

<sup>141</sup> *Id.*, at 22-23.

<sup>142</sup> *Id.*, at 9.

<sup>143</sup> *Id.*, at 9-10 (citing *Husteel v. United States*, 98 F. Supp. 3d 1315, 1359 (CIT 2015)).

<sup>144</sup> *Id.*, at 10-11.

<sup>145</sup> *Id.*, at 11.

<sup>146</sup> See SeAH PMS Rebuttal Brief, at 14-15.

- The affidavit contains nothing to indicate that the prices SeAH paid for inputs were below the COP for those inputs or outside of the ordinary course of trade.<sup>147</sup>
- Evidence shows a relatively small amount of purchases from POSCO, which is inconsistent with the notion that POSCO and SeAH have a strategic alliance or that the prices paid to POSCO are outside the ordinary course of trade.
- The information cited by Maverick is not an admission by SeAH or its subsidiary of any type of arrangement with POSCO.<sup>148</sup>
- As Maverick has made the allegation, it has the burden to create the record. Maverick has failed to provide adequate, factual information to support its allegation.<sup>149</sup>

#### *E. Korean Government Electricity Pricing Interference*

##### *Maverick's Arguments:*

- Maverick provided sufficient evidence of the Government of Korea (GOK) interfering with electricity pricing, which the Department dismissed with very little reasoning.<sup>150</sup>
- By deciding that GOK electricity pricing interference is not a particular market situation, and not providing any support for its decision, the Department has further hindered the language, intent, and objectives of the new law.<sup>151</sup>

##### *NEXTEEL's Rebuttal Arguments:*

- Maverick's argument overlooks the purpose of the CVD law, and the Department should continue to reject Maverick's argument regarding electricity.<sup>152</sup> The allegation regarding electricity inputs is properly addressed under CVD laws, and the Department correctly found that "there is no evidence to suggest that electricity prices charged to producers of either HRC or OCTG in Korea do not reasonably reflect the cost of production of electricity..." The remedy for subsidies should not be introduced into dumping calculations.<sup>153</sup>
- Any government involvement in the electricity market in Korea is not unique, and is no different than any other government involvement and regulation in energy markets; therefore, it is not a particular market situation.<sup>154</sup>

##### *SeAH's Rebuttal Arguments:*

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<sup>147</sup> *Id.*, at 15.

<sup>148</sup> *Id.*, at 15-16.

<sup>149</sup> *Id.*, at 16.

<sup>150</sup> *See* Maverick PMS Case Brief, at 24.

<sup>151</sup> *Id.*, at 25.

<sup>152</sup> *See* NEXTEEL PMS Rebuttal Brief, at 11.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*, at 11-12.

- The Department correctly rejected Maverick’s electricity market argument, as its reliance on *Hot-Rolled Steel Flat Products from Korea* was insufficient reasoning and unsupported by record evidence.<sup>155</sup>
- The Department has consistently found that the electricity prices paid by Korean steel producers represent “adequate remuneration” and are not below appropriate market prices.<sup>156</sup> The Department specifically concluded that KEPCO’s provision of electricity to POSCO (and Hyundai Steel) was not for less than adequate remuneration, because “the prices charged to these respondents under the applicable industrial tariff were consistent with KEPCO’s standard pricing mechanism.”<sup>157</sup>
- Maverick cites to no new record evidence and provides no new analysis that would support the Department changing its position.<sup>158</sup>

*F. Apply an Extension of the Major Input Rule*

*Maverick’s Arguments:*

- If the Department does not find a particular market situation, then it should reconsider and apply an extension of the TPEA’s major input rule by accounting for the overall Korean hot-rolled steel distortion by adjusting NEXTEEL’s costs by the *Hot-Rolled Steel Flat Products from Korea* subsidy rate.<sup>159</sup>

*NEXTEEL’s Rebuttal Arguments:*

- There is no record evidence that contains information on POSCO’s actual cost as its section D submission provided actual unit COP and average selling price to customers other than NEXTEEL.<sup>160</sup>
- An adjustment by the AFA rate applied to POSCO in *Hot-Rolled Steel Flat Products from Korea* would vastly overstate any appropriate adjustment as the record demonstrates POSCO is not NEXTEEL’s sole supplier of hot-rolled steel, and its hot-rolled steel acquisition prices are not equal to POSCO’s COP.<sup>161</sup>

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<sup>155</sup> See SeAH PMS Rebuttal Brief, at 16-17.

<sup>156</sup> *Id.*, at 17-18 (citing *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015); *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35310 (June 2, 2016); *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016); and *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49943 (July 29, 2016)).

<sup>157</sup> See SeAH PMS Rebuttal Brief, at 17-18.

<sup>158</sup> *Id.*, at 18.

<sup>159</sup> See Maverick PMS Case Brief, at 25.

<sup>160</sup> See NEXTEEL PMS Rebuttal Brief, at 12-13.

<sup>161</sup> *Id.*, at 13.

Department's Position:

After analyzing the case and rebuttal briefs submitted by interested parties in response to the Department's Memorandum on Particular Market Situation Allegations, the Department has reconsidered the allegations and supporting evidence with respect to the alleged particular market situations for the final results of this administrative review. For the final results of this review, the Department finds that record evidence supports a finding that a particular market situation exists in Korea which distorts the OCTG costs of production.

Section 504 of the TPEA added the concept of particular market situation in the definition of the term "ordinary course of trade," for purposes of constructed value under section 773(e), and through these provisions for purposes of the cost of production under section 773(b)(3). Section 773(e) states that "if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology." In the Memorandum on Particular Market Situation Allegations, the Department analyzed the four particular market situation allegations, and concluded that none of the four, taken individually, provided persuasive evidence that costs directly related to the production of the subject merchandise do not reasonably reflect the cost of production in the ordinary course of trade. However, because section 504 of the TPEA provides no guidance on whether to consider the allegations individually or collectively, for the final results, the Department has analyzed the four allegations as a whole, as detailed below, and based upon that examination, found that a particular market situation does exist in Korea during this POR. Furthermore, the Department preliminarily determined in its Memorandum on Particular Market Situation Allegations that insufficient evidence existed on the record to support finding a particular market situation with respect to each of the four allegations. However, after considering the comments of interested parties, the Department has reconsidered the quantum of evidence necessary given its approach to examine the allegations as a whole for purposes of these final results.

The Department has refocused its analysis of the particular market situation allegations relating to the production of OCTG in Korea, including Korean imports of HRC from China, strategic alliances, Korean HRC subsidies, and electricity market distortions. The Department reconsidered these four allegations as a whole, based on their cumulative effect on the Korean OCTG market through the cost of OCTG inputs. Although the Department preliminarily found insufficient support for the allegations when it individually considered them as four separate particular market situations, the Department refocused the analysis on the totality of the conditions in the Korean market and finds that the allegations represent, instead, facets of a single particular market situation. Record evidence shows subsidization of HRC by the Korean government and purchases of HRC by the mandatory respondents from POSCO, which received such subsidies.<sup>162</sup> Record evidence also shows that subsidies received by Korean hot-rolled steel producers totaled up to 60 percent of the cost of hot-rolled steel, the primary input into OCTG production.<sup>163</sup> Additionally, the Department notes that HRC as an input of OCTG constitutes

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<sup>162</sup> See Maverick PMS Case Brief, at 6 and footnote 18, and sources cited therein.

<sup>163</sup> See Maverick PMS Case Brief, at 6, citing *Hot-Rolled Steel from Korea CVD Final Determination*, 81 FR at 53439.

approximately 80 percent of the cost of OCTG production; thus, distortions in the HRC market have a significant impact on production costs for OCTG.<sup>164</sup> As a result of significant overcapacity in Chinese steel production, which stems in part from the distortions and interventions prevalent in the Chinese economy, the Korean steel market has been flooded with imports of cheaper Chinese steel products, placing downward pressure on Korean domestic steel prices.<sup>165</sup> This, along with the domestic steel production being heavily subsidized by the Korean government, distorts the Korean market prices of HRC, the main input in Korean OCTG production.

With respect to Maverick's contention that certain Korean HRC producers and Korean OCTG producers attempt to compete by engaging in strategic alliances, the Department agrees that the record evidence supports that such strategic alliances exist in Korea,<sup>166</sup> and that these strategic alliances may have affected prices in the period covered by the original less-than-fair value investigation. Although the record does not contain specific evidence showing that strategic alliances directly created a distortion in HRC pricing in the current period of review, the Department nonetheless finds that these strategic alliances between certain Korean HRC producers and OCTG producers are relevant as an element of the Department's analysis in that they may have created distortions in the prices of HRC in the past, and may continue to impact HRC pricing in a distortive manner during the instant POR and in the future. With respect to the allegation of distortion caused by the electricity market, consistent with the SAA, a particular market situation may exist where there is government control over prices to such an extent that home market prices cannot be considered to be competitively set. Moreover, electricity in Korea functions as a tool of the government's industrial policy. Furthermore, the largest electricity supplier, KEPCO, is a government controlled entity.<sup>167</sup> To be clear, our determination of a particular market situation in this review is not based solely upon any support from the government of Korea for electricity. To the contrary, as we stated above, each of these allegations are contributing factors that, taken together, lead the Department to conclude a particular market situation exists in Korea.

These intertwined market conditions signify that the production costs of OCTG, especially the acquisition prices of HRC, are distorted, and, thus, demonstrates that the costs of HRC to Korean OCTG producers are not in the ordinary course of trade. Thus, the Department finds that various market forces result in distortions which impact the costs of production for OCTG from Korea. Considered collectively, the Department finds that the allegations support a finding that a particular market situation exists during the POR in the instant administrative review.

With respect to the parties' arguments concerning the legal standard for finding a particular market situation, the Department agrees with Maverick, and finds that section 504 of the TPEA

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<sup>164</sup> See November 25, 2016 Petitioner submission, at 3; *see also* Letter from SeAH to the Department, "Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from Korea — Response to February 12 Questionnaire," dated March 31, 2016 (SeAH BCQR, SeAH DQR, and SeAH EQR) at SeAH DQR, page 7; Letter from NEXTEEL to the Department, "Oil Country Tubular Goods from the Republic of Korea: Sections C-D Response," dated March 31, 2016 (NEXTEEL CQR and NEXTEEL DQR), at NEXTEEL DQR, Exhibit D-4.

<sup>165</sup> See Maverick's September 6, 2016 submission, at Exhibit 4.

<sup>166</sup> See Maverick's November 25, 2015 submission, at Attachment 4.

<sup>167</sup> See Maverick's February 3, 2016 submission, at 14 and at Exhibit 2, p. 50.

enables the Department to address a particular market situation where the costs of materials, fabrication, or processing fail to accurately reflect the COP in the ordinary course of trade. NEXTEEL argues that the statute provides a “high bar” for the Department to determine that a particular market situation exists, and argues that Maverick has not met its burden of proof for such a determination.<sup>168</sup> While the Department agrees that sufficient evidence must exist to support a finding of a particular market situation, it finds that Maverick provided sufficient evidence in this case and, thus, has met its burden. Concerning SeAH’s argument that certain of Maverick’s allegations are unrelated to the comparability of U.S. sale prices to comparison market sale prices,<sup>169</sup> the Department is not making a determination as to whether there exists a particular market situation regarding SeAH’s sales of OCTG in the Canadian market. Maverick’s allegations relate to whether SeAH’s (or NEXTEEL’s) cost of production are outside of the ordinary course of trade because of distorted costs for the inputs to produce OCTG in Korea.

Maverick, NEXTEEL, and SeAH also provided detailed comments on the Department’s preliminary decision relating to the allegations on HRC from China, strategic alliances, Korean HRC subsidies, and electricity market distortions. The Department disagrees with NEXTEEL and SeAH’s arguments<sup>170</sup> that the Department’s adjustments for its finding of a particular market situation cannot properly include CVD rates applied in *Hot-Rolled Steel Flat Products from Korea*. As explained below, the Department finds that these rates are an appropriate basis for making the adjustment in this review. Maverick also argued that, in the alternative, if the Department did not find a particular market situation, then it should apply an extension of the TPEA’s major input rule and apply this analysis to unaffiliated suppliers. However, because the Department has determined that a particular market situation exists, the Department has not addressed the merits of this argument.<sup>171</sup>

Having found that a particular market situation exists for the respondents’ production costs for OCTG, the Department examined whether there was sufficient evidence to quantify the impact of the particular market situation. In quantifying the impact, the Department has determined to make an upward adjustment to NEXTEEL’s and SeAH’s reported costs for HRC. For HRC purchased from Korean producers, the Department bases this adjustment on the subsidy rates found for POSCO and all other producers of HRC in the final determination in *Hot-Rolled Steel Flat Products from Korea*.<sup>172</sup> The Department has quantified this adjustment as the net domestic subsidization rate, namely the countervailing duty rate less all export subsidies.<sup>173</sup> In the view of

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<sup>168</sup> See NEXTEEL PMS Rebuttal Brief, at 2-3, 7-8.

<sup>169</sup> See SeAH PMS Rebuttal Brief, at 3.

<sup>170</sup> See NEXTEEL PMS Rebuttal Brief, at 3-6; see also SeAH PMS Rebuttal Brief, at 5-9.

<sup>171</sup> See Comment 32 of this memorandum for additional analysis.

<sup>172</sup> While the Department has found for these final results that all four allegations are part of the Department’s particular market situation finding, the record did not contain sufficient information to make adjustments specifically relating to the electricity and strategic alliances allegations. Therefore, in order to adjust for the particular market situation, the Department used record information relating to HRC.

<sup>173</sup> See Memorandum from Ji Young Oh, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, “Cost of Production and Constructed Value Calculation Adjustments for the Final Results – SeAH Steel Corp., Ltd.,” dated April 10, 2017 (SeAH Final Cost Calculation Memorandum) and Memorandum from Milton Koch, International Trade Accountant, to Neal M. Halper, Director, Office of Accounting, “Constructed Value Calculation Adjustments for the Final Results – NEXTEEL Co., Ltd.,” dated April 10, 2017 (NEXTEEL Final Cost Calculation Memorandum).

the Department, these rates appropriately quantify the impact of the particular market situation that it has found in these final results. The Department finds that strategic alliances could not be used to quantify the impact of the particular market situation because the limited data on the record of this review does not enable to the Department to quantify the impact of such alliances on the costs of HRC in this particular period, although such alliances tend to impact the way customer-supplier relationships are structured and contribute to the existence of a particular market situation.

Further, the Department notes that excess steel-production capacity has created market distortions across the globe. Excess steel-production capacity causes serious market distortions and contributes to the downturn in global steel markets, including significant price suppression, displaced markets, unsustainable capacity utilization, negative financial performance, shut-downs, and lay-offs. The deterioration in steel demand, along with continued capacity expansions, are likely to place further pressure on country-specific steel markets and create incentives for government interventions which will further distort the production costs and prices for a wide range of steel products.

SeAH also contends that section 504 of the TPEA modifies provisions concerning calculating constructed value. However, SEAH points out that its price comparisons are not based on constructed value, but rather on third-country sales. When the Department does not calculate constructed value (or when it calculates constructed value, but the cost of materials and fabrication does accurately reflect cost of production), the calculations are governed by pre-existing statutory provisions. Accordingly, SeAH claims Maverick's allegations vastly exceed the plain language and intent of the statute and, thus, are insufficient under the statute.<sup>174</sup> We disagree with SeAH's limited examination and interpretation of the statute. The term "ordinary course of trade" defined in section 771(15) includes "situations in which the administering authority determines that the particular market situation prevents a proper comparison with the export price or constructed export price." See section 771(15)(C). Thus, where a particular market situation affects the cost of production for the foreign like product, such as through distortions in the cost of inputs, for example, it is reasonable to conclude that such a situation may prevent a proper comparison with the export price or constructed value. SeAH's claim that an examination of particular market situation for purposes of the cost of production vastly exceeds the plain language is limited in that it fails to consider section 771(15)(C). Moreover, we find such an interpretation unpersuasive as it would defeat the purpose of the provision on ordinary course of trade, which is to ensure that particular market situations do not prevent proper comparisons with U.S. price, consistent with the intent of Congress.

NEXTEEL contends that the trends in prices in the Korean market are remarkably similar to prices in the United States market (which NEXTEEL discusses specifically) and do not demonstrate a particular market situation. Rather, any price declines in Korea are a result of global price fluctuation.<sup>175</sup> The Department originally considered this situation in its preliminary analysis of the particular market situation allegations, but upon further reflection, we recognize that the aim of the antidumping law is to establish an appropriate yardstick by which to measure whether export price and constructed export price are fairly priced. Given that, global distortions

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<sup>174</sup> See SeAH PMS Rebuttal Brief, at 3-4.

<sup>175</sup> See NEXTEEL PMS Rebuttal Brief, at 7.

that may or may not impact the U.S. market, for example, are not relevant to the question of whether a particular market situation exists in Korea.

Maverick's allegations of particular market situations in the instant review are the first such allegations filed since the enactment of the TPEA. The Department will continue to develop the concepts and types of analysis that would be necessary to address future allegations of particular market situations under section 773(e) of the Act.

Comment 4: Memoranda Placed on the Record by the Department

*Maverick, TMK IPSCO, Vallourec Star, L.P., Welded Tube USA, and United States Steel Corporation's Arguments:*

- The e-mail that the Department received from the Director of the National Trade Council (NTC), and placed on the record in a March 8, 2017, memorandum, is a pre-decisional, inter-agency communication from within the executive branch of government that is covered by the deliberative process privilege, and, as such, it was unnecessary for the Department to place this communication on the record.
- The views contained in the e-mail from the Director of the NTC are consistent with Maverick's position in this proceeding and with the purpose of the law.
- The new particular market situation provision is consistent with WTO law and the United States' WTO obligations, and it gives the Department the authority to adjust production costs where such costs are distorted.
- Concerning the March 13, 2017, memorandum containing correspondence from the Korean government, the Department should take the Korean government's letter under advisement but grant it no more weight than any other letter received in this proceeding.

*SeAH's Arguments:*

- The attempt by the Director of the NTC to interfere in an ongoing proceeding is improper. The Department must make decisions based solely on the evidence contained on the record, and the Act does not permit a role for instructions or unsupported factual representations by non-Departmental officials.
- The e-mail from the Director of the NTC contains new factual assertions that were not part of the record and which have not been certified as accurate.
- The Department must obtain and place on the record any relevant documents or other materials presented to the NTC, as well as memoranda describing any *ex parte* meetings held with the NTC or its staff regarding this matter.

*NEXTEEL, Hyundai Steel Company, and Husteel Co., Ltd.'s Arguments:*

- Decisions in antidumping proceedings are to be made by the Department on the basis of record facts and arguments presented by interested parties. The NTC has no operational role in interpreting antidumping law or making administrative decisions in applying that law.

- Even if the NTC had legal authority to intervene in this proceeding, the e-mail from the Director of the NTC should be rejected as an untimely sur-rebuttal that presents arguments on behalf of Tenaris after the close of the briefing period.
- The record contains no basis to conclude that Chinese dumping margins are relevant to the margin calculation in this proceeding, or that a link exists between prices paid to Korean producers and the U.S. dumping margins associated with Chinese HRC.
- The Department should confirm that it will not consider the e-mail from the Director of the NTC in the final results. The Department should obtain and include any relevant materials presented to the NTC, as well as memoranda describing any *ex parte* meetings held with the NTC or its staff regarding this matter. The Department should describe and memorialize through *ex parte* memoranda any additional communications or briefings involving the NTC and the Department, and provide respondents an opportunity to respond to any such materials.

*ILJIN Steel Corporation's Arguments:*

- The timing of the e-mail from the Director of the NTC, in relation to the Department's preliminary particular market situation decision, suggests a pre-determined final result independent from any facts on the record. In addition, the e-mail contravened the Department's statutory responsibility, exceeded the NTC's area of responsibility, and made suggestions that were inconsistent and factually incorrect.
- The factual basis for the margin calculations contained in the NTC Director's e-mail are not accurate to ILJIN's experience, and a cost adjustment based on an adjustment for hot-rolled coil would be inaccurate and unlawful if applied to ILJIN.
- The Department must issue final results that are based on the record of this proceeding and the law.

*Department's Position:*

Interested parties have provided comments pertaining to the email message from the Director of the National Trade Council to the Department, which the Department addresses below. With respect to Maverick's argument that the Department need not have placed on the record of this administrative review the communication at issue, we disagree. The Department placed the communication on the record in accordance with the requirements of the law. In particular, section 516A(b)(2)(A) of the Act states that the administrative records of AD and CVD proceedings shall consist of "a copy of all information presented to or obtained by the Secretary, the administering authority, or the Commission during the course of the administrative proceeding, including all governmental memoranda pertaining to the case and the record of *ex parte* meetings required to be kept by section 777(a)(3)." In our view, governmental memoranda includes any writing prepared by anyone in the government outside the delegation chain for consideration by anyone inside the delegation chain in connection with a proceeding. This includes the communication at issue. Accordingly, the Department will not be removing or rejecting from the record the copy of the communication it placed on the record.

With respect to SeAH's point that the Department should place all *ex parte* memoranda on the record, there is no dispute. Section 777(a)(3) of the Act requires the Department to prepare and

place on the record an *ex parte* memorandum when an *ex parte* meeting occurs between interested parties or other persons and the person charged with making the determination, or any person charged with making a final recommendation to that person, in connection with the proceeding. In this case, notwithstanding the statement in the email to “consider allowing attendance of the National Trade Council for this,” no meeting or further *ex parte* communication occurred. Accordingly, the requirement for an *ex parte* memorandum was not triggered.

With respect to comments about the appropriateness of the communication at issue and whether the Department should take the communication into account in making its final determination, some clarification is necessary. First, other government agencies are free to submit their views on questions before the Department in AD and CVD proceedings, as are members of Congress. Second, the Department is free to take these views into account provided the application of the statute to the facts on the record does not compel a different result, and provided the time allows for comment on such views in keeping with the Department’s statutory deadlines.

Separate and apart from any views expressed by the National Trade Council, the Department on its own has been actively engaged in an ongoing examination of the new statutory provisions pertaining to particular market situations and the implication of these new provisions, as required and expected of the Department in order to fulfill its function as the agency responsible for administering the AD and CVD laws. In this case, the Department has relied upon its interpretation of the amended statute and the facts submitted by the parties in the context of their submissions and certified as to their accuracy. After considering the facts and comments on the record, the Department has made a finding that a particular market situation exists in Korea based on Maverick’s allegations and supporting evidence taken as a whole, as explained above. Accordingly, for the final results of this review, the communication from National Trade Council did not change the results.

## **B. SeAH-Specific Issues**

### Comment 5: Whether to Apply Total Adverse Facts Available to SeAH

Maverick asserts that SeAH misreported its sales and cost data and withheld information from the Department, and makes specific arguments involving the 16 issues below. As a result, Maverick claims, SeAH has significantly delayed this proceeding, and, thus, has not acted to the best of its ability in responding to the Department’s questionnaires. Maverick argues that this merits the application of total AFA to SeAH for these final results, and urges the Department to apply the highest dumping margin from the petition, 158.53 percent, as AFA.

SeAH asserts that it did not report misleading or inaccurate information to the Department. SeAH contends it has fully cooperated with the Department in the instant review. According to SeAH, it completely responded to the questions in the seven supplemental questionnaires issued by the Department; fully reconciled its reported information to its normal accounting records and audited financial statements; and provided ample support documentation for its reported figures. SeAH argues that while it made some minor errors in its responses, it fully corrected these errors. It then rebuts the 16 issues which Maverick raised.

Department's Position:

Section 776(a) of the Act provides that the Department, subject to section 782(d) of the Act, will apply “facts otherwise available” if necessary information is not available on the record or an interested party: 1) withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified.

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA,<sup>176</sup> the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on assumptions about information an interested party would have provided if the interested party had complied with the Department's request for information.<sup>177</sup> In addition, the SAA explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>178</sup> Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.<sup>179</sup> It is the Department's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.<sup>180</sup>

The Department has examined the record evidence with respect to each of the 16 issues raised by Maverick and finds that none of them, either individually or collectively, merits the application of total AFA to SeAH. Upon analyzing the information on the record, the Department determines that SeAH did not misreport its sales or cost data, and did not withhold information requested by the Department or significantly impede this proceeding. We find that SeAH did not mislead the Department in responding to the Department's requests for information, but, rather, cooperated with the Department in providing clarification or additional information where requested and by remedying deficiencies in its supplemental questionnaire responses. As such,

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<sup>176</sup> See TPEA. The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015).

<sup>177</sup> See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

<sup>178</sup> See SAA, at 870; see also *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

<sup>179</sup> See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); and *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997) (*Preamble*).

<sup>180</sup> See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum at page 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

the Department finds that SeAH fully complied with the Department's requests for information, and, therefore, we agree with SeAH that the application of total AFA is not warranted. Our analysis for each of the 16 issues is set forth below. The Department notes that some adjustments to SeAH's data are warranted for these issues; where such adjustments are necessary, they are identified within the discussion of the relevant issue.

#### *A. Whether SeAH Manipulated Its Margin*

##### *Maverick's Arguments:*

- The record shows that SeAH attempted to manipulate its dumping margin in this administrative review.
- Specifically, SeAH engaged in questionable business practices with respect to its U.S. sales of couplings.<sup>181</sup>
- In addition, SeAH created its third-country market, Canada, and misreported the nature of its sales to avoid paying Canadian dumping duties.<sup>182</sup>

##### *SeAH's Rebuttal Arguments:*

- The record shows that no sales of couplings took place in the manner alleged by Maverick.<sup>183</sup> As such, there is no basis on which to conclude that SeAH attempted to mislead the Department or reported its U.S. sales inaccurately.
- SeAH did not "create" its Canadian market; rather, it sold OCTG to customers in the Canadian petroleum industry as part of its normal business operations.
- Concerning the argument that SeAH misreported the nature of its Canadian sales, the misreporting occurred due to an error by the Canadian customs broker, which SeAH and its U.S. affiliate, Pusan Pipe America, Inc. (PPA), have taken the proper steps to amend.<sup>184</sup> In addition, based on the Department's request, SeAH provided complete entry and shipment documentation for each Canadian sale reported for the POR, and this documentation corroborates that all of the reported sales consisted of OCTG sold to Canadian destinations.<sup>185</sup>

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<sup>181</sup> *Id.*, at 40 (citing Letter from SeAH to the Department, "Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from Korea - Response to July 1 Supplemental Questionnaire," dated July 28, 2016 (SeAH BCSQR), at 57-59).

<sup>182</sup> *Id.*, at 41 (citing Letter from SeAH to the Department, "Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea for the 2014-15 Review Period — Response to the Department's Second Section A Supplemental Questionnaire," dated September 2, 2016 (SeAH A2SQR), at Appendix S2A-3).

<sup>183</sup> See SeAH Rebuttal Brief, at 6 (citing Letter from SeAH to the Department, "Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea for the 2014-15 Review Period - Response to Wiley Rein's May 11 Submission," dated May 19, 2016 and SeAH BCSQR, at 57-60 and Appendices SC-9 to SC-12).

<sup>184</sup> *Id.*, at 7 (citing Letter from SeAH to the Department, "Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from Korea - Response to June 14 Supplemental Questionnaire," dated July 6, 2016 (SeAH ASQR), at 8).

<sup>185</sup> *Id.*, at 7-8 (citing SeAH ASQR, at Appendix SA-4).

Department's Position:

In its deficiency comments on SeAH's questionnaire response for sections B through E, Maverick first raised the issue that SeAH might be selling couplings in the United States in a questionable manner.<sup>186</sup> In response to this allegation, the Department asked SeAH in a supplemental questionnaire to report certain information regarding its sales of couplings to U.S. customers. In its response to that supplemental questionnaire, SeAH explained that during the POR, neither SeAH nor its U.S. affiliate made any sales of couplings in the manner alleged by Maverick.<sup>187</sup> In particular, SeAH stated that "neither SeAH nor PPA had any sales during the review period in which a coupling was sold for \$0.01 per piece or per metric ton 'hidden on a separate invoice' in exchange for higher OCTG prices. Neither SeAH nor PPA had any sales of couplings at a price of \$0.01 per piece or per ton."<sup>188</sup> SeAH also provided, among other information, a list of Pan Meridian Tubular (PMT)'s<sup>189</sup> sales of couplings during the POR, and support documentation for certain sales in that list, which showed that no such sales took place.<sup>190</sup> Based on the information which SeAH submitted in response to the Department's requests, we find there is no evidence on the record of this review that SeAH sold couplings at a nominal price in exchange for higher prices for OCTG in the U.S. market.

Regarding the argument that SeAH created its third-country market, Maverick alleged after the submission of SeAH's response to sections B and C of the Department's questionnaire that SeAH's Canadian market was not viable.<sup>191</sup> Based on this allegation, the Department requested that SeAH provide certain information about its Canadian sales. In response to the Department's requests for information, SeAH provided, among other information, documentation for each Canadian sale reported in its database. This documentation included invoices, packing lists, bills of lading, mill test certificates, and, where applicable, entry documentation.<sup>192</sup> The Department has examined this information and finds that it demonstrates that the sales reported in SeAH's Canadian database are sales of OCTG that were destined for locations in Canada. Accordingly, we disagree with Maverick that SeAH created its Canadian market to manipulate the dumping margin.<sup>193</sup>

Finally, with respect to the argument that SeAH misreported the nature of its Canadian sales, we also disagree with Maverick. As part of the information requested by the Department in

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<sup>186</sup> See Letter from Maverick to the Department, "Certain Oil Country Tubular Goods from the Republic of Korea: Resubmission of Petitioner's Deficiency Comments on SeAH's Sections B-E Response," dated May 11, 2016 (Maverick May 11, 2016 Submission), at 3-5.

<sup>187</sup> See SeAH BCSQR, at 57-59.

<sup>188</sup> *Id.*, at 57-58.

<sup>189</sup> PMT is a division of PPA.

<sup>190</sup> *Id.*, at Appendices SC-9 and SC-11.

<sup>191</sup> See Letter from Maverick to the Department, "Certain Oil Country Tubular Goods from the Republic of Korea: Comparison Market Viability Allegation," dated April 11, 2016 (Maverick April 11, 2016 Market Viability Allegation) and Letter from Maverick to the Department, "Certain Oil Country Tubular Goods from the Republic of Korea: Market Viability Allegation," dated April 20, 2016 (Maverick April 20, 2016 New Factual Information Letter).

<sup>192</sup> See SeAH ASQR, at Appendix SA-4 and SeAH A2SQR, at Appendix S2A-3.

<sup>193</sup> We note that, in the *Preliminary Results*, the Department found SeAH's Canadian market to be viable. See Preliminary Decision Memorandum at 16. Since that time, no argument has been made, or any new information provided, that would lead the Department to determine otherwise.

response to Maverick’s market viability allegation, SeAH provided information addressing this issue. Specifically, SeAH stated that “{f} or imports prior to August 2015, the OCTG that SeAH exported to Canada . . . was initially classified under an incorrect tariff classification due to an error by the Canadian customs broker. The customs broker subsequently filed corrected entry documents with Canadian Customs. . . .”<sup>194</sup> SeAH also provided a chart summarizing its OCTG exports to Canada during the POR and a chart reconciling those exports to Canadian import data.<sup>195</sup> In response to a subsequent request from the Department, SeAH provided, for all of the affected entries, documentation which supports SeAH’s claim that it has taken the appropriate steps to correct the misclassification error.<sup>196</sup>

As explained above, we find that SeAH responded to our requests for information concerning its U.S. sales of couplings and Canadian sales, and we are satisfied with the clarifications and supporting documents that SeAH provided. Therefore, we disagree with Maverick that these issues provide grounds for applying total AFA to SeAH.

### *B. U.S. Sales of Non-Prime Products*

#### *Maverick’s Arguments:*

- SeAH stated that some of the merchandise sold to PPA was defective and could not be sold as prime merchandise, but also stated that it had no U.S. sales of non-prime OCTG.<sup>197</sup>
- SeAH referred to the defective merchandise as “scrap;”<sup>198</sup> however, information on the record shows that these products are instead non-prime merchandise.<sup>199</sup>
- Sales of these products should have been reported as U.S. sales of non-prime merchandise.
- SeAH hindered the review process by not reporting its U.S. sales of non-prime OCTG and prevented the Department from determining whether some of these pipes were sold as limited service or non-prime OCTG. Because SeAH did not report all of its U.S. sales, the Department should apply total AFA to SeAH.

#### *SeAH’s Rebuttal Arguments:*

- Maverick has not pointed to any evidence that SeAH withheld information requested by the Department or misled the Department with respect to the sales at issue.

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<sup>194</sup> See SeAH ASQR, at 8.

<sup>195</sup> *Id.*, at Appendix SA-2.

<sup>196</sup> See SeAH A2SQR, at Appendix S2A-3.

<sup>197</sup> See Maverick Case Brief, at 42 (citing Letter from SeAH to the Department, “Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from Korea — Response to February 12 Questionnaire,” dated March 31, 2016 (SeAH BCQR, SeAH DQR, and SeAH EQR) at SeAH EQR, page 5 and SeAH BCQR, page 52).

<sup>198</sup> *Id.* (citing Letter from SeAH to the Department, “Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from Korea - Response to July 20 and August 1 Questionnaire,” dated August 15, 2016 (SeAH DE2SQR), at 45-46).

<sup>199</sup> *Id.*, at 42-43 (citing SeAH DE2SQR at Appendices SE-3-A and SE-4).

- SeAH described how damaged pipes are identified after importation into the United States;<sup>200</sup> it indicated that it did not have any U.S. sales of non-prime OCTG during the POR,<sup>201</sup> and it provided a summary of the quantity and value of the “scrap sales” of these damaged pipes.<sup>202</sup>

*Department’s Position:*

In its section C questionnaire response, SeAH reported that it did not make any sales of non-prime OCTG products in the United States during the POR.<sup>203</sup> While Maverick contends that merchandise which SeAH determined to be defective should have been reported as non-prime merchandise, information on the record shows that SeAH classified defective, non-repairable merchandise in its inventory system as scrap. In a supplemental questionnaire response, SeAH explained that the quantity of damaged pipe “is deducted from the inventory quantity for the relevant product code and added to the inventory quantity for scrap,” and indicated that sales of these products were considered “scrap.”<sup>204</sup> SeAH also provided information regarding PMT’s inventory which showed that damaged merchandise was labeled as scrap.<sup>205</sup> Additionally, SeAH indicated that some damaged merchandise could be repaired and then classified and sold as prime merchandise. Specifically, SeAH stated that “{t}he costs incurred to repair damaged products in order to allow them to be classified and sold as prime-quality products are charged by the unaffiliated processors to PMT as part of the cost of processing the pipe.”<sup>206</sup> There is no information on the record that demonstrates that SeAH sold non-repairable, defective merchandise as OCTG or anything other than scrap. Accordingly, we disagree with Maverick that SeAH impeded the review process by failing to report certain sales, which SeAH classified as scrap in its inventory system. Thus, we find that the application of total AFA to SeAH is not warranted.

*C. CONNUMs with Negative Costs*

*Maverick’s Arguments:*

- SeAH improperly reported negative material and fabrication costs for certain CONNUMs in its August 15, 2016, section D supplemental questionnaire response. The negative cost fields appear to result from the improper allocation of pre-POR variances.
- Even though SeAH has corrected the error, its revised database cannot be used because it eliminated the separate scrap offset field and, therefore, does not allow the Department to make separate adjustments to the total HRC consumed and to reported scrap offsets. SeAH’s explanations for this change do not explain why it could not continue reporting the scrap offset in a separate field.

<sup>200</sup> See SeAH Rebuttal Brief, at 8 (citing SeAH EQR, at 5).

<sup>201</sup> *Id.*, (citing SeAH BCQR, at 52).

<sup>202</sup> *Id.*, (citing SeAH EQR, at Appendix E-7).

<sup>203</sup> See SeAH BCQR, at 52.

<sup>204</sup> See SeAH DE2SQR, at 45-46 and EQR, at Appendix E-7.

<sup>205</sup> See SeAH DE2SQR, at Appendices SE-3-A and SE-4.

<sup>206</sup> *Id.*, at 46.

*SeAH's Rebuttal Arguments:*

- The costs reported by SeAH reflect the actual costs recorded in its normal accounting system in accordance with the Department's instructions.
- SeAH has explained how variances are calculated and applied in its normal cost accounting system, and Maverick has not alleged that this explanation was somehow insufficient.
- SeAH complied with the Department's requests to weight average the POR HRC costs in its September 26, 2016, submission.

*Department's Position:*

We agree with SeAH. The cost database SeAH submitted on August 15, 2016, included negative costs for certain CONNUMs, and SeAH explained that these negative costs were mainly caused by the timing of its variance allocations to POR costs. For example, in the normal course of business, if a production run was started prior to the POR but was completed during the POR, the entire cost variance attributable to this production order was assigned as POR costs because this production order was completed during the POR.<sup>207</sup> The Department subsequently requested that SeAH correct these negative costs by reallocating the variances to all months in which the production order was produced. The Department also requested SeAH to report its raw material costs based on a POR weighted-average grade-specific and wall thickness basis.

On September 26, 2016, in response to our supplemental questionnaire, SeAH submitted three revised cost databases: 1) the POR weighted-average grade and thickness-specific HRC costs with negative variances (*i.e.*, revised cost database version 1); 2) the production order-specific HRC costs with corrected variances (*i.e.*, revised cost database version 2); and 3) the POR weighted-average grade and thickness-specific HRC costs with the corrected variances (*i.e.*, revised cost database version 3). SeAH also explained that to calculate the POR weighted-average grade and thickness-specific HRC costs, SeAH had to combine the costs of HRC and scrap offset because the scrap offset amount recorded in its normal accounting system reflects both the value of the recovered scrap and the costs of additional hot-rolled coils used for reworking of non-prime products that were refurbished to prime quality. Thus, SeAH eliminated the separate scrap offset field from the revised cost database version 1 and version 3. As such, the raw material cost field in these two databases represented the HRC costs net of scrap offset.<sup>208</sup> SeAH submitted the revised cost databases on September 26, 2016, to comply with the Department's requests and the fact that it combined the HRC costs and scrap offset field does not prevent the Department from being able to use the revised databases. Thus, we do not find that SeAH failed to cooperate by not acting to the best of its ability to comply with the Department's requests, and we find that the information provided by SeAH is not deficient.

*D. Cost Difference Related to Timing Differences of Production and Not to Physical Characteristics*

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<sup>207</sup> See SeAH DE2SQR, at 43.

<sup>208</sup> See Letter from SeAH to the Department, "Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from Korea - Response to September 12 Supplemental Questionnaire," dated September 26, 2016 (SeAH D3SQR), at 3.

*Maverick's Argument:*

- SeAH's August 15, 2016, section D cost file reflects differences in HRC costs unrelated to physical characteristics, such as the timing of production (*i.e.*, the production order-specific HRC costs).

*SeAH's Rebuttal Argument:*

- SeAH complied with the Department's request to submit a revised cost file reporting POR average HRC costs by grade, and provided a detailed explanation of why it combined the direct material and scrap offset fields.

*Department's Position:*

We agree with Maverick, in part. As we discussed in issue C, immediately above, in addressing the concern about cost differences due to timing of production, SeAH complied with the Department's requests and submitted the revised cost databases reflecting the POR weighted-average grade and thickness-specific HRC costs on September 26, 2016 (*i.e.*, the revised cost database version 1 and version 3). However, the significant variation in the reported HRC costs for identical grades continues to persist.<sup>209</sup> Thus, while SeAH cooperated with the Department's requests, the information provided by SeAH is not perfect and requires further adjustment. Therefore, as a facts available adjustment, we have weight averaged SeAH's reported material costs by reported OCTG grade for the final results.

*E. Information on Inputs from Affiliated Parties*

*Maverick's Arguments:*

- SeAH failed to provide the requested information related to affiliated party transactions for computer network services and facility maintenance services. For example, the Department requested that SeAH provide the audited financial statements "for affiliates involved in the production of subject merchandise during the POR," emphasizing that "the copies should include all notes to the financial statements and the audit report." However, in response, SeAH submitted financial statements with only the income statement translated. Because SeAH did not translate the entire financial statements, the Department does not have the information necessary to properly evaluate and apply its transactions disregarded rule.
- The Department should, accordingly, apply AFA to the cost of the inputs obtained from these affiliated suppliers.

*SeAH's Rebuttal Arguments:*

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<sup>209</sup> See SeAH D3SQR cost database SEAH\_OCTG\_COPCV03C\_AVGCOIL\_REVAR.

- SeAH responded to each of the Department’s questions regarding affiliated services and provided all the requested information that it or its affiliates possessed.
- In its section D responses, SeAH reported that it obtained information services from SeAH Networks and facility maintenance services from SeAH Engineering. SeAH also provided the total value of inputs obtained from these companies during the POR, which accounted for an extremely small portion of SeAH’s total costs.
- The company explained in its August 15, 2016, supplemental submission that it did not obtain comparable services from unaffiliated suppliers and therefore, no market prices for these inputs, as requested by the Department, were available.
- In its September 26, 2016, supplemental submission, SeAH demonstrated that both of these affiliates generated positive net income in their financial statements, establishing that these companies provided these services at a price that is in excess of their fully loaded costs.

Department’s Position:

We agree with Maverick, in part. In this review, SeAH did not provide the necessary information regarding the value of transactions between SeAH and its affiliated service providers, SeAH Networks and SeAH Engineering.

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

During the POR, SeAH obtained information services from SeAH Networks and facility maintenance services from SeAH Engineering. Thus, the Department requested that SeAH provide comparable market prices for these affiliated services.<sup>210</sup> In its response, SeAH explained that it did not obtain comparable services from unaffiliated suppliers during the POR. Also, SeAH stated that because the precise nature of the services provided vary by customer, it was not possible to provide a comparison of the prices that SeAH paid to SeAH Networks and SeAH Engineering with the prices those companies charged their unaffiliated customers.<sup>211</sup> Subsequently, the Department again requested that SeAH provide comparable market prices and if SeAH did not purchase the same type of services from unaffiliated companies or SeAH’s affiliated companies did not provide the same type of services to its unaffiliated customers, the Department instructed SeAH to provide its affiliates’ POR average per-unit COP of the service.<sup>212</sup> In its response, while SeAH provided a detailed description of the services provided by its affiliate, a service contract between its affiliate and SeAH, and worksheets showing the percentage of these affiliated service costs applicable to OCTG and common production costs, it did not provide either market prices or its affiliates’ COP. SeAH simply stated SeAH Networks and SeAH Engineering do not calculate the costs incurred or the profits realized from providing

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<sup>210</sup> See SeAH DE2SQR, at 14.

<sup>211</sup> See SeAH DE2SQR, at 15-16.

<sup>212</sup> See SeAH D3SQR, at 8.

services to SeAH. SeAH again stated that, because of the unique nature of the services provided, it is not possible to compare the prices charged by its affiliates with other transactions. Nevertheless, SeAH pointed out that SeAH Networks and SEAH Engineering had positive net incomes for fiscal year 2015 (*i.e.*, income statement) and, thus, SeAH claimed that the fees charged by SeAH's affiliates to SeAH must have exceeded its affiliates' costs.<sup>213</sup>

While we acknowledge SeAH's assertion that SeAH Networks and SeAH Engineering reported a positive net income in their fiscal year 2015 income statements, this argument does not address whether the affiliated transactions between SeAH and these two affiliates occurred at above cost or arm's-length prices. Specifically, SeAH Networks and SeAH Engineering's income statement operating results reflect all transactions that these affiliates conducted with all their customers including, not just SeAH, during the entire year. By SeAH's own admission, the services provided by these companies varied by customer. Consequently, it is unreasonable to assume that the net income shown in SeAH's affiliates' income statements necessarily demonstrate that the fees charged by SeAH's affiliates to SeAH exceeded their costs in providing such services during the POR. Moreover, SeAH had at least two opportunities to provide the actual costs of the services, but failed to do so.

When analyzing affiliated party transactions in accordance with the transactions disregarded rule, we normally compare the transfer prices paid to the affiliate to market prices, or in the absence of such market prices, the affiliate's cost of providing such input or service. In this instance, SeAH did not provide a market price or its affiliate's cost of providing such services. Thus, necessary information (*i.e.*, the affiliated supplier's cost of these services) is missing from the record to analyze the affiliated transactions. When necessary information is not provided by the respondent, the Department must use the facts otherwise available, in accordance with section 776 of the Act. Section 776(b) of the Act permits the use of an adverse inference when a respondent has failed to cooperate to the best of its ability. In this case, SeAH had at least two separate opportunities to provide the actual costs of the services. Nevertheless, SeAH failed to provide the requested information. As such, the application of an adverse inference is warranted for these transactions.

Therefore, we made an adverse facts available adjustment to these transactions for the final results. As adverse facts available, we first calculated the affiliated transaction adjustment factor based on SeAH Networks and SeAH Engineering's fiscal year 2015 profit experience and the percentage of these affiliated service costs related to OCTG and common production costs. We then increased the reported COM of each CONNUM by applying the affiliated transaction adjustment factor for the final results.

#### *F. SeAH's Inventory Movement Schedules for OCTG*

##### *Maverick's Arguments:*

- The Department requested an explanation for "other adjustments" shown on the inventory movement schedule for OCTG. However, SeAH provided only a general statement describing these adjustments and did not provide any documentary support.

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<sup>213</sup> *Id.*, at 8-9.

- If the Department does not apply total AFA to SeAH, it should at least add the total amount of the adjustments to the reported costs.

*SeAH's Rebuttal Arguments:*

- SeAH responded fully to the Department's request for an explanation of the various "other adjustments" shown on the inventory movement schedule for OCTG.
- SeAH explained that these adjustments consisted of transfers of obsolete items to by-products, internal consumption, transfers to other accounts, and transfers to rework production orders.

*Department's Position:*

We agree with SeAH. During the proceeding, SeAH provided the requested detailed POR monthly inventory movement schedules for OCTG along with supporting accounting reports.<sup>214</sup> Also, SeAH explained that "other adjustments" were associated with the transfer of obsolete items to by-products, transfers to other accounts and re-work production orders, and internal consumption. Further, SeAH explained that the majority of these adjustments were attributable to the re-work production orders.<sup>215</sup> As the "other adjustments" items were very small in amount, the Department did not request any further information or supporting documentation related to these items. As such, we find that SeAH fully complied with the Department's requests and there is no basis to make an adjustment or apply AFA to SeAH's reported costs.

*G. International Freight Expenses*

*Maverick's Arguments:*

- There is a disparity between international freight expenses reported for SeAH's Canadian and U.S. sales when one compares the POR weighted-average amounts reported for the two markets. This disparity is even greater when one compares the international freight rates provided by SeAH's affiliate, SeAH L&S, and unaffiliated freight providers.
- In a supplemental questionnaire response, SeAH explained that international freight rates for containerized shipments (used for most of its Canadian sales) were normally higher than the rates for bulk shipments (used for U.S. sales), and that more volume was shipped to the United States.<sup>216</sup> SeAH's explanation did not justify the difference in the international freight costs reported for each market.
- In a subsequent submission, SeAH provided an article about containerized and bulk shipping, along with other information, but that information did not justify the price differences or relate to subject merchandise.<sup>217</sup>

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<sup>214</sup> See SeAH DE2SQR, at Appendix SD-8.

<sup>215</sup> See SeAH D3SQR, at 10.

<sup>216</sup> See Maverick Case Brief, at 48 (citing SeAH BCSQR, at 34).

<sup>217</sup> *Id.*, at 49 (citing Letter from SeAH to the Department, "Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from Korea – Response to August 29 Supplemental Questionnaire," dated September 8, 2016 (SeAH BC2SQR), at 20 and Letter from SeAH to the Department, "Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea for the – Response to Wiley Rein's August 19

- In addition, SeAH originally reported that its U.S. and Canadian sales were shipped by unaffiliated ocean freight carriers, but later provided information showing that SeAH L&S was involved in providing international freight.<sup>218</sup>
- Finally, SeAH should have reported vessel-specific international freight expenses for inventory sales through PMT. The Department asked SeAH to do so, and certain documentation provided by SeAH shows that this was possible.<sup>219</sup>
- For the foregoing reasons, SeAH's international freight expenses are distorted and should be adjusted accordingly.

*SeAH's Rebuttal Arguments:*

- SeAH showed that international freight expenses for bulk shipments to the United States and Canada were approximately the same, and that the overall average cost for Canadian shipments was higher because some Canadian sales were shipped in containers, whereas all U.S. sales were shipped in bulk.
- SeAH provided evidence which confirmed that international freight costs for containerized shipments to the United States were much higher than the costs for bulk shipments to the United States, and were also higher than the reported international freight expenses for containerized shipments to Canada.<sup>220</sup>
- SeAH also provided a press report explaining that ocean freight for containerized shipments was considerably higher than ocean freight for bulk shipments during the POR.<sup>221</sup>
- SeAH provided documentation showing that the price SeAH L&S charged SeAH for arranging ocean freight for a containerized shipment was lower than the price quoted by an unaffiliated freight forwarder, and, as such, SeAH L&S's involvement in arranging containerized shipments to Canada does not affect the analysis.<sup>222</sup> Also, the price that SeAH L&S charged SeAH for arranging the freight was higher than the price that the unaffiliated ocean carrier charged SeAH L&S for the actual transport, which means that SeAH L&S covered any administrative or financing expenses related to the transaction.<sup>223</sup>

*Department's Position:*

In its response to sections B and C of the questionnaire, SeAH stated that international freight for its sales of OCTG to Canada and the United States was provided by unaffiliated transportation companies.<sup>224</sup> For back-to-back sales (all of SeAH's Canadian sales, and some of its U.S. sales),

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Comments on SeAH's July 28 Supplemental Section B and C Response," dated August 31, 2016 (SeAH August 31, 2016 Submission), at 3 and Attachments 1 and 2).

<sup>218</sup> *Id.*, at 50 (citing BCQR, at 43 and 84; SeAH BC2SQR, at Appendix SB-16; and SeAH BC2SQR, at 20).

<sup>219</sup> *Id.*, at 51 (citing SeAH BCQR, at Appendices C-9 through C-13 and C-15).

<sup>220</sup> *See* SeAH Rebuttal Brief, at 16-17 (citing SeAH August 31, 2016 Submission, at Attachment 2). SeAH states that since it did not ship OCTG to the United States during the POR, it provided a comparison of bulk and containerized international freight rates for welded stainless pipe shipped to the United States during the POR.

<sup>221</sup> *Id.*, at 17 (citing SeAH August 31, 2016 Submission, at Attachment 1).

<sup>222</sup> *Id.*, at 18 (citing SeAH August 31, 2016 Submission, at Attachment 3).

<sup>223</sup> *Id.* (citing SeAH BC2SQR, at Appendix S2B-5).

<sup>224</sup> *See* SeAH BCQR, at 43 and 84.

SeAH explained that it reported international freight expenses based on the actual per-unit ocean freight charges paid by SeAH for each sale.<sup>225</sup> For U.S. sales made through inventory held by PPA's PMT division, SeAH explained that it reported international freight expenses by allocating the total ocean freight charges it incurred on shipments of OCTG to PMT during the POR by the total quantity of such shipments during the POR.<sup>226</sup>

In its comments on SeAH's questionnaire response for sections B and C, Maverick argued that that the differences between the international freight expenses reported for the Canadian and U.S. markets indicated that the rates were distorted.<sup>227</sup> The Department thus requested, in its first supplemental questionnaire for sections B and C, that SeAH provide justification for the international freight expenses reported for the two markets. In its supplemental questionnaire response, SeAH stated that most of its shipments of OCTG to Canada during the POR were made in containers, and that the ocean freight rates for these shipments were established through shipment-specific negotiations with the ocean freight carriers.<sup>228</sup> It also stated that ocean freight rates for bulk shipments were normally determined under "Contracts of Affreightment" with bulk carriers.<sup>229</sup> SeAH explained:

The ocean freight costs for SeAH's shipments of OCTG to Canada were higher than the ocean freight costs for SeAH's shipments of OCTG to the United States primarily because the rates for ocean freight for containerized shipments are normally higher than the rates for ocean freight for bulk shipments. In addition, because the overall volume of shipments from Korea to the port of Houston is higher than the volume of shipments from Korea to Canadian ports, there are more alternatives and more competition for shipments to Houston.<sup>230</sup>

In addition, SeAH provided support documentation for one Canadian sale that was shipped in containers, and one Canadian sale that was shipped in bulk.<sup>231</sup> SeAH also provided support documentation for one U.S. back-to-back sale, and one shipment related to merchandise sold through PMT's inventory.<sup>232</sup>

Maverick commented on SeAH's supplemental questionnaire response, claiming again that SeAH's reported international freight expenses were distorted.<sup>233</sup> In response to these comments, SeAH clarified that it shipped OCTG to one Canadian customer in containers at that customer's request, and that its sales of OCTG to other Canadian customers and all of its U.S. sales of OCTG were shipped in bulk.<sup>234</sup> SeAH stated that since it did make any containerized

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<sup>225</sup> *Id.*, at 44 and 84-85.

<sup>226</sup> *Id.*, at 85.

<sup>227</sup> *See* Maverick May 11, 2016 Submission, at 21-22.

<sup>228</sup> *See* SeAH BCSQR, at 33.

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*, at 33-34.

<sup>231</sup> *Id.*, at Appendix SB-16.

<sup>232</sup> *Id.*, at Appendices SC-17-A and SC-17-B, respectively.

<sup>233</sup> *See* Letter from Maverick to the Department, "Certain Oil Country Tubular Goods from the Republic of Korea: Resubmission of Comments on SeAH's Supplemental Section B-C Questionnaire Response," dated August 19, 2016 (Maverick August 19, 2016 Submission), at 5-10.

<sup>234</sup> *See* SeAH August 31, 2016 Submission, at 2-3.

shipments of OCTG to the United States, it could not supply any support documentation for the rates for U.S. sales of OCTG shipped in containers. However, SeAH stated that it shipped other pipe products to the United States in containers, and, thus, for comparison, provided sample documentation which it stated was for a bulk shipment of welded stainless pipe to Houston in June 2015 and a containerized shipment of welded stainless pipe to the port of Savannah, Georgia in July 2015.<sup>235</sup>

In addition, SeAH clarified that the ocean freight for its exports of OCTG to Canada and the United States was provided in all instances by unaffiliated freight companies, and stated that it contracted directly with the unaffiliated transportation companies for bulk shipments.<sup>236</sup> For containerized shipments, SeAH stated that it typically contracts for ocean freight with a freight forwarder, which then arranges the freight with unaffiliated ocean freight companies.<sup>237</sup> SeAH then explained that, for containerized shipments of OCTG to its Canadian customer, it contracted with its affiliate, SeAH L&S, which acted as a freight forwarder that contracted with the unaffiliated providers of the actual freight service.<sup>238</sup> SeAH explained that it chose to contract with SeAH L&S for these containerized shipments after receiving competing quotes from SeAH L&S and an unaffiliated freight forwarder and finding that SeAH L&S's quoted price was lower.<sup>239</sup> SeAH provided a copy of the competing quotes.<sup>240</sup> In response to a request from the Department to demonstrate that the international freight rates offered by SeAH L&S were at arm's length, SeAH provided, for the quoted shipment, a copy of SeAH L&S's invoice to SeAH and the corresponding invoice from the ocean transport company to SeAH L&S.<sup>241</sup>

Based on information on the record of this review, the Department finds that the difference noted by Maverick between the weighted-average international freight expenses reported for SeAH's Canadian and U.S. sales is primarily attributable to whether the OCTG was shipped in containers or in bulk. That is, the record shows that international freight expenses were higher, on average, for Canadian sales than for U.S. sales of OCTG because some of SeAH's Canadian sales were shipped in containers. The sample documentation provided in SeAH's first supplemental questionnaire response demonstrated that the per-unit rate for the containerized shipment to Canada was higher than the per-unit rates for the bulk shipment to Canada and the two bulk shipments to the United States.<sup>242</sup>

In addition, comparing the per-unit rates for the three bulk shipments of OCTG documented in SeAH's first supplemental questionnaire response, the Department finds that these rates are within the same general range.<sup>243</sup> In turn, an examination of SeAH's Canadian and U.S. databases reveals that the per-unit international freight expenses reported for Canadian sales that were shipped in bulk, as well as all U.S. sales (which were all bulk shipments), fall within the

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<sup>235</sup> *Id.*, at 3-4 and Attachment 2.

<sup>236</sup> *Id.*, at 5.

<sup>237</sup> *See* SeAH BC2SQR, at 22.

<sup>238</sup> *Id.*; *see also* SeAH August 31, 2016 Submission, at 5.

<sup>239</sup> *See* SeAH August 31, 2016 Submission, at 5; *see also* SeAH BC2SQR, at 22.

<sup>240</sup> *See* SeAH August 31, 2016 Submission, at Attachment 3.

<sup>241</sup> *See* SeAH BC2SQR, at Appendix S2B-5.

<sup>242</sup> *See* SeAH BCSQR, at Appendices SB-16, SC-17-A, and SC-17-B.

<sup>243</sup> *Id.*

same range as the per-unit rates for bulk shipments in the sample documentation.<sup>244</sup> An examination of SeAH's Canadian database also shows that the per-unit rates for containerized shipments were higher than the range for U.S. and Canadian bulk shipments, and the vast majority of the per-unit expenses reported for containerized shipments were in line with the per-unit rate on the sample invoice in SeAH's first supplemental questionnaire response.<sup>245</sup>

With respect to the involvement of SeAH L&S in providing international freight, we agree with Maverick that SeAH did not inform the Department of this arrangement in its initial questionnaire response. However, SeAH clarified in its later submissions that for containerized shipments of OCTG to one Canadian customer, an affiliated company, SeAH L&S, acted as a freight forwarder which, in turn, arranged for transport with unaffiliated transport companies.<sup>246</sup> SeAH also responded to the Department's request to demonstrate that SeAH L&S provided this service at arm's length.<sup>247</sup>

As explained above, SeAH has responded to the Department's requests for information with respect to its reported international freight expenses. We find that this information establishes the reason for the difference between the weighted-average international freight expenses reported for SeAH's Canadian and U.S. sales. As such, we do not find that SeAH's international freight expenses are unsupported, or distorted in such a manner that would lead the Department to apply total AFA to SeAH. Further, the Department does not find that SeAH's revision to its response regarding SeAH L&S's involvement in providing international freight calls for the application of total AFA. However, as noted in Comment 7, below, for these final results, the Department is making the same adjustment as we made in the *Preliminary Results* to SeAH's Canadian international freight expenses to account for the difference between the reported per-unit rates for containerized and bulk shipments.

As for Maverick's argument that SeAH should have reported vessel-specific international freight expenses for its U.S. inventory sales, we address this issue in issue H, immediately below.

#### *H. Transaction-Specific Reporting of Certain Movement Expenses*

##### *Maverick's Arguments:*

- SeAH should have reported the following expenses on transaction-specific basis for U.S. sales through PMT's inventory, but did not do so: Korean inland freight (DINLFTPU), Korean brokerage and handling (DBROKU), international freight (INTNFRU), marine insurance (MARNINU), U.S. brokerage and handling (USBROKU), freight from the U.S. port to the processor (INLFPW1U), harbor maintenance fees (USDUTYU), and entered value (ENTVALU).

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<sup>244</sup> *Id.*; see also SeAH's September 8, 2016 Canadian sales database and SeAH's September 12, 2016 U.S. database.

<sup>245</sup> See SeAH BCSQR, at Appendix SB-16 and SeAH's September 8, 2016 Canadian sales database.

<sup>246</sup> See SeAH August 31, 2016 Submission, at 5; see also SeAH BC2SQR, at 22.

<sup>247</sup> See SeAH BC2SQR, at Appendix S2B-5.

- SeAH did not demonstrate why it could not calculate these expenses on a sales-specific basis, even though documentation on the record shows that it could have done so.<sup>248</sup>
- The Department, and not respondents, determines what information must be provided.<sup>249</sup>

*SeAH's Rebuttal Arguments:*

- Maverick's claim that SeAH could have reported the disputed movement expenses on a transaction-specific basis is false, and there is no basis for determining that SeAH failed to cooperate or applying AFA.
- SeAH reported sales from PMT's inventory based on the individual invoices pertaining to the shipments from PMT's inventory to the unaffiliated customer.
- Maverick has not provided any evidence showing how the sales through PMT's inventory could be linked to specific imports from Korea; rather, Maverick has only identified evidence showing that individual shipments from SeAH to PMT can be linked to vessel-specific expenses.
- Maverick conflates the shipments from SeAH to PMT with sales from PMT's inventory, which are made to PMT's customers after storage and, in some cases, further processing.
- SeAH described the process that would be required to link each PMT sale to the specific vessel on which the OCTG was shipped from Korea.<sup>250</sup>

*Department's Position:*

SeAH reported that during the POR, it made U.S. sales through two channels of distribution: back-to-back sales, which consisted of direct shipments from SeAH to an unaffiliated customer in the United States, and sales through PMT's inventory.<sup>251</sup> For the latter channel of distribution, the OCTG was shipped from SeAH to PMT, where it was stored in inventory, and, in some cases, further manufactured by an unaffiliated processor prior to being sold to an unaffiliated U.S. customer.<sup>252</sup>

In reporting the movement expenses at issue (Korean inland freight (DINLFTPU), Korean brokerage and handling (DBROKU), international freight (INTNFRU), marine insurance (MARNINU), U.S. brokerage and handling (USBROKU), freight from the U.S. port to the processor (INLFPWIU), harbor maintenance fees (USDUTYU), and entered value (ENTVALU), SeAH used two different methodologies, one for each channel of distribution. For back-to-back sales, SeAH reported an amount for each expense on a vessel- or sale-specific

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<sup>248</sup> See Maverick Case Brief, at 52-53 (citing SeAH BCSQR, at Appendices SC-16-B, page 2 and SC-19, page 3, and SeAH BCQR, at Appendices C-9 through C-13 and C-15).

<sup>249</sup> *Id.*, at 53 (citing *Certain Oil Country Tubular Goods from the People's Republic of China*, 78 FR 49475 (August 14, 2013) and accompanying Issues and Decision Memorandum at Comment 5; *Ansaldo Componenti, S.p.A. v. United States*, 10 CIT 28, 37, 628 F. Supp. 198, 205 (1986); and *Essar Steel Ltd. v. United States*, 34 CIT 1057, 1073, 721 F. Supp. 2d 1285, 1298-99).

<sup>250</sup> See SeAH Rebuttal Brief, at 20 (citing SeAH August 31, 2016 Submission, at 6-7, n.8).

<sup>251</sup> See, e.g., Letter from SeAH to the Department, "Response of SeAH Steel Corp., Ltd. to the Department's February 12 Questionnaire – Section A," dated March 18, 2016 (SeAH AQR), at 20).

<sup>252</sup> *Id.*

basis.<sup>253</sup> For sales through PMT inventory, SeAH reported these movement expenses based on an allocation of the total charges incurred by SeAH or PPA on shipments or imports of OCTG during the POR over the total quantity of such shipments or entries during the POR.<sup>254</sup>

In the Department's first supplemental questionnaire for sections B and C, the Department asked SeAH to report these movement expenses on a vessel-specific basis or prove that each sale cannot be traced to its actual expenses. (For entered value, the Department asked SeAH to report this field on a more specific basis, such as by model.) For all eight of these adjustments, SeAH responded that "it is not feasible to trace the merchandise involved in each and every PMT sale to specific imports."<sup>255</sup> We also asked SeAH to provide source documentation for each of the eight adjustments, regardless of whether it could report these expenses on a more specific basis. In response, SeAH provided support documentation, for each expense, for one of its shipments to PMT during the POR.<sup>256</sup>

In response to other supplemental questions from the Department, SeAH explained the difficulty of tracing PMT inventory sales to specific imports. For example, in response to the Department's request that SeAH report all U.S. sales "with an initial purchase order date or vessel loading date within the POR," SeAH stated the following with respect to PMT inventory sales:

Because PMT makes its sales from inventory held in the United States, the specific pipe that will be shipped to a customer in response to a specific customer order is not known until the OCTG is actually picked from PMT's inventory. Furthermore, as noted above, PMT's normal inventory records do not allow it to trace the merchandise sold to its customers in individual transactions to the actual imports from Korea in a systematic way.<sup>20</sup> Consequently, it is not possible to identify sales from PMT inventory for which the merchandise was loaded for shipment from Korea during the review period.<sup>257</sup>

Similarly, in response to a supplemental question regarding product codes, SeAH stated, "it is not feasible for SeAH to identify the actual import that corresponds to each sale from PMT's inventory in a systematic manner," and offered the following explanation:

PMT's normal computer system does not record information that would identify the import transaction that corresponds to each PMT sale from inventory. In theory, individual PMT sales transactions can be matched to imports through a manual review of the processor's "tally sheet" for the shipments to the customer, the processor's invoices and other documents confirming the processing

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<sup>253</sup> See SeAH BCQR, at 81, 83-85, 91, and 109 and Appendices C-9 through C-13, C-15, and C-23. For back-to-back sales, SeAH did not incur any expenses for inland freight from the port to the processor (INLFPW1U), because the unaffiliated U.S. customer was responsible for freight from the port to its location. See SeAH BCQR, at 86.

<sup>254</sup> *Id.*, at 81, 83-87, 91, and 109-110 and Appendices C-9 through C-13, C-14-A, C-15, and C-23.

<sup>255</sup> See SeAH BCSQR, at 63, 65-68, 71, 75, and 83.

<sup>256</sup> *Id.*, at Appendices SC-14-B, SC-15-B, SC-16-B, SC-17-B, SC-18-B, SC-19, SC-22, and SC-27-B.

<sup>257</sup> *Id.*, at 49-50. Footnote 20 within this passage states, "The only way to trace the merchandise involved in each PMT sale to a specific import would be through manual matching of the heat numbers for each pipe to individual work orders and purchase orders."

performed prior to shipment to the customer, and the mill test certificates received by PMT from SeAH Korea. Such manual tracing may be performed, for example, when a customer files a claim for a manufacturing defect in the OCTG supplied by PMT. However, PMT does not normally perform such an analysis for sales for which there has been no customer claim, its systems do not allow such an analysis to be performed by computer, and it is simply not feasible for PMT to complete such an analysis within the time available for responding to the Department's questionnaires.<sup>258</sup>

SeAH also provided the following clarification in a later submission:

In the normal course of business, PMT assigns tag numbers to the imported pipe, and these tag numbers are recorded in PMT's computer system and can be used to match the individual sales by PMT to the corresponding PMT purchases from SeAH. However, this trace requires several manual steps. PMT estimates that performing this sort of trace for all of the reported U.S. sales of OCTG during the review period could take more than a month of work by its current personnel. Furthermore, PMT has found, in the past, that there can be errors in entering the tag numbers and other tracking information into the system. Verifying the accuracy of the matches between PMT sales and purchases for all transactions would, therefore, take a far longer amount of time.

Furthermore, a trace from PMT's sales to its purchases does not necessarily permit a trace from PMT's sales to specific shipments from SeAH to PMT. It is possible that a single PMT purchase order to SeAH may be shipped by SeAH on multiple vessels. As a result, a linkage between PMT's sale and its purchase order to SeAH does not automatically provide a link between PMT's sale and a specific vessel. While it is possible to trace individual sales by PMT to individual shipments by SeAH (for example, when a customer makes a claim that pipe it received was defective), performing such a trace for more than a small number of transactions cannot be completed within a reasonable amount of time.<sup>259</sup>

Based on the explanations provided by SeAH, the Department disagrees with Maverick that SeAH should have reported the disputed movement expenses on a transaction- or vessel-specific basis for PMT inventory sales. SeAH has explained that PMT's computer system does not contain the information that would allow the company to link each PMT inventory sale with the corresponding import. SeAH also explained that while it could, in theory, identify the import corresponding to each sale through PMT inventory, this would involve a manual tracing of information that would take a substantial amount of time. Thus, the Department finds that SeAH has adequately explained why it could not have reported the eight adjustments at issue on a sale- or vessel-specific basis for PMT inventory sales. With the exception of the entered value field, the Department finds that SeAH's allocation methodology for the movement expenses at issue is reasonable for PMT inventory sales. (For further discussion regarding the entered value field, *see* Comment 9, below). Therefore, the Department disagrees with Maverick that SeAH's

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<sup>258</sup> *Id.*, at 42 and n.17.

<sup>259</sup> *See* SeAH August 31, 2016 Submission, at 6-7, n.8.

methodology for reporting the disputed movement expenses for sales through PMT inventory constitutes grounds for applying total AFA to SeAH.

### *I. Reporting of Payment Terms for Canadian Sales*

#### *Maverick's Arguments:*

- SeAH withheld information from the Department regarding the payment terms for its Canadian sales because it did not respond fully when asked to how customers agree to payment terms and explain whether payment terms are tied to late payment penalties.
- This is another example of SeAH's failure to cooperate and act to the best of its ability in responding to the Department's requests for information, which justifies the application of total AFA.

#### *SeAH's Rebuttal Arguments:*

- SeAH explained that customers indicate the agreed-upon payment terms on their purchase orders utilizing commonly-used business terms.<sup>260</sup>
- SeAH also explained that neither it nor PPA charged Canadian customers interest for late payment on OCTG sales during the POR.<sup>261</sup> It should be obvious that the payment terms indicated on the customer's purchase order, PPA's order confirmation, and PPA's invoice to the customer do not include late payment fees.

#### *Department's Position:*

SeAH explained in its section B questionnaire response that payment terms were fixed by negotiations with individual Canadian customers, and are stated on PPA's invoices.<sup>262</sup> Based on comments from Maverick,<sup>263</sup> we asked SeAH in the first supplemental questionnaire for sections B and C to indicate, for its Canadian sales, whether payment terms are tied to interest penalties and also how customers agree to payment terms. SeAH responded that the payment terms for each sale were specified on the customer's purchase order, PPA's order confirmation, and PPA's invoice to the customer.<sup>264</sup> SeAH did not provide a response regarding late payment penalties in that response, but it did state in its section B questionnaire response that neither it nor PPA charged Canadian customers interest for late payment on sales of OCTG during the POR.<sup>265</sup>

Based on the foregoing, we find that SeAH responded to the Department's requests for information regarding the establishment of payment terms with its Canadian customers. We also find that SeAH explained to the Department that it did not charge interest for late payments on Canadian sales of OCTG during the POR. Further, SeAH indicated what payment terms it offered during the POR to its Canadian customers on sales of OCTG, and none of those payment

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<sup>260</sup> See SeAH Rebuttal Brief, at 21 (citing SeAH BCSQR, at 25).

<sup>261</sup> *Id.* (citing SeAH BCQR, at 35).

<sup>262</sup> See SeAH BCQR, at 21.

<sup>263</sup> See Maverick May 11, 2016 Submission, at 26-27.

<sup>264</sup> See SeAH BCSQR, at 25.

<sup>265</sup> See SeAH BCSQR, at 25 and SeAH BCQR, at 35.

terms included penalties for late payment.<sup>266</sup> Therefore, we disagree with Maverick that SeAH withheld information from the Department regarding the terms of payment for its Canadian sales, and, as such, the Department finds that application of total AFA is not warranted.

#### *J. U.S. Warehousing Expenses*

##### *Maverick's Arguments:*

- SeAH originally reported warehousing expenses as part of indirect selling expenses. It claimed that it was unable to report warehousing expenses for individual sales because it could not link shipments from Korea to sales made through PMT's inventory.<sup>267</sup>
- In response to the Department's requests to report warehousing requests as direct warehousing expenses and not as indirect selling expenses, SeAH later reported sales-specific expenses for its Colorado and Houston warehouses.<sup>268</sup>
- SeAH misled the Department by not originally reporting warehousing expenses on a sales-specific basis, and, as such, impeded the Department's review.

##### *SeAH's Rebuttal Arguments:*

- SeAH explained why it initially included warehousing expenses in its indirect selling expenses, but reclassified them as direct warehousing expenses at the Department's request.
- Maverick is incorrect in asserting that SeAH reported sales-specific warehousing expenses. While SeAH can determine which sales were shipped from the Colorado warehouse, that warehouse did not charge SeAH on a sales-specific basis. For both the Colorado and Houston warehouses, SeAH reported warehousing expenses by allocating the warehousing costs over the shipments from those warehouses.<sup>269</sup>

##### *Department's Position:*

SeAH reported in its section C questionnaire response that for most sales from PMT inventory, the OCTG was shipped from the port to an unaffiliated further processor, where it was stored until processing and then until delivery to the unaffiliated U.S. customer.<sup>270</sup> Those warehousing expenses are not at issue here. Rather, the warehousing expenses at issue are those incurred at locations other than the further processors' storage facilities. For those warehousing expenses, we agree with Maverick that SeAH originally reported them as part of U.S. indirect selling expenses. Specifically, SeAH explained in its section C response that it included warehousing expenses in indirect selling expenses for: (1) OCTG that was stored initially at a warehouse in a foreign trade zone (FTZ) prior to entry for consumption into the United States and shipment to the further processor, and (2) OCTG stored at a warehouse associated with PPA's Colorado

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<sup>266</sup> See BCQR, at Appendix B-2 and BCSQR, at 25.

<sup>267</sup> See Maverick Case Brief, at 54-55 (citing SeAH BCQR, at 89 and SeAH ASQR, at 35).

<sup>268</sup> *Id.*, at 55-56 (citing SeAH BCSQR, at 72 and revised sales database and SeAH BC2SQR, at 24).

<sup>269</sup> See SeAH Rebuttal Brief, at 22-23 (citing SeAH BCSQR, at Appendix SC-20-A and SeAH BC2SQR, at 24).

<sup>270</sup> See BCQR, at 88.

office.<sup>271</sup> With respect to the warehousing performed at the FTZ, SeAH stated that it could not identify the costs for storing the OCTG on a sales-specific basis “{b}ecause PMT cannot trace the shipments received from Korea (or the specific shipments stored in the foreign-trade-zone warehouse) to its sales to unaffiliated customers.”<sup>272</sup>

Because the Department’s questionnaire includes a specific field for reporting warehousing expenses, we instructed SeAH, for the expenses incurred for storing merchandise in the FTZ, to “{a}ssign the direct warehousing and movement expenses for your sales from the FTZ to the actual sales to which they pertain. ... if {this is} not possible, then allocate these expenses across all sales of subject merchandise ... but do not classify these expenses as indirect selling expenses.”<sup>273</sup> In its response to that supplemental question, SeAH clarified that there were actually two non-further processing storage facilities near the port of Houston, one in the FTZ and one outside the FTZ.<sup>274</sup> SeAH explained that because it could not identify the costs for storing OCTG at these warehouses on a sale-specific basis, it allocated the storage costs over all of PMT’s sales and reported the resulting amount for each PMT inventory sale in a new field, PORTWHU.<sup>275</sup>

Similarly, in our first supplemental questionnaire for sections B and C, we asked SeAH to report the expenses for its Colorado warehouse as direct warehousing expenses rather than as part of indirect selling expenses. SeAH did so, reporting these expenses in a new field, COLOWHU.<sup>276</sup>

In a subsequent supplemental questionnaire (*i.e.*, the Department’s second supplemental questionnaire for section A), the Department asked SeAH to provide a list of each of its storage locations. In its response to that supplemental questionnaire, SeAH provided the requested list, and clarified that there were four non-further processor storage locations at or near the port of Houston.<sup>277</sup> SeAH provided an explanation as to why it had mistakenly reported in its earlier response that there were only two such facilities rather than four.<sup>278</sup>

Finally, in response to another question regarding warehousing expenses in the Department’s second supplemental questionnaire for sections B and C, SeAH clarified that it was further refining its reported warehousing expenses. Specifically, it explained that warehousing expenses for the non-processor locations were now being reported in reported in three fields: HOUSTONWHU (cost of storage at the warehouses near the port of Houston); COLOWHU (cost of warehousing in Colorado); and PORTWHU (cost of storage at the warehouse in the FTZ in the port of Houston).<sup>279</sup> SeAH also provided a revised worksheet showing the per-unit, allocated amounts calculated and reported for each of the three fields.<sup>280</sup>

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<sup>271</sup> *Id.*, at 89.

<sup>272</sup> *Id.*

<sup>273</sup> See Letter from the Department to SeAH, dated July 1, 2016, at 11.

<sup>274</sup> See SeAH BCSQR, at 69.

<sup>275</sup> *Id.*, at 70.

<sup>276</sup> *Id.*, at 72.

<sup>277</sup> See SeAH A2SQR, at 22.

<sup>278</sup> *Id.*, at n.5.

<sup>279</sup> See SeAH BC2SQR, at 24-25.

<sup>280</sup> *Id.*, at Appendix S2C-7.

As explained earlier, SeAH originally reported warehousing expenses as part of indirect selling expenses. However, SeAH was fully responsive to the Department's requests to report these expenses as direct warehousing expenses. In fact, through the supplemental questionnaire process, SeAH refined the methodology it used to report these warehousing expenses, breaking them down and reporting them in the three fields annotated above. As such, the Department finds that SeAH complied with the Department's requests for information in reporting these warehousing expenses, despite the fact that it initially reported them as part of indirect selling expenses. Further, contrary to Maverick's allegation, the Department finds that SeAH did not mislead the Department by initially not reporting these expenses on a sales-specific basis and then later doing so. Rather, SeAH explained why it was not possible to report these expenses on a sales-specific basis, and consistently reported them on an allocated basis throughout this proceeding. Therefore, the Department concludes that SeAH did not provide misleading information about its warehousing expenses, and, as such, SeAH's U.S. warehousing expenses do not provide grounds for applying total AFA to SeAH.

#### *K. Price Adjustments for Certain U.S. Sales*

##### *Maverick's Arguments:*

- For certain U.S. sales that were returned as scrap, SeAH reported, in a supplemental questionnaire response, an upward price adjustment because the amount SeAH received for reselling the pipes as scrap was greater than what it paid to repurchase the pipes from the customer.<sup>281</sup>
- SeAH claimed this price increase without disclosing any details in its original questionnaire response.
- This is another example of SeAH's "manipulative reporting tactics," which should collectively result in total AFA.<sup>282</sup>

##### *SeAH's Rebuttal Arguments:*

- In its original questionnaire response, for certain U.S. sales, SeAH reported the amount it paid customers to re-purchase OCTG as a downward billing adjustment.
- In response to an argument by Maverick, the Department requested that SeAH report a discount based on the "difference between the original sale price and the scrap sales price" for these transactions.<sup>283</sup>
- In response to the Department's request, SeAH supplied a list of PMT's purchases and subsequent resales of used OCTG from its customers. This list included the price for SeAH's initial sale to the customer; the price SeAH paid to re-purchase the used pipe from the customer; and the price SeAH received for selling the used pipe as scrap. As shown in the list, SeAH received more from the scrap sales than it paid to re-purchase the used pipe; thus, the difference between the two amounts resulted in a negative "discount," which increased U.S. price.<sup>284</sup>

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<sup>281</sup> See Maverick Case Brief, at 56 (citing SeAH BC2SQR, at 17).

<sup>282</sup> *Id.*

<sup>283</sup> See SeAH Rebuttal Brief, at 24 (citing SeAH BC2SQR, at 17).

<sup>284</sup> *Id.*, (citing SeAH BC2SQR, at Appendix S2C-6).

- SeAH reported the relevant amounts in a transparent manner in response to the Department’s request, and Maverick has not pointed to any flaws in SeAH’s calculation.

Department’s Position:

In the Department’s first supplemental questionnaire for sections B and C, we asked SeAH to provide certain information regarding price adjustments made to U.S. sales during the POR. In response to this question, SeAH explained that most of the billing adjustments that PMT made during the POR related to the correction of invoicing errors regarding the quantity or unit price.<sup>285</sup> SeAH also informed the Department that some billing adjustments reflected credits issued by PMT for returned pipe.<sup>286</sup>

Based on Maverick’s comments regarding the billing adjustments for the returned pipe,<sup>287</sup> the Department asked SeAH to provide additional information in its second supplemental questionnaire for sections B and C. Specifically, the Department requested that SeAH report a discount based on “the difference between the original sale price and the scrap sales price” for the transactions at issue. In its supplemental questionnaire response, SeAH explained that “the credits issued by PMT for the purchases of used pipe from its customers were reported in the U.S. sales databases provided in SeAH’s previous submissions as billing adjustments (reported in the BILLADJU field). The amounts reported in the BILLADJU field for these transactions reflected only the credit given to the customer for the return of the used pipe, and were not offset by the revenue received by PMT when it sold the used OCTG as scrap.”<sup>288</sup> SeAH provided a chart listing the affected sales,<sup>289</sup> and then stated that:

“the amounts that SeAH received from the sales of this scrap exceeded the amounts that it paid to re-purchase the scrap from its customers. As a result, if the difference between the re-purchase and re-sale price is treated as a “discount,” the discount would be negative, increasing the net U.S. price for each sale. In accordance with the Department’s instructions, the amount of this negative discount has been reported in the RSALEDISCU field ... Because the net amount (*i.e.*, the credit given to the customer *minus* the revenue from the sale of scrap) has been reported in the RSALEDISCU field, the amount of the credit given to the customer for the return of the used OCTG has been removed from the BILLADJU field in the revised U.S. sales listing.”<sup>290</sup>

Maverick argues that SeAH misreported its price adjustments for the sales at issue because SeAH claimed an upward price adjustment without disclosing any details in its initial questionnaire response. However, SeAH only reported the upward adjustments after the Department asked it to do so in response to comments from Maverick. With respect to Maverick’s argument that SeAH did not disclose any information related to the affected sales in

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<sup>285</sup> See SeAH BCSQR, at 56.

<sup>286</sup> *Id.*, at n.22.

<sup>287</sup> See Maverick August 19, 2016 Submission, at 27-28.

<sup>288</sup> See SeAH BC2SQR, at 17.

<sup>289</sup> *Id.*, at Appendix S2C-6.

<sup>290</sup> *Id.*, at 17-18 (emphasis SeAH’s).

its initial response, we disagree. Rather, as SeAH explained to the Department, it reported the credits issued by PMT for the purchases of used pipe from its customers in its previously-submitted U.S. sales databases as billing adjustments (in the field BILLADJU), and those amounts only reflected the credit given to the customer for the return of the used pipe, not any scrap revenue received by PMT.<sup>291</sup>

That said, the Department determines that it would not be appropriate to use the upward price adjustments in the margin calculation, because these amounts reflect an offset for scrap revenue that is not related to the original sale of subject merchandise. However, as the Department noted for the *Preliminary Results*, we did not include the upward price adjustments in our preliminary margin calculation. In fact, as we noted in the *Preliminary Results*, the RSALEDISCU field does not actually appear in SeAH's U.S. database.<sup>292</sup> Further, despite SeAH's statement in its response to the second supplemental questionnaire for sections B and C that it removed from the BILLADJU field the amount of the credit given to the customer for the return of the used OCTG, the Department finds that these amounts still appear in the BILLADJU field as downward billing adjustments. The Department made this determination based on a comparison of the information reported in the chart at Appendix S2C-6 to SeAH's U.S. database.<sup>293</sup> The Department compared the amounts reported in the BILLADJU field for the affected sales in SeAH's original U.S. database and its most recently submitted U.S. database and finds that the same downward billing adjustments were reported in both databases.<sup>294</sup> As such, this confirms that SeAH did not fail to disclose these adjustments in its original section C questionnaire response.

Because SeAH responded to the Department's requests for information and properly reported downward billing adjustments for the affected sales, the Department determines that SeAH did not misreport these price adjustments. Therefore, the Department disagrees with Maverick that this issue merits the application of total AFA to SeAH. In addition, for these final results, the Department determines that it is appropriate to use the downward billing adjustments reported in the BILLADJU field for the affected sales, just as we did for the *Preliminary Results*.

#### *L. Korean Inland Freight*

##### *Maverick's Arguments:*

- SeAH stated in a supplemental questionnaire response that it was providing support documentation for its Korean inland freight expenses, but then acknowledged in a subsequent supplemental questionnaire response that the specified exhibit did not exist.<sup>295</sup>
- Maverick avers that SeAH failed to report requested information in the allotted time and, thus, the Department should not use this exhibit, even though SeAH did provide it.

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<sup>291</sup> *Id.*, at 17.

<sup>292</sup> See Memorandum from Deborah Scott, International Trade Compliance Analyst, AD/CVD Operations, Office VI, to the File, "Analysis of Data Submitted by SeAH Steel Corporation for the Preliminary Results of the 2014-2015 Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea," dated October 5, 2016 (SeAH Preliminary Analysis Memorandum), at 7, n.7 and SeAH's September 12, 2016 U.S. database.

<sup>293</sup> See SeAH BC2SQR, at Appendix S2C-6 and SeAH's September 12, 2016 U.S. database.

<sup>294</sup> See SeAH's March 31, 2016 and September 12, 2016 U.S. databases.

<sup>295</sup> See Maverick Case Brief, at 57 (citing SeAH BCSQR, at 28 and SeAH BC2SQR, at 19).

- If the Department does not use this information, SeAH's Korean inland freight would be unsubstantiated, and, thus, the Department should disallow this adjustment for SeAH's Canadian sales.

*SeAH's Rebuttal Arguments:*

- The exhibit at issue was not provided in SeAH's first supplemental questionnaire response for sections B and C due to an unintentional production error.
- SeAH placed this information on the record in its second supplemental questionnaire response for sections B and C, and this information corroborates the accuracy of the Korean inland freight expenses it reported for its Canadian sales.<sup>296</sup>
- One of the reasons for the supplemental questionnaire process is to allow the Department to remedy imperfections in the record, in accordance with section 782(d) of the Act. There is no legal or factual basis for the Department to apply total or partial AFA due to an inadvertent error that was easily rectified.

*Department's Position:*

In the Department's first supplemental questionnaire for sections B and C, the Department requested that SeAH provide support documentation for certain figures in the sample Korean inland freight calculation in its section B questionnaire response. SeAH stated in its supplemental questionnaire response that support documentation for those figures could be found in Appendix SB-13-B of that submission.<sup>297</sup> However, Appendix SB-13-B did not appear in SeAH's supplemental questionnaire response. Thus, the Department, in its second supplemental questionnaire for sections B and C, stated that Appendix SB-13-B had not been provided, and asked SeAH to submit it its response to the second supplemental questionnaire. SeAH did so, acknowledging that the materials were supposed to have been provided in its prior response.<sup>298</sup> Because SeAH complied with the Department's request for information, we disagree with Maverick that SeAH's inadvertent omission of an exhibit, which SeAH corrected in its response to the second supplemental questionnaire, should lead the Department to apply total AFA to SeAH.

*M. Warranty Expenses*

*Maverick's Arguments:*

- SeAH stated in its original questionnaire response that it did not incur warranty expenses on U.S. sales of subject merchandise during the POR, but then reported warranty expenses in a supplemental questionnaire response without explaining why it did not report these expenses initially.<sup>299</sup>
- SeAH did not provide support for its claim that these expenses pertained to all sales.

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<sup>296</sup> See SeAH Rebuttal Brief, at 25 (citing SeAH BC2SQR, at Appendix S2B-3).

<sup>297</sup> See SeAH BCSQR, at 28.

<sup>298</sup> See SeAH BC2SQR, at 19 and Appendix S2B-3.

<sup>299</sup> See Maverick Case Brief, at 58 (citing SeAH BCQR, at 96 and SeAH BCSQR, at Appendix SB-14).

- The Department should apply AFA to SeAH because it provided misleading information in an untimely manner.

*SeAH's Rebuttal Arguments:*

- Maverick's arguments with respect to its warranty expenses are contrary to record evidence.
- SeAH explained in its original questionnaire response that neither it nor its U.S. affiliate incurred any warranty expenses on Canadian or U.S. sales of OCTG during the POR.<sup>300</sup>
- In response to the Department's request, SeAH reported the total warranty expenses recorded in PPA's accounting system over the past three years. Because PPA does not record these expenses separately by product, the expenses recorded in PPA's accounting system reflected the expenses that PPA incurred on all sales of all products.<sup>301</sup>

*Department's Position:*

We disagree with Maverick that SeAH reported misleading information to the Department with respect to its warranty expenses. In its section B and C questionnaire response, SeAH stated that neither it nor PPA incurred any warranty expenses on its Canadian or U.S. sales of OCTG during the POR.<sup>302</sup> However, SeAH did not provide a schedule of direct and indirect warranty expenses incurred on the merchandise under consideration for the three most recently completed fiscal years, as requested by the Department's standard questionnaire. Therefore, in our first supplemental questionnaire for sections B and C, the Department asked SeAH to provide this information.

In its supplemental questionnaire response, SeAH provided the requested schedule, which showed the total amounts recorded by PPA in the relevant accounts during the 2013, 2014, and 2015 fiscal years.<sup>303</sup> SeAH also provided a copy of PPA's trial balance for the relevant accounts for the three fiscal years, which supported the totals reported in the schedule.<sup>304</sup> SeAH explained that PPA's normal accounting records do not distinguish between warranty expenses for sales to Canada and sales to the United States, and that all warranty expenses are recorded based on the PPA office that recorded the transaction in the relevant accounts.<sup>305</sup> In a later submission, SeAH stated that those warranty accounts include expenses for both OCTG and non-subject products, and that there was no net expense on sales of OCTG during the POR.<sup>306</sup> SeAH also explained that to determine whether there were any warranty expenses on OCTG during the POR, it "undertook a detailed analysis of all of the credits granted to Canadian and U.S. customers by PPA in connection with those sales. That analysis did not identify any credits given for warranty claims for the sales during the period."<sup>307</sup>

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<sup>300</sup> See SeAH Rebuttal Brief, at 26 (citing SeAH BCQR, at 36 and 96).

<sup>301</sup> *Id.*, (citing SeAH BCSQR, at 30, 77, and Appendix SB-14).

<sup>302</sup> See SeAH BCQR, at 36 and 96.

<sup>303</sup> See SeAH BCSQR, at 30, 77, and Appendix SB-14.

<sup>304</sup> *Id.*, at Appendix SB-14.

<sup>305</sup> *Id.*, at 30.

<sup>306</sup> See SeAH August 31, 2016 Submission, at 11.

<sup>307</sup> *Id.*, at n.17.

Despite the fact that SeAH did not provide the requested warranty schedule in its initial questionnaire response, SeAH remedied this deficiency in its first supplemental questionnaire response for sections B and C. SeAH reported that it did not incur warranty expenses on OCTG during the POR, and the record does not contain any information which shows that SeAH did, in fact, incur any such expenses. As such, the Department finds that SeAH responded to the Department's requests for information regarding its warranty expenses and did not provide misleading information. Accordingly, the Department determines that total AFA is not justified for SeAH.

*N. Inventory Movement Schedules for By-Products and Scrap*

*Maverick's Arguments:*

- The Department requested that SeAH provide an inventory movement schedule for each type of scrap/by-product, and that it explain any adjustments shown. Further, the Department instructed SeAH to explain how the scrap offset was calculated in its normal books and records and in the reported costs.
- However, SeAH instead provided one movement schedule for all scrap. Additionally, SeAH failed to explain the various adjustments shown on the schedule, per the Department's request, and did not explain how the scrap offset was calculated in its normal books and for reporting purposes.

*SeAH's Rebuttal Arguments:*

- SeAH provided a detailed monthly inventory movement schedule for scrap in Appendix SD-9 of the August 15, 2016, submission. The schedule contained detailed quantity and value information for each of its 25 scrap codes.
- The company also responded in detail to the Department's questions regarding how the scrap offset was reflected in its normal books and records and in the reported costs.

*Department's Position:*

We agree with SeAH. Contrary to Maverick's claims, SeAH provided a detailed POR monthly scrap inventory movement schedule by each type of scrap code.<sup>308</sup> Further, SeAH provided a detailed explanation for how generated scrap was valued and how generated scrap and scrap sales were recorded in its normal books and records.<sup>309</sup> Specifically, SeAH explained that the scrap generated during the production process is valued based on the average selling price. As part of its explanation, SeAH provided details concerning the accounting treatment of scrap illustrating the specific accounts in which the sale of scrap and the relevant cost of goods sold were recorded.<sup>310</sup> SeAH also explained that the CONNUM-specific costs were calculated based on the actual product-specific costs recorded in its normal books and records.<sup>311</sup> As such, we do

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<sup>308</sup> See SeAH DE2SQR, at Appendix SD-9.

<sup>309</sup> See SeAH DQR, at 31.

<sup>310</sup> See SeAH DE2SQR, at 22.

<sup>311</sup> *Id.*

not find that SeAH failed to comply with the Department's requests and the information provided by SeAH to be deficient.

### *O. Costs to Repair Damaged Products*

#### *Maverick's Arguments:*

- In responding to the Department's request regarding repair costs for damaged U.S. products, SeAH explained that these costs were either: i) reported as PPA's net claim expenses in section C; ii) included in the reported further manufacturing costs; or iii) omitted from reporting.
- All repair costs associated with damaged pipe should be included as part of U.S. further manufacturing costs, on a product-specific basis. As to the claim expenses, there is no justification for reporting these particular costs as a sales expense that is allocated across all sales.

#### *SeAH's Rebuttal Arguments:*

- Regarding the third category of rework/repair costs related to damaged pipe (*i.e.*, those costs initially omitted from reporting which could not be tied to specific orders), SeAH revised its further manufacturing costs to include these charges, as requested by the Department.
- Although the Maverick takes issue with SeAH's methodology for allocating the net warranty claim expenses related to damaged pipe, this does not serve as a basis for justifying AFA.

#### *Department's Position:*

We agree with SeAH. SeAH explained that all the OCTG products exported to the United States are inspected and tested just before export and the products are also inspected when they arrive at the U.S. further manufacturing processor's location. Nevertheless, in a small number of cases, the products received by the U.S. further processor had been damaged and the repair costs incurred by the U.S. further processor were initially reported to the Department as follows.<sup>312</sup> Any repair costs for which PPA expected an insurance refund would be reported as warranty expenses if the product was not further processed, but sold directly. Repair charges associated with products sent for further processing that could be repaired were included in the reported further manufacturing costs, and a small amount of miscellaneous repair fees were not included in the costs reported to the Department.<sup>313</sup> Subsequently, in complying with the Department's request, SeAH revised its further manufacturing cost database to include the omitted miscellaneous repair fees.<sup>314</sup> Thus, we find that PPA's total POR repair costs have been captured in the reported further manufacturing costs. We disagree with Maverick that the repair costs reported as net warranty claims should be reclassified from the net warranty expenses to the further manufacturing costs. The damages were incurred during transporting products from

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<sup>312</sup> See SeAH EQR, at 5-6.

<sup>313</sup> See SeAH DE2SQR, at 45-46.

<sup>314</sup> See SeAH D3SQR, at 25 and Appendices S2E-3 and S2E-4.

SeAH to PPA. As such, the repair costs attributable to transit damages are not related to the further manufacturing activities. SeAH reported the repair costs associated with damaged pipes in the further manufacturing costs when the damage was identified at the processors location in the U.S. and the pipe could be repaired.<sup>315</sup> Further, SeAH explained that any losses or damage experienced during transit would be covered and offset by the insurance claims.<sup>316</sup> As such, we find that it is inappropriate to include this amount in the further manufacturing costs.

*P. PPA's Unconsolidated Financial Statements*

*Maverick's Argument:*

- The Department requested PPA's unconsolidated financial statements for the year ended December 31, 2015. However, SeAH provided only the consolidated statements for this company. The unconsolidated financial statements are vital to the Department's ability to analyze the reported U.S. further manufacturing costs. Thus, SeAH failed to provide PPA's unconsolidated financial statements.

*SeAH's Rebuttal Arguments:*

- PPA established a wholly-owned company to act solely as the purchaser of PPA's new office building.
- As SeAH has explained to the Department, PPA prepares two sets of financial statements: those that consolidate the results of PPA with this entity only, and those that consolidate the results of PPA, this particular entity, and State Pipe.
- Thus, the former financial statements are partially consolidated, and given the limited scope of the entity which only acted as a purchaser of PPA's office building, these partially consolidated financial statements effectively reflect PPA's stand-alone performance.

*Department's Position:*

SeAH explained that PPA does not prepare audited unconsolidated financial statements in the normal course of business.<sup>317</sup> Thus, SeAH provided the fiscal year 2015 unconsolidated trial balance for PPA and PPA's wholly-owned subsidiary company and reconciled these two companies' trial balances to PPA's fiscal year 2015 audited consolidated financial statements.<sup>318</sup> Consequently, the Department was able to trace PPA's unconsolidated operating results to PPA's audited consolidated financial statements and reconcile them to the reported further manufacturing costs. As such, we do not find that the information provided by SeAH to be deficient.

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<sup>315</sup> See SeAH DE2SQR, at 45-46.

<sup>316</sup> See SeAH EQR, at 5-6.

<sup>317</sup> See SeAH DE2SQR, at 3.

<sup>318</sup> See SeAH D3SQR, at Appendices S2E-5 and S2E-6.

## Comments 6-16: Whether to Apply Partial Adverse Facts Available to SeAH

Maverick asserts that, if the Department does not apply total AFA to SeAH for the final results, the Department should apply partial AFA by making the sales and cost adjustments discussed in Comments 6-16, below.

### Comment 6: Date of Sale

#### *Maverick's Arguments:*

- In the *Preliminary Results*, the Department relied on SeAH's reported dates of sale (the date the merchandise was loaded onto the vessel for shipment from Korea for back-to-back sales, and the date of PPA's shipment to the unaffiliated U.S. customer for inventory sales).<sup>319</sup> However, shipment date is not the correct date of sale.
- Each back-to-back sale is individually negotiated with the customer and the material terms, including quantity and value, are set at the time of the initial agreement.<sup>320</sup> Because the material terms are set on the date the purchase order is confirmed, this should be the date of sale for back-to-back sales.
- SeAH used the date that the goods were loaded onto the vessel because SeAH claimed the ordered quantity was always subject to change, within 10 percent of the ordered volume, between order and shipment.<sup>321</sup> However, the plus or minus 10 percent quantity term was negotiated by the parties and is not a real change in the material terms of sale.
- When the Department asked SeAH to provide examples of changes to the material terms after the purchase order/sales confirmation date, SeAH did not provide any such examples for Canadian sales; for U.S. sales, SeAH only provided one example where the ordered and shipped quantity varied by more than 10 percent.<sup>322</sup>
- Because SeAH never explained the reason for that change, and that change constituted a single instance out of thousands of transactions, it is not a sufficient basis on which to disregard the Department's preferred date of sale for every sale in the database. Therefore, the date of sale should be the date on which the purchase order was confirmed.

#### *SeAH's Rebuttal Arguments:*

- The Department has a long history of reviewing back-to-back sales by SeAH and other Korean pipe producers, and has consistently determined that, although customers typically generate formal purchase orders, the quantities are subject to change until the time of shipment from Korea. As a result, the Department has consistently utilized the date of shipment from Korea as the date of sale for those sales.<sup>323</sup>

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<sup>319</sup> See *Maverick Case Brief*, at 62 (citing *Preliminary Decision Memorandum*, at 11).

<sup>320</sup> *Id.* (citing *SeAH AQR*, at 25).

<sup>321</sup> *Id.*, at 63 (citing *SeAH AQR*, at 26).

<sup>322</sup> *Id.*, at 63-64 (citing *SeAH BCSQR*, at 12, 18-19, 46-47, and *Appendix SC-3*).

<sup>323</sup> See *SeAH Rebuttal Brief*, at 33 (citing *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of the Antidumping Duty Administrative Review*, 77 FR 34344 (June 11, 2012) (*Circular Welded Non-Alloy Steel Pipe from Korea*), and accompanying *Issues and Decision Memorandum* at Comment 3).

- While none of SeAH’s shipments of OCTG to Canadian customers during the POR differed from the order quantity by more than the normally-accepted tolerance, it had U.S. back-to-back sales of OCTG and Canadian sales of non-subject products which did.<sup>324</sup> This information shows that the customer’s order does not constitute a binding commitment in terms of quantity for back-to-back transactions.
- The “single instance” cited by Maverick where the ordered and shipped quantity differed by more than the normal tolerance was a U.S. back-to-back sale that related to three observations reported in the database.
- Although SeAH reported thousands of transactions in its U.S. database, the vast majority of these transactions were sales through PMT inventory, not back-to-back sales. Thus, the methodology used to determine the date of sale for back-to-back sales did not affect thousands of transactions. Maverick has not disputed the date-of-sale methodology used for PMT inventory sales.
- In addition, the Department’s preferred method for determining the date of sale is to rely on the invoice date, not the purchase order date.<sup>325</sup>
- Lastly, even if the quantity changed between order and shipment for only a small number of back-to-back OCTG sales during the POR, had the actual production quantities for its other back-to-back sales been different from the ordered quantities, SeAH would have shipped the quantities produced, not the quantities specified in the purchase orders.
- For the foregoing reasons, SeAH correctly reported the shipment date from Korea as the date of sale for U.S. and Canadian back-to-back sales.

Department’s Position:

We disagree with Maverick that we should use the date on which the purchase order was confirmed as SeAH’s date of sale for these final results.

The Department “normally will use the date of invoice” as the date of sale, unless “the Secretary is satisfied that a different date better reflects the date on which the exporter or producer established the material terms of sale.”<sup>326</sup> Moreover, the Department has a longstanding practice of finding that, where invoice date is the presumptive date of sale, but shipment date precedes invoice date, shipment date should be used as date of sale.<sup>327</sup>

SeAH reported that during the POR, it sold OCTG in Canada through one channel of distribution, back-to-back sales consisting of direct shipments from the factory in Korea to

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<sup>324</sup> *Id.* (citing SeAH BCSQR, at Appendices SC-3 and SB-10).

<sup>325</sup> *Id.*, at 34-35 (citing 19 CFR 351.401(i)).

<sup>326</sup> See 19 CFR 351.401(i).

<sup>327</sup> See *Circular Welded Non-Alloy Steel Pipe from Korea*, and accompanying Issues and Decision Memorandum at Comments 2 and 3; see also *Stainless Steel Bar From Japan: Final Results of Antidumping Administrative Review*, 65 FR 13717 (March 14, 2000), and accompanying Issues and Decision Memorandum at Comment 1; *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fourteenth Administrative Review and Partial Rescission*, 74 FR 11082 (March 16, 2009), and accompanying Issues and Decision Memorandum at Comment 18; and *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fifteenth Administrative Review*, 75 FR 13490 (March 22, 2010), and accompanying Issues and Decision Memorandum at Comment 5.

unaffiliated Canadian customers.<sup>328</sup> During the POR, SeAH's U.S. sales of OCTG were made through two channels of distribution: back-to-back sales to an unaffiliated customer, and sales through PMT's inventory.<sup>329</sup>

SeAH explained that for back-to-back sales to Canada and the United States, the OCTG was produced to order, and the ordered quantity was always subject to change (within ten percent of the ordered amount) between order and shipment.<sup>330</sup> SeAH stated that the order quantity and price were not set until the OCTG was shipped from the plant and loaded onto the vessel, and, thus, reported the bill-of-lading date as the date of sale for back-to-back sales.<sup>331</sup>

For sales through PMT's inventory, SeAH explained that the OCTG was shipped from SeAH to PMT, where it was placed in PMT's inventory until being sold to unaffiliated U.S. customers.<sup>332</sup> For these sales, SeAH reported the date of PMT's shipment to the unaffiliated U.S. customer as the date of sale.<sup>333</sup>

In its deficiency comments on sections B through E of SeAH's questionnaire response, Maverick commented that for back-to-back sales, it was not clear that shipment date was the proper date of sale.<sup>334</sup> Based on these comments, the Department asked SeAH, in our first supplemental questionnaire for sections B and C, to justify its reported date of sale for Canadian and U.S. back-to-back transactions. We specifically asked SeAH to explain whether the material terms of sale changed after the purchase order/sales confirmation date, and, if so, to provide examples. In its response, SeAH stated that during the POR, its shipments of OCTG to Canadian customers did not differ from the ordered quantity by more than the normally-accepted tolerance.<sup>335</sup> However, SeAH stated that it had U.S. back-to-back sales of OCTG during the POR where the final shipment quantity differed from the ordered quantity by more than the normally-accepted tolerance (*i.e.*, 10 percent), and provided documentation showing the change in quantity.<sup>336</sup>

As demonstrated above, the record evidence shows that the material terms of sale can and do change up until shipment date. While SeAH provided only one example of such a change, the Department has found that even if quantity changes were rare, the CIT has stated that "the existence of ...one sale beyond contractual tolerance levels suggests sufficient possibility of changes in material terms of sale. ..."<sup>337</sup> Therefore, consistent with the Department's regulations and practice, we have continued to use SeAH's reported date of sale, shipment date, as the date of sale for all of its Canadian and U.S. sales for these final results.

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<sup>328</sup> See SeAH AQR, at 19.

<sup>329</sup> *Id.*, at 20.

<sup>330</sup> *Id.*, at 26.

<sup>331</sup> *Id.*

<sup>332</sup> *Id.*, at 27.

<sup>333</sup> *Id.*

<sup>334</sup> See Maverick May 11, 2016 Submission, at 6-9.

<sup>335</sup> See SeAH BCSQR, at 19.

<sup>336</sup> *Id.*, at 19, 46, and Appendix SC-3.

<sup>337</sup> See *Stainless Steel Sheet and Strip in Coils from Taiwan: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 7519 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 4 and *Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1091 (January 18, 2001).

## Comment 7: International Freight

### *Maverick's Arguments:*

- As asserted in Comment 5.G, above, there is a disparity between the international freight expenses reported for SeAH's Canadian and U.S. sales; thus, these amounts are unreliable.
- If the Department does not apply total AFA to SeAH for these final results, the Department should apply, to all U.S. sales, either: (1) the highest reported Canadian international freight expense; or (2) the weighted-average international freight expense for all Canadian sales.

### *SeAH's Rebuttal Arguments:*

- All of SeAH's U.S. sales and some of its Canadian sales were shipped in bulk, and a comparison of the bulk rates for both markets reveals that there is not a meaningful difference between the amounts reported for each market.
- SeAH's sales to one Canadian customer were shipped in containers, and the international freight for these shipments was higher than the international freight for its Canadian sales that were shipped in bulk. It provided support documentation (*i.e.*, sample invoices and a press report) showing that the per-ton international freight rate for containerized shipments during the POR was higher than that for bulk shipments.<sup>338</sup>
- SeAH also provided information showing that SeAH L&S's involvement in arranging international freight for containerized shipments to Canada has no effect on the analysis.<sup>339</sup>

### *Department's Position:*

As we explained in Comment 5.G, above, the record establishes the reason for the difference in the weighted-average international freight expenses reported for SeAH's Canadian and U.S. sales. Specifically, the record shows that SeAH's shipments of OCTG to one Canadian customer were made in containers, and the per-unit international freight rates for these shipments were higher than the per-unit rates for bulk shipments to Canadian and U.S. customers.

In the *Preliminary Results*, the Department made an adjustment to SeAH's Canadian international freight expenses to account for the difference between the reported per-unit rates for containerized and bulk shipments. Specifically, we set international freight expenses for Canadian containerized shipments equal to the weighted-average international freight expenses for Canadian bulk shipments.<sup>340</sup> Because this adjustment has the effect of placing the per-unit rates for Canadian containerized shipments on par with the per-unit rates for Canadian bulk shipments (and U.S. bulk shipments), we do not find it necessary to make either of Maverick's proposed adjustments to U.S. sales. Instead, we have continued to make the same adjustment for

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<sup>338</sup> See SeAH Rebuttal Brief, at 37 (citing SeAH August 31, 2016 Submission, at Attachments 1 and 2).

<sup>339</sup> *Id.*, at 37-38 (citing SeAH August 31, 2016 Submission, at Attachment 3 and SeAH BC2SQR, at Appendix S2B-5).

<sup>340</sup> See SeAH Preliminary Analysis Memorandum, at 8 and Attachment 2.

these final results as we made in the *Preliminary Results* to SeAH's Canadian containerized shipments. Because we are making this adjustment to SeAH's international freight expenses for its containerized shipments of OCTG to Canada, it is not necessary to address the issue of whether these shipments, which were arranged by SeAH's affiliate, SeAH L&S, were made at arm's length.

#### Comment 8: Canadian Inland Freight

##### *Maverick's Arguments:*

- SeAH's reported Canadian inland freight from the port to the customer is distorted for two reasons.
- First, the Canadian inland freight rates are distorted based on a comparison of those rates to U.S. international freight rates. SeAH explained this difference was due to buoyancy, the limited friction of ocean transport, and the fact that ocean transport is significantly less expensive than land transport.<sup>341</sup> Historically, international freight has always been the largest movement expense, and, thus, SeAH's explanation is groundless.
- Second, the Canadian inland freight rates are distorted based on a comparison of those rates to inland freight rates from the U.S. port to the processor (INLFPW1U). SeAH does not explain why the U.S. inland freight rates are lower.
- Because SeAH did not provide adequate support for the difference in rates, the Department should use the highest Canadian inland freight rate for all U.S. sales that reported inland freight. In the alternative, the Department should calculate an average of all inland freight for U.S. and Canadian sales and apply this average value to all U.S. and Canadian sales that reported inland freight.

##### *SeAH's Rebuttal Arguments:*

- SeAH explained that per-ton international freight rates are lower than per-ton inland freight expenses due to the physics of moving goods.<sup>342</sup>
- Regarding Maverick's argument that international freight has always been the largest movement expense, cases involving low weight-to-value products, like cement, have shown this to be false.<sup>343</sup>
- The freight expenses reported in INLFPW1U reflect freight from the port of Houston to the processors, and seven of the eight processors are located at the port or in Houston.<sup>344</sup> Thus, one should expect that inland freight expenses from the port of Houston to those processors is substantially less than the cost of inland freight for OCTG shipments across Canada.

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<sup>341</sup> See *Maverick Case Brief*, at 66 (citing SeAH BCSQR, at 37).

<sup>342</sup> See *SeAH Rebuttal Brief*, at 38-39 (citing SeAH BCSQR, at Appendix SB-18-C).

<sup>343</sup> *Id.*, at 39 (citing *Gray Portland Cement and Cement Clinker from Japan*, Inv. No. 731-TA-461 (Third Review), USITC Pub. 4281 (December 2011), at 1 and 9).

<sup>344</sup> *Id.*, (citing SeAH EQR, at Appendix E-3). SeAH notes the eighth processor processed less than two metric tons during the POR; thus, it argues that the freight from the U.S. port to this processor has a negligible impact on the average expense reported in this field.

- An objective analysis would be to compare Canadian inland freight costs with costs to equidistant locations in the United States. The documentation SeAH provided for freight from Houston to a customer in Colorado demonstrated the costs for that shipment were much greater than the reported Canadian inland freight costs.

Department's Position:

As an initial matter, a comparison of SeAH's Canadian inland freight expenses to international freight expenses is not germane to the analysis of the inland freight expense at issue here. Further, we find that evidence on the record does not support Maverick's claim that international freight expenses have historically been the largest freight expense. Likewise, we do not find SeAH's reliance on the ITC report regarding cement to be apposite, because the product at issue in that case is very different from OCTG, and the ITC report does not discuss the provision of international freight.<sup>345</sup>

As a result, we have focused our analysis here on the inland freight costs themselves. Maverick compares SeAH's reported Canadian inland freight rates to the rates SeAH reported for inland freight from the U.S. port to the processor (INLFPW1U), and, based on that comparison, argues that the Canadian inland freight rates are distorted. However, as SeAH points out, all but one of the further processors are located within the Houston area.<sup>346</sup> Thus, the distance from the port of Houston to these further processors is relatively minimal. For SeAH's Canadian sales, the OCTG was transported from the Canadian port across Canada to the customer's location.<sup>347</sup> Because of the difference between the distance from the port of Houston to the U.S. further processors and the distance from the Canadian port to customer's location in Canada, we find that the expenses reported for Canadian inland freight from the port to the customer are not distorted. Accordingly, it is not necessary to make any adjustments to SeAH's reported Canadian or U.S. inland freight rates for these final results.

Comment 9: Certain Movement Expenses

*Maverick's Arguments:*

- As claimed in Comment 5.H, above, for U.S. sales through PMT's inventory, SeAH should have reported the following expenses on a transaction-specific basis: Korean inland freight (DINLFTPU), Korean brokerage and handling (DBROKU), international freight (INTNFRU), marine insurance (MARNINU), U.S. brokerage and handling (USBROKU), freight from the U.S. port to the processor (INLFPW1U), harbor maintenance fees (USDUTYU), and entered value (ENTVALU).
- If the Department does not apply total AFA to SeAH for these final results, the Department should apply the highest amount reported for SeAH's back-to-back sales for each of these variables to all U.S. sales through PMT's inventory.

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<sup>345</sup> See *Gray Portland Cement and Cement Clinker from Japan*, Inv. No. 731-TA-461 (Third Review), USITC Pub. 4281 (December 2011), at 9.

<sup>346</sup> See SeAH EQR, at Appendix E-3.

<sup>347</sup> See SeAH BCQR, at 45-46 and SeAH ASQR, at Appendix SA-4.

*SeAH's Rebuttal Arguments:*

- As SeAH argued in Comment 5.H, above, there is no basis for finding that SeAH failed to cooperate with the Department in reporting the disputed movement expenses. The ability to link vessel-specific movement expenses to each import is different from linking those expenses to specific PMT inventory sales.

*Department's Position:*

As explained in Comment 5.H., above, we disagree with Maverick that SeAH should have reported the disputed movement expenses on a transaction-specific or vessel-specific basis for PMT inventory sales. We find that SeAH has sufficiently explained in its questionnaire responses why it was not feasible for it to report these movement expenses on a transaction-specific or vessel-specific basis. In addition, we determine that SeAH's allocation methodology for PMT inventory sales is reasonable for the expenses at issue. Accordingly, we disagree with Maverick that we should apply, as partial AFA, the highest amount reported for each of the disputed movement expenses for SeAH's back-to-back sales to all PMT inventory sales. However, we note that, for the *Preliminary Results*, we set entered value equal to zero for PMT inventory sales to permit the margin program to calculate entered value for these sales instead of using the average value reported for these sales.<sup>348</sup> We received no comments on this aspect of the *Preliminary Results*, and we have continued to set entered value equal to zero for PMT inventory sales for these final results.

Comment 10: Packing Expenses

*Maverick's Arguments:*

- SeAH used the same three types of packing for both its U.S. and Canadian sales – steel band packing, individual packing, and wood box packing – but the differences in the amounts reported for individual U.S. and Canadian sales show that SeAH's packing expenses are distorted.<sup>349</sup>
- The differences in reported packing expenses do not relate to whether the OCTG was shipped in bulk or in containers, and nothing SeAH placed on the record explains the distortion.
- To account for this distortion, the Department should make a neutral adjustment by applying the average Canadian packing expense to SeAH's U.S. sales.

*SeAH's Rebuttal Arguments:*

- Most of the OCTG SeAH exported to Canada during the POR was threaded and coupled in Korea and, thus, required protective caps to prevent damage to the threaded ends.

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<sup>348</sup> See SeAH Preliminary Analysis Memorandum, at 5.

<sup>349</sup> See Maverick Case Brief, at 68 (citing SeAH BCSQR, at 32, 80, and Appendix SB-15).

- With respect to its U.S. sales, most of the OCTG SeAH exported to the United States during the POR consisted of plain-end pipe that was threaded and coupled after importation.
- Because the plain-end pipe did not need protective caps, the cost for packing OCTG for export to the United States was, on average, less than the cost for packing OCTG for export to Canada.<sup>350</sup>

Department's Position:

We disagree with Maverick that SeAH's reported packing expenses are distorted. An examination of SeAH's Canadian database reveals that most of SeAH's Canadian sales were, in fact, threaded and coupled during the POR.<sup>351</sup> Similarly, an examination of SeAH's U.S. database shows that most of SeAH's U.S. sales were not threaded and coupled at the time of importation.<sup>352</sup> As SeAH stated in one of its submissions, OCTG that was threaded and coupled in Korea required protective caps to avoid damage to the threaded ends.<sup>353</sup> It explained that, because plain-end OCTG did not require protective caps, the costs to pack OCTG for export to the United States were, on average, less than the costs to pack OCTG for export to Canada.<sup>354</sup>

In addition, SeAH reported in its section B and C questionnaire response that it determined packing material costs based on its normal materials inventory records, and packing labor costs based on the cost of subcontracted services for each product.<sup>355</sup> In the Department's first supplemental questionnaire for sections B and C, we asked SeAH to provide additional information regarding its reported packing expenses, including cost build-ups for the highest and lowest packing expenses reported for its Canadian and U.S. sales. The cost build-ups that SeAH submitted in response to the Department's supplemental questionnaire showed that SeAH reported packing costs on a CONNUM-specific basis, and provided details about the materials used and the calculation of labor costs for each example.<sup>356</sup>

Based on the foregoing, we do not find that SeAH's reported packing costs are distorted. SeAH explained why its reported U.S. packing costs were, on average, lower than its reported packing costs for Canadian sales, and this explanation comports with information in its U.S. and Canadian databases. Further, information on the record demonstrates that SeAH reported packing expenses on a CONNUM-specific basis using its normal cost accounting records. Thus, we do not find it necessary to make any adjustments to SeAH's reported packing expenses for these final results.

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<sup>350</sup> See SeAH Rebuttal Brief, at 42 (citing SeAH August 31, 2016 Submission, at 10).

<sup>351</sup> See SeAH's September 8, 2016 Canadian sales database.

<sup>352</sup> See SeAH's September 12, 2016 U.S. database.

<sup>353</sup> See SeAH August 31, 2016 Submission, at 10.

<sup>354</sup> *Id.*

<sup>355</sup> See SeAH BCQR, at 42 and 104-105.

<sup>356</sup> See SeAH BCSQR, at Appendices SB-15 and SC-25.

## Comment 11: Adjustment to SeAH's Costs Related to U.S. Non-Prime Merchandise

### *Maverick's Arguments:*

- SeAH impeded these proceedings by not reporting U.S. sales of non-prime products.
- The Department should adjust SeAH's reported costs by the percentage of pieces that PPA rejected in the U.S. as non-prime to the total number of pieces inspected by PPA.

### *SeAH's Rebuttal Arguments:*

- All of the OCTG products exported by SeAH to the United States are inspected and certified to be prime-quality.
- Products that are sold in back-to-back transactions are inspected by the customer, and any defects would have been included in the reported U.S. warranty expenses. Products sold through the PPA inventory channel are inspected when they arrive at the U.S. processor, and PPA should be able to make a claim for damage against the marine insurance or trucking company.
- The losses incurred during the transport of pipe between Korea and the United States are not yield losses for SeAH's production processes or for U.S. further processing operations.
- Imported damaged pipes that could not be repaired are considered scrap and they are not non-prime products.
- Even if it were appropriate to increase the reported U.S. further manufacturing costs to account for losses during transport, the adjustment should reflect not only the number of pieces identified as damaged, but also the revenue that PMT receives when it sells the damaged pipe as scrap (*i.e.*, net losses).

### *Department's Position:*

We disagree with SeAH. SeAH explained that all of the OCTG products exported to the United States are inspected shortly before exportation, and the products are also inspected when they arrive at the U.S. further processor's location. Nevertheless, in a small number of cases, the products received by the U.S. further processor had been damaged and the repair costs incurred by the U.S. further processor were reported to the Department as follows: (1) any repair costs for which PPA expected an insurance refund would be reported as warranty expenses if the product was not further processed, but sold directly; and (2) repair charges associated with products sent for further processing and a small amount of miscellaneous repair fees were included in the reported further manufacturing costs.<sup>357</sup> SeAH also stated that the U.S. further manufacturing processors do not always identify such damages in a timely manner, especially when imported products were stored for a period of time before being removed from stock for shipments to a customer or for further processing. In the latter case, PPA's records do not identify whether a particular piece of pipe was damaged during transport, storage at the processor's yard, or during further processing due to the absence of a claim for damages to an insurer or transport company. Consequently, when a piece of pipe is found to be damaged, it is

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<sup>357</sup> See SeAH EQR, at 5-6; SeAH DE2SQR, at 45-46; and SeAH D3SQR, at 25.

recorded as scrap.<sup>358</sup> According to SeAH, the damaged pipes at issue are unrepaired pipes that were sold as scrap.<sup>359</sup> These pipes have been stored for a period of time and PPA was not able to identify whether these pipes were damaged during transport, storage, or further processing. Because PPA could not identify when these losses were incurred (*e.g.*, during transit, during storage, during the further manufacturing process), we find that it is appropriate to include the net losses associated with these damaged pipes in the further manufacturing costs for the final results.

Comment 12: Disregard SeAH's Revised Database Purporting to Reflect Weighted-Average Costs of HRC

*Maverick's Arguments:*

- SeAH's latest revised cost database did not reflect the POR weighted-average HRC costs, as requested by the Department. Specifically, SeAH failed to report the value of recovered scrap as a separate field, thereby impeding the Department's ability to adjust the offset as necessary. Also, any adjustment made to HRC in the revised cost database would not be made on the full cost of HRC used in the manufacture of HRC.
- The Department should ignore the latest revised cost database that purports to have made the requested revision and continue applying the HRC cost adjustments that were made at the preliminary results.

*SeAH's Rebuttal Arguments:*

- The Department instructed SeAH to submit a revised cost data file in which the actual cost of HRC used for each product was replaced with the POR average cost of coil for products with the same grade.
- SeAH submitted three revised cost databases on September 26, 2016, based on the Department's request, and there is no reason the Department cannot rely on the cost databases as submitted.
- The Department's request that SeAH replace its actual HRC cost with a POR average HRC cost by grade required SeAH to combine the HRC cost with the scrap-recovery offset, because it is not possible to segregate the cost of hot-rolled coils and scrap. Specifically, the scrap amount for each production order that is recorded in its normal accounting system includes both the value of the recovered scrap and the costs of additional HRC used in re-working defective pipe.
- Maverick has not attempted to refute this explanation nor has it explained how SeAH could have replaced the actual coil costs with an average coil value while ignoring the fact that the scrap recovery offset includes additional HRC costs that were used in re-working defective pipe as well.

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<sup>358</sup> See SeAH EQR, at 5-6 and SeAH DE2SQR, at 45-46.

<sup>359</sup> See SeAH EQR, at Appendix E-7 and SeAH DE2SQR, at 45-46.

Department's Position:

We disagree with Maverick. As explained in Comment 5.C, above, SeAH submitted three revised cost databases on September 26, 2016: (1) the POR weighted-average grade-specific HRC costs with negative variances (*i.e.*, revised cost database version 1); (2) the production order-specific HRC costs with the corrected variances (*i.e.*, revised cost database version 2); and (3) the POR weighted-average grade-specific HRC costs with the corrected variances (*i.e.*, revised cost database version 3). SeAH also explained that, in order to calculate the POR weighted-average grade-specific HRC costs, SeAH had to combine the costs of HRC and scrap offset because the scrap offset amount recorded in its normal accounting system reflects both the value of the recovered scrap and the costs of additional hot-rolled coils used for re-working of non-prime products that were refurbished to prime quality. Thus, SeAH eliminated the separate scrap offset field from the revised cost database version 1 and version 3. As such, the raw material cost field in these two databases represented the HRC costs net of scrap offset.<sup>360</sup> SeAH submitted the revised cost databases on September 26, 2016, in order to comply with the Department's request and the combined HRC costs and scrap offset field does not prevent the Department from making any adjustments to these costs, if necessary.

For the final results, we used SeAH's submitted cost database which reflected the POR weighted-average grade-specific HRC costs with the corrected variance (*i.e.*, revised cost database version 3). However, as noted above, we have determined that significant variations in HRC costs related to production timing differences persist and, therefore, we have weight averaged the HRC costs based on grade for these final results.<sup>361</sup>

Comment 13: SeAH's Cost Variances

Maverick's Arguments:

- SeAH reallocated the variances recorded under production orders because a portion of the variances were related to the production outside of the POR.
- SeAH's submitted a list of the production orders and the ratio of review-period to non-review period productions used to allocate the POR variances. Generally, most producers try to keep their production levels as stable as possible. However, the submitted list shows an uneven distribution of production orders between the beginning and end of the POR. Also, SeAH's POR variance reallocation affected different cost components unequally.
- SeAH failed to demonstrate the application of the ratios that were used to allocate the POR variances. Also, SeAH failed to explain the uneven distribution of production orders between beginning and end of the POR and the uneven effect on the different cost components.
- For the final results, the Department should adjust the reported costs for certain CONNUMs that were affected by the reallocation of the POR variances.

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<sup>360</sup> See SeAH's D3SQR, at 3.

<sup>361</sup> See SeAH Final Cost Calculation Memorandum, at 1-2.

*SeAH's Rebuttal Arguments:*

- The revised allocation of variances in SeAH's September 26, 2016, submission fully complied with the Department's request.
- SeAH's normal cost accounting system initially calculates and records product costs based on standard costs. The standard costs are then adjusted to actual costs and the variances are recorded in the period when the production orders are closed (*i.e.*, completion of production). As such, if the production for a particular production order was started prior to the POR, but was completed during the POR, the total variances attributable to that production order were entirely allocated as POR costs. Similarly, if the production for a particular production order was started during the POR but was completed after the POR, the total variances attributable to that production order were entirely excluded from the POR.
- SeAH analyzed each production order during the review period and identified the production orders that were produced cross periods (*i.e.*, review period and non-review period). Then, the variances attributable to those production orders were allocated between review and non-review period based on the relative production quantity.
- Reallocation of variances had different effects on each cost element because the cost variances were calculated separately for each cost component. The differences in the impact of the variance reallocation on each cost element reflect the accuracy of the calculation for each element and not an error.

*Department's Position:*

We agree with SeAH. As explained in Comment 5.C, SeAH's submitted cost database on August 15, 2016, included negative costs for certain CONNUMs and these negative costs were mainly caused by the timing of its variance allocations to POR costs. For example, in the normal course of business, if a production run was started prior to the POR but it was completed during the POR, the entire cost variance attributable to this production order was assigned as POR costs because this production order was completed during the POR.<sup>362</sup> Likewise, if a production run was started during the POR but it was completed after the POR, the entire cost variance attributable to this production order was excluded from the POR costs because this production order was completed after the POR. The Department subsequently requested SeAH to correct these negative costs by reallocating the variances to all months in which the production order was produced and to comply with the Department's request, SeAH submitted the revised cost database on September 26, 2016 (*i.e.*, revised cost database version 3). SeAH also explained the general process it went through to identify the variance associated with the cross periods and the method it used to allocate the variance between review period and non-review period (*i.e.*, based on relative production quantity).<sup>363</sup>

Contrary to Maverick's assertions, the various factors (*e.g.*, market condition, factory efficiencies, new technologies, *etc.*) could affect companies' production level during different periods and it is not unreasonable for companies to experience uneven production levels between

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<sup>362</sup> See SeAH DE2SQR, at 43.

<sup>363</sup> See SeAH D3SQR, at 12-13 and Appendix S2D-11.

periods. Further, because cost variances are associated with each component of production costs, it is not unreasonable that SeAH's reallocation of variance affected the different cost components unevenly. SeAH submitted the revised cost database on September 26, 2016, to comply with the Department's request and we find that the method it used to reallocate the POR variances is reasonable. Thus, for the final results, we did not make any adjustment.

Comment 14: PPA's General and Administrative (G&A) Expenses Related to Resold U.S. Products

*Maverick's Arguments:*

- SeAH reported zero further manufacturing costs for those CONNUMs sold in the United States in the same form in which they were imported.
- The Department has found that it is appropriate to allocate G&A expenses not only to the U.S. further manufactured products but to all company activities where the company engages in both further manufacturing and reselling activities. Thus, when applying the G&A expense ratio to the total cost of all further manufactured and non-further manufactured goods, the denominator of the ratio must be revised to include not only the further processing costs, but also the cost of the imported coils that were further processed, as well as the cost of all non-further manufactured products.<sup>364</sup>
- For the final results, consistent with *Cold-Rolled Steel from Brazil*, the Department should allocate PPA's G&A expense to resold products in the United States by applying its G&A expense ratio to the COP of the imported pipes.

*SeAH's Rebuttal Argument:*

- SeAH has allocated PPA's G&A expenses over its total cost of goods sold. To the extent that Maverick is suggesting that the G&A expenses related to imported materials should be considered further manufacturing costs, its argument is contrary to longstanding Department practice.<sup>365</sup>

Department's Position:

We agree with Maverick that PPA's G&A expenses should be allocated to resold products (*i.e.*, non-further manufactured products) in the U.S. market. PPA's employees are responsible for overseeing and coordinating both sales and further manufacturing related to all subject products. Because PPA's G&A activities support the general activities of the company as a whole, including its sales and further manufacturing functions of all products (*i.e.*, further manufactured and resold products), we applied the G&A ratio to the total cost of further manufactured products

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<sup>364</sup> See *Certain Cold-Rolled Steel Flat Products from Brazil: Final Determination of Sales at Less Than Fair Value*, 81 FR 44946 (July 29, 2016) (*Cold-Rolled Steel from Brazil*), and accompanying Issues and Decision Memorandum at Comment 7.

<sup>365</sup> See *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 57995 (November 10, 2009), and accompanying Issues and Decision Memorandum at Comment 5(b).

(including the cost of the pipe), as well as to the cost of all resold products.<sup>366</sup> We also find that the cases cited by SeAH do not address the issue presented here, because the issues discussed in those cases are not related to the calculation and application of the G&A expenses for resold U.S. products. Thus, as in the *Preliminary Results*, we have continued to allocate PPA's G&A expenses to resold products in the United States by applying PPA's G&A expense ratio to the COP of imported pipes for purposes of the final results.

#### Comment 15: SeAH's Scrap Offset

##### *Maverick's Arguments:*

- According to SeAH, it generates three types of by-products: off-grade pipe, defective pipe, and steel scrap. However, there are certain inconsistencies between the data provided in an appendix of the August 15, 2016, section D submission and the company's narrative with regard to by-products. For example, the data provided in an appendix showed that SeAH generated more than three types of by-products and offset values used for these by-products vary.
- In addition, the company did not explain how it calculated the scrap offset in its normal books and for reporting purposes, nor did it respond to the Department's request for inventory movement schedules by type of scrap.
- Because of these inconsistencies and SeAH's failure to provide the requested information related to scrap and by-products, the Department should deny the company's claimed scrap offset for the final results.

##### *SeAH's Rebuttal Arguments:*

- As requested by the Department, SeAH provided a monthly inventory movement schedule for scrap in Appendix D-9 of the August 15, 2016, submission. The schedule contained detailed quantity and value information for 25 scrap codes.
- Contrary to Maverick's assertions, the company also responded in detail to the questions regarding how the scrap offset was reflected in its normal books and records and in the reported costs. These explanations make clear that recovered scrap is valued based on sales value, that the actual revenue from the scrap sale is recorded as part of SeAH's sales revenue, and that the inventory value of scrap is transferred from inventory to the cost of goods sold.

##### Department's Position:

We agree with SeAH. As explained in Comment 5.N, above, SeAH provided a detailed POR monthly inventory movement schedule by each type of scrap code.<sup>367</sup> Further, SeAH provided a

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<sup>366</sup> See *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) (*Welded Line Pipe from Korea*), and accompanying Issues and Decision Memorandum at Comment 20; see also *Cold-Rolled Steel from Brazil*.

<sup>367</sup> See SeAH DE2SQR, at Appendix SD-9.

detailed explanation for how generated scrap was valued and how generated scrap and scrap sales were recorded in its normal books and records.<sup>368</sup> See Comment 5.N.

During this proceeding, Maverick questioned SeAH's scrap offset calculation methodology and the Department specifically analyzed SeAH's scrap offset calculation methodology and discussed its analysis in the *Preliminary Results*.<sup>369</sup> As explained in the Preliminary Results Cost Calculation Memorandum, the Department reviewed the value of each type of scrap offset used in the calculation of selected CONNUMs. Specifically, the Department compared the scrap offset values used for these CONNUMs to the POR scrap inventory movement schedule maintained in SeAH's normal books and records and determined that the reported scrap offset values were based on the quantity and value (*i.e.*, based on the average selling price) of each type of scrap code generated during the POR. As such, we find that SeAH's reported scrap offset calculation methodology is reasonable and have continued to rely on its reported scrap offset for the final results.

#### Comment 16: Valuation of SeAH's Non-Prime Products

##### *Maverick's Arguments:*

- Although it is not clear whether SeAH values non-prime merchandise at the same value as prime merchandise, such treatment would not be appropriate, as sub-prime OCTG is not really OCTG and is sold for significantly lower prices.
- The Department does not assign full production costs to non-prime merchandise because “the market value of a downgraded product may be significantly impaired when compared to the prime product.”<sup>370</sup>
- The Department should, accordingly, ensure that SeAH does not assign full costs to its non-prime OCTG and make the appropriate adjustment for the final results.

##### *SeAH's Rebuttal Argument:*

- Despite Maverick's suggestion, SeAH has already explained that off-grade pipe and defective pipe is treated in its accounting system as scrap, and that for reporting purposes such pipe is valued at its market value based on the average selling price of scrap.

##### Department's Position:

We agree with SeAH. SeAH explained that it classifies off-grade and defective pipes that cannot be reworked into prime quality merchandise as scrap and the scrap generated during production is valued at market value based on the average selling price.<sup>371</sup> Further, SeAH's detailed scrap

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<sup>368</sup> See SeAH DQR, at 31 and DE2SQR, at 22.

<sup>369</sup> See Memorandum from Ji Young Oh, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – SeAH Steel Corp., Ltd.,” dated October 5, 2016 (Preliminary Results Cost Calculation Memorandum), at 2 and Attachment 2.

<sup>370</sup> See *OCTG from Korea Final Determination*, and accompanying Issues and Decision Memorandum at Comment 18.

<sup>371</sup> See SeAH DQR, at 31.

inventory movement schedule (*i.e.*, by each type of scrap code) showed that off-grade and defective pipes were classified and valued as scrap.<sup>372</sup> Consequently, SeAH did not assign the full production costs to off-grade and defective pipes.

#### Comment 17: Interested Party Standing

##### *SeAH's Arguments:*

- The antidumping law restrains the ability of third-country producers to influence the Department's determinations. For example, the statutory definition of "interested party" does not include third-country producers of the product at issue,<sup>373</sup> and third-country producers and their counsel cannot obtain access to proprietary information under protective order.<sup>374</sup>
- While the law firm Wiley Rein LLP (Wiley Rein) states that it represents Maverick, Wiley Rein's client is actually Tenaris, a foreign corporation that produces pipe products in various countries. The person who has signed the company certifications in Wiley Rein's submissions, Luis Rodriguez, has identified himself as a Tenaris employee whose job description signifies that he only performs tasks for Tenaris.<sup>375</sup>
- In addition, the record contains evidence that other Tenaris officials have tried to influence the Department in this proceeding, and Wiley Rein has taken part in meetings between senior Department officials and senior Tenaris officials.<sup>376</sup>
- Because of Tenaris' involvement in this proceeding, Wiley Rein should not be permitted to have access to SeAH's proprietary information or to participate in the briefing process.<sup>377</sup> Also, any factual submissions from Wiley Rein that were certified by a Tenaris official must be removed from the record.

##### *Maverick's Rebuttal Arguments:*

- Tenaris is Maverick's corporate parent, and Maverick is a wholly-owned U.S. subsidiary of Tenaris.

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<sup>372</sup> See SeAH DE2SQR, at Appendix SD-9.

<sup>373</sup> See SeAH Case Brief, at 2 (citing section 771(9) of the Act).

<sup>374</sup> *Id.* (citing section 777(c)(1)(A) of the Act).

<sup>375</sup> *Id.*, at 2-3 (citing Letter from SeAH to the Department, "Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea for the 2014-15 Review Period — Comments on Statements by Admitted Tenaris Employee Who Has Been Certifying Wiley Rein's Submissions in this Proceeding," dated August 11, 2016 (SeAH August 11, 2016 Submission), at Attachment 1 and Letter from Maverick to the Department, "Certain Oil Country Tubular Goods from the Republic of Korea: Submission of Information and Comments on CV Profit for SeAH and NEXTEEL," dated August 8, 2016 (Maverick August 8, 2016 CV Profit Comments), at Attachment 3, page 1.)

<sup>376</sup> *Id.*, at 3 (citing Memorandum from Ryan Rhodes, Senior Advisor to the Assistant Secretary for E&C, to the File, "Ex parte Meeting with German Cura, North American Manager, Tenaris," dated April 29, 2016 and Letter from SeAH to the Department, "Oil Country Tubular Goods from Korea and Welded Line Pipe from Korea – Objection to Ex Parte Meeting with Representative of Third-Country Producers," dated June 3, 2016 (SeAH June 3, 2016 Submission), at Attachment 2.

<sup>377</sup> *Id.*, at 3-4 (citing section 777(c)(1)(A) and 19 CFR 351.309(c).

- Tenaris’ 2015 financial statements confirm that Maverick is a wholly-owned U.S. subsidiary of Tenaris.<sup>378</sup>
- As Maverick’s corporate parent, Tenaris employees hold both Maverick and Tenaris titles and responsibilities. Mr. German Cura is listed as Tenaris’ “North American Area Manager” and “president and chief executive officer” of Maverick.<sup>379</sup> Mr. Luis Rodriguez is the “U.S. Planning Director of Maverick Tube Corporation.”<sup>380</sup> Mr. Rodriguez’s role as Tenaris’ Planning Director in the U.S. includes Maverick. SeAH offered no evidence for its claim that Mr. Rodriguez only performs tasks for Tenaris.
- SeAH also did not point to any evidence to support its claim that Tenaris is participating in this proceeding through Maverick to advance the interests of its non-U.S. subsidiaries.
- Tenaris has made investments in the United States to enhance U.S. operations. Tenaris’ 2015 financial statements show an ownership of multiple U.S. operations.<sup>381</sup>

Department’s Position:

We disagree with SeAH. Maverick meets the definition of a domestic interested party within the meaning of 19 CFR 351.102(b)(29)(v) as a “manufacturer, producer, or wholesaler in the United States of a domestic like product.” Further, Tenaris’ 2015 financial statements confirm that Maverick was a wholly-owned subsidiary of Tenaris during the POR.<sup>382</sup>

Regarding the two individuals that SeAH references in its case brief, we note that Tenaris’ 2015 financial statements list Mr. Germán Curá as both the North American Area Manager of Tenaris and the president and chief executive officer of Maverick.<sup>383</sup> Mr. Luis Rodriguez has stated in the company certifications contained in various Maverick submissions during the POR that he is the “U.S. Planning Director of Maverick Tube Corporation.”<sup>384</sup> Further, Mr. Rodriguez declared in one submission that he is “currently employed as the U.S. Planning Director for Maverick Tube Corporation (‘Maverick’) and Tenaris S.A. (‘Tenaris’)” and that he has “worked for Maverick and its parent company, Tenaris, since 2000.”<sup>385</sup> Mr. Rodriguez stated in that same submission, “I declare under penalty of perjury under the laws of the United States that, to the best of my knowledge, the foregoing is true and correct.”<sup>386</sup> Thus, in spite of SeAH’s citation to Mr. Rodriguez’s Linked-In profile, which indicates that he is employed by Tenaris as the

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<sup>378</sup> See Maverick Rebuttal Brief, at 25 (citing SeAH August 8, 2016 CV Profit Comments, at Attachment 9 (Tenaris 2015 Financial Statements, pages 144 and 150)).

<sup>379</sup> *Id.*, at 26 (citing SeAH August 8, 2016 CV Profit Comments, at Attachment 9 (Tenaris 2015 Financial Statements, page 52 and Company Information, pages 1-2)).

<sup>380</sup> *Id.*, (citing SeAH June 3, 2016 Submission, at Attachment 2).

<sup>381</sup> *Id.*, at 27 (citing SeAH August 8, 2016 CV Profit Comments, at Attachment 9 (Tenaris 2015 Financial Statements, pages 6-8, 10, 31, 144, and 151)).

<sup>382</sup> See SeAH August 8, 2016 CV Profit Comments, at Attachment 9 (Tenaris 2015 Financial Statements, page 150).

<sup>383</sup> *Id.*, at Attachment 9 (Tenaris 2015 Financial Statements, pages 52 and 54, respectively).

<sup>384</sup> See, e.g., Letter from Maverick to the Department, “Certain Oil Country Tubular Goods from the Republic of Korea: Information and Comments Requiring Immediate Action,” dated November 25, 2015, at Company Certification. By the Department’s count, Mr. Luis Rodriguez has certified eight of Maverick’s submissions before the Department during the POR, each time stating he is the U.S. Planning Director of Maverick Tube Corporation.

<sup>385</sup> See Maverick August 8, 2016 CV Profit Comments, at Attachment 3.

<sup>386</sup> *Id.*

“Planning Director USA at Tenaris,”<sup>387</sup> the Department has no reason to believe that Mr. Rodriguez is not also employed by its wholly-owned subsidiary, Maverick.

Based on the foregoing reasons, we disagree with SeAH that counsel for Maverick, which appeared before the Department in this proceeding, should have been denied participation in the briefing process on behalf of Maverick, or that Maverick’s counsel, Wiley Rein, should have been denied access to SeAH’s proprietary information under APO. We also disagree with SeAH that any factual submissions from Wiley Rein that were submitted on Maverick’s behalf in this segment of the proceeding must be removed from the record.

#### Comment 18: Timeliness of Market-Viability Allegation

##### *SeAH’s Arguments:*

- In accordance with the Department’s regulations, any new factual information filed in support of a market-viability allegation was due within 10 days of that submission.<sup>388</sup> In addition, the *Preamble* to the Department’s regulations specifies that the information needed to make market-viability allegations “typically is contained in a respondent’s section A response.”<sup>389</sup>
- Maverick did not submit a market-viability allegation, nor did it request an extension to file such an allegation, by the established deadline. SeAH filed its section A questionnaire response on March 18, 2016, and that Maverick filed two letters after the 10-day deadline requesting an extension to file a market-viability allegation. The Department granted that request, after which time Maverick filed a market-viability allegation on April 11, 2016, and new factual information in support of its allegation on April 20, 2016.<sup>390</sup>
- In the April 11, 2016, Market-Viability Allegation, Maverick noted “concerns about the quantity of U.S. sales/entries used for the denominator and about the true quantity of CM sales used in the numerator.”<sup>391</sup> In the April 20, 2016, New Factual Information Letter, Maverick argued for the first time that the Canadian sales were dumped and, thus, “not an appropriate basis of comparison.”<sup>392</sup>
- SeAH refutes the claim in Maverick’s April 20, 2016, New Factual Information Letter that SeAH’s section A response did not contain the information needed to make a market-viability allegation. SeAH clearly stated in its section A response that the quantity of its Korean sales of OCTG was less than five percent of its U.S. sales, and that the quantity of its Canadian sales constituted more than five percent of its U.S. sales. Moreover, SeAH provided information in its section A response regarding the channels of distribution and sales processes for its U.S. and Canadian sales, along with sample sales documentation. In particular, it explicitly stated that all of its Canadian transactions were back-to-back sales in which the OCTG was shipped directly from Korea to the Canadian port without

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<sup>387</sup> See SeAH August 11, 2016 Submission, at Attachment 1.

<sup>388</sup> See SeAH Case Brief, at 4 (citing 19 CFR 351.301(c)(2)(i)).

<sup>389</sup> *Id.* (citing *Preamble*, 62 FR at 27335).

<sup>390</sup> *Id.*, at 6 (citing Maverick April 11, 2016 Market Viability Allegation and Maverick April 20, 2016 New Factual Information Letter).

<sup>391</sup> *Id.* (citing Maverick April 11, 2016 Market Viability Allegation, at 1).

<sup>392</sup> *Id.* (citing Maverick April 20, 2016 New Factual Information Letter, at 14).

first entering the United States.<sup>393</sup> Also, SeAH's sample sales documents showed that the Canadian sale was shipped directly from Korea to a Canadian port for delivery to a Canadian customer.<sup>394</sup>

- The Department treated Maverick preferentially by permitting it to file an untimely market-viability allegation. To correct this error, the Department should remove Maverick's April 11, 2016, Market-Viability Allegation and April 20, 2016, New Factual Information Letter from the record, along with any subsequent filings that referenced the material in those documents.

*Maverick's Rebuttal Arguments:*

- The Department should deny SeAH's request to reject Maverick's market-viability allegation.
- SeAH engineered its Canadian sales to eliminate its dumping margins in the United States.
- As an initial matter, Maverick did not raise the issue of the viability of SeAH's Canadian market in its case brief. However, even if Maverick had done so, SeAH has not provided any justification for rejecting Maverick's initial market-viability allegation and factual information.
- The *Preamble* to the Department's regulations does not require that market-viability allegations always be based on a respondent's section A response.<sup>395</sup> Maverick's allegation was timely and the Department's regulations state that the deadline for a market-viability allegation depends on "the relevant section of the questionnaire."<sup>396</sup> The regulations do not specify a section of the questionnaire.
- The Department routinely bases market-viability allegations on section B and C questionnaire responses; SeAH picked one example in which the Department did not, but that case was fact-specific and does not indicate a Department precedent.
- The information necessary to make a market-viability allegation was not included in SeAH's section A questionnaire response. Only when SeAH submitted its section B and C questionnaire responses did it become possible for Maverick to review certain information.
- The Department and SeAH acknowledged in section A that SeAH's section B and C questionnaire responses would demonstrate how it identified the sales reported in its quantity and value chart. It was not until SeAH filed its section B and C responses that it was even possible to examine the dates of sale, or whether certain sales were, in fact, sales or samples, or outside the ordinary course of trade.

*Department's Position:*

The Department disagrees with SeAH that we should reject Maverick's market-viability allegation as untimely. As an initial matter, in the *Preliminary Results*, the Department found

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<sup>393</sup> *Id.*, at 7 (citing SeAH AQR, at 20).

<sup>394</sup> *Id.*, at 7-8 (citing SeAH AQR, at Appendix 4-B).

<sup>395</sup> See *Maverick Rebuttal Brief*, at 29 (citing *Preamble*, 62 FR at 27335).

<sup>396</sup> *Id.*, at 30 (citing 19 CFR 351.301(c)(2)(i)).

SeAH's Canadian market to be viable.<sup>397</sup> In addition, as Maverick states in its rebuttal brief, Maverick did not raise the issue of the viability of SeAH's Canadian market in its case brief. Nevertheless, we address SeAH's arguments below.

The Department's regulations state that:

Allegations regarding market viability in an antidumping investigation or administrative review, including the exceptions in § 351.404(c)(2), are due, with all supporting factual information, 10 days after the respondent interested party files the response to the relevant section of the questionnaire, unless the Secretary alters this time limit.<sup>398</sup>

In addition, the Preamble to the Department's regulations state that:

The information necessary to make allegations concerning market viability typically is contained in a respondent's section A response. ... The Secretary is likely to {alter the time limit} where ... the information necessary to make a market viability allegation is not available as part of the section A response.<sup>399</sup>

Thus, as shown above, the Department's regulations do not require that market-viability allegations be based on a respondent's response to section A of the antidumping questionnaire. Rather, the regulations merely specify that such allegations be filed in response to the relevant section of the questionnaire. Further, the *Preamble* states that the information necessary to make market-viability allegations "typically" will be contained in a respondent's section A questionnaire response. As such, the use of the word "typically" means that section A questionnaire responses must not always form the basis of market-viability allegations.

In the instant review, SeAH filed its section A questionnaire response on March 18, 2016.<sup>400</sup> In its comments on SeAH's section A questionnaire response, Maverick requested that the Department obtain additional information regarding sales to SeAH's third-county market.<sup>401</sup> Subsequently, Maverick submitted a request that the Department extend the deadline for submitting factual information in support of a market-viability allegation.<sup>402</sup> Initially, the Department declined to grant an extension to Maverick.<sup>403</sup> Maverick then filed a second request for an extension of the deadline to submit factual information in support of a market-viability allegation, referencing its section A deficiency comments and providing specific argument as to why SeAH's section B and C questionnaire responses might form the appropriate basis for a

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<sup>397</sup> See Preliminary Decision Memorandum, at 16 and SeAH Preliminary Analysis Memorandum, at 2 and Attachment 1.

<sup>398</sup> See 19 CFR 351.301(c)(2)(i).

<sup>399</sup> See *Preamble*, 62 FR at 27335.

<sup>400</sup> See SeAH AQR.

<sup>401</sup> See Letter from Maverick to the Department, "Certain Oil Country Tubular Goods from the Republic of Korea: Deficiency Comments on SeAH's Section A Response," dated April 1, 2016, at 9-12.

<sup>402</sup> See Letter from Maverick to the Department, "Certain Oil Country Tubular Goods from the Republic of Korea: Request for Extensions of Time to Submit Rebuttal Factual Information and Factual Information in Support of Market Viability Allegations," dated April 6, 2016.

<sup>403</sup> See Letter from the Department to Maverick, dated April 8, 2016.

market-viability allegation.<sup>404</sup> For example, Maverick stated that, as it had argued in its section A deficiency comments, “there were entries made to the United States that SeAH was not reporting as U.S. sales, which is information that goes to the denominator of the market viability calculation.”<sup>405</sup> Upon reconsidering Maverick’s request, the Department granted Maverick an extension to file factual information in support of a market-viability allegation, stating that it “may be the case in this instance” that “sections B and C of the Department’s questionnaire response serves as the relevant submission for filing factual information in support of market viability allegations.”<sup>406</sup>

Based on the foregoing, the Department finds that Maverick’s market-viability allegation was not untimely filed. Therefore, we determine not to remove from the record the Maverick April 11, 2016, Market-Viability Allegation, the Maverick April 20, 2016, New Factual Information Letter, or any subsequent filings that referenced the material in those submissions.

Finally, we disagree with Maverick’s assertion that SeAH created its Canadian sales to eliminate its U.S. dumping margins. *See* Comment 5.A, above, for more information.

#### Comment 19: Reporting of Grade Codes

##### *SeAH’s Arguments:*

- The Department’s decision to recode its three proprietary grades as “080” (the code for grade N-80 OCTG) in the *Preliminary Results* was in error.<sup>407</sup>
- SeAH developed the three proprietary grades to have mechanical properties (*i.e.*, tensile and hardness requirements) that are equivalent to grade N-80 without having to undergo the heat treatment (*i.e.*, full-body normalizing) required by the N-80 specification.<sup>408</sup> Therefore, it is technically incorrect to code its proprietary grades using code “080,” because its proprietary grades did not undergo the heat treatment required for grade N-80.
- While its proprietary grades can be produced using seam-annealing, a type of heat treatment that can be used to produce lower grades of OCTG such as J-55 and K-55, using the codes for those grades (“060” and “070,” respectively) would be improper, because the mechanical properties of its proprietary grades are superior to those of grade J-55 or K-55.
- SeAH coded its proprietary grades as “075” because these grades were most comparable to grade N-80. Contrary to the Department’s finding in the *Preliminary Results*, the differences between its proprietary grades and grade N-80 OCTG cannot be not captured by another product characteristic, and, thus, for the final results, the Department should use SeAH’s reported grade code of “075” for its proprietary grades.

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<sup>404</sup> *See* Letter from Maverick to the Department, “Certain Oil Country Tubular Goods from the Republic of Korea: Request for Extension of Time to Submit Factual Information in Support of Market Viability Allegations,” dated April 11, 2016, at 2-4.

<sup>405</sup> *Id.*, at 3.

<sup>406</sup> *See* Letter from the Department to Maverick, dated April 11, 2016.

<sup>407</sup> *See* SeAH Case Brief, at 10-11 (citing SeAH Preliminary Analysis Memorandum, at 3).

<sup>408</sup> *Id.*, at 11-12 (citing SeAH BCSQR, at 11, n.6 and Appendix SB-6, and SeAH BC2SQR, at Appendix S2C-3).

*Maverick's Rebuttal Arguments:*

- The Department should continue to treat grade “075” the same as grade “080” for the final results.
- SeAH concedes that the mechanical properties (*i.e.*, tensile and hardness requirements) of its proprietary grades are equivalent to grade N-80, even without going through the heat treatment required by the N-80 specification.
- The Department already rejected SeAH’s argument in the *Preliminary Results*.
- The API 5CT specification does not distinguish between grade N-80 products that have been heat treated and those that have not, and therefore SeAH’s argument is misleading.
- The two products will have separate CONNUMs for both sales and costs.

*Department's Position:*

We agree with Maverick and have continued to combine the grades of OCTG that SeAH reported under code “075” with the grade it reported under code “080” for purposes of SeAH’s margin calculation in these final results.

The Department’s antidumping questionnaire instructed SeAH:

If you sold grades of OCTG that are proprietary/non-API grades that are not listed in the API Specification 5CT, please report a separate reporting code for each of those other grades, provide complete technical documentation describing each of those additional grades, and describe how each of those additional grades compares to each other and to those listed above.<sup>409</sup>

SeAH reported in its questionnaire responses that it sold three proprietary grades of OCTG in the United States, for which it reported the separate reporting code “075.”<sup>410</sup> SeAH stated that it “introduced its own unique specification for an OCTG product that has the same tensile strength required by the N-80 specification {(to which the Department assigns a grade code of “080”)} but is not heat treated (by normalization or by quenching-and-tempering) in the manner required by the N-80 norms.”<sup>411</sup> The Department stated in the *Preliminary Results* that it recoded as grade “080” those grade codes and CONNUMs reported in SeAH’s sales and cost databases as grade “075,” finding that any differences between these grades were already captured in other product characteristics.<sup>412</sup>

SeAH has acknowledged that the “mechanical properties {of these proprietary grades} (*i.e.*, tensile and hardness requirements) { } are equivalent to grade N-80, without having gone through the heat treatment required by the N-80 specification.”<sup>413</sup> Further, the API 5CT standard does not distinguish between N-80 grade products that have been heat treated from those that

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<sup>409</sup> See Letter from the Department to SeAH containing the Department’s Antidumping Questionnaire, dated February 12, 2016.

<sup>410</sup> See SeAH BCQR, at 3, n.4, and 55-56, n.27.

<sup>411</sup> *Id.*

<sup>412</sup> See SeAH Preliminary Analysis Memorandum, at 3.

<sup>413</sup> See Maverick Rebuttal Brief, at 33, citing SeAH Case Brief, at 11.

have not.<sup>414</sup> Therefore, we disagree with SeAH’s assertion that the proprietary grades of OCTG it reported under code “075” were improperly categorized by the Department under code “080” based on the heat treatment required for grade N-80.

For the reasons described above, as well as the analysis conducted in the *Preliminary Results*, we continue to find that it is appropriate to treat the grades reported by SeAH under code “075” as “080” for the final results. Further, we continue to find that the differences between these grades are captured within the other reported product characteristics that make up each CONNUM.

#### Comment 20: Freight Revenue Cap

##### *SeAH’s Arguments:*

- It is not lawful for the Department to cap freight revenue by the actual amount of the associated freight expenses, as it did in the *Preliminary Results*.<sup>415</sup>
- In past cases, the Department reasoned this methodology was appropriate because freight is a service and not a part of the sale of the merchandise.<sup>416</sup> However, SeAH does not offer freight services, nor does its U.S. affiliates. Rather, the additional charge for freight is merely a disaggregation of the delivered price into one amount for the goods and another for freight.
- Even if the freight charges and the actual freight costs are the same, different dumping margins may result depending on whether the price is on a delivered or ex-warehouse basis.
- It is not logical for freight revenue to represent a sale of services when the seller makes a profit on freight, but be part of the sale of the merchandise when the seller incurs a loss.

##### *Maverick’s Rebuttal Arguments:*

- The Department should continue to apply the freight revenue cap for the final results.
- In *Welded Steel Pipe from Vietnam*,<sup>417</sup> the Department explained that its normal practice is “to cap freight revenue at the corresponding amount of freight charges incurred because it is inappropriate to increase gross unit selling price for subject merchandise as a result of profit earned on the sale of services (*i.e.*, freight).”
- SeAH’s arguments ignore that the cap is not applied when that manufacturer pays for delivery, and is applied when the customer agrees to pay for delivery and the manufacturer charges that customer over costs incurred. SeAH’s statement that this application of the freight revenue creates different dumping margins for different

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<sup>414</sup> See Maverick August 19, 2016 Submission, at Exhibit 1 at Exhibit 5 (Specification for Casing and Tubing, API Specification 5CT, Eighth Edition (July 1, 2005), at 85).

<sup>415</sup> See SeAH Case Brief, at 14 (citing SeAH Preliminary Analysis Memorandum, at 7).

<sup>416</sup> *Id.* (citing *Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 64170 (October 28, 2014) and accompanying Issues and Decision Memorandum at Comment 4).

<sup>417</sup> See Maverick Rebuttal Brief, at 36 (citing *Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam*, 81 FR 75042 (October 28, 2016) (*Welded Steel Pipe from Vietnam*), and accompanying Issues and Decision Memorandum at Comment 7).

exporters based solely on the manner in which they have chosen to present their prices is inaccurate.

- The CIT has upheld the Department’s rationale for applying its uniform practice of capping freight revenues.

Department’s Position:

We agree with Maverick and have continued to apply the freight revenue cap for SeAH’s sales in these final results.

The Department stated in *Welded Steel Pipe from Vietnam* that “{i}t is the Department’s normal practice to cap freight revenue at the corresponding amount of freight charges incurred because it is inappropriate to increase gross unit selling price for subject merchandise as a result of profit earned on the sale of services (*i.e.*, freight).”<sup>418</sup> The CIT has upheld the Department’s practice on the capping of freight revenue in *Dongguan Sunrise Furniture Co.*,<sup>419</sup> stating:

Although Fairmont has put forth evidence to suggest that the freight revenue it generated was more than a simple reimbursement for freight expenses, a proper “apples-to-apples” comparison should not include profit earned from the sale of a service (freight) as opposed to profit earned from the sale of the subject merchandise (furniture).<sup>420</sup>

In this review, SeAH argues that the Department’s application of the freight revenue cap in the *Preliminary Results* was inappropriate because SeAH claims that the additional charge for freight is a disaggregation of the delivered price into one amount for the goods and another for freight, rather than a service rendered by SeAH. However, we continue to find here, as in *Welded Steel Pipe from Vietnam*, that is inappropriate to increase gross unit selling price for subject merchandise as a result of any profit earned by SeAH on the sale of freight. It is the Department’s normal practice to cap freight revenue at the corresponding amount of freight charges incurred because it is inappropriate to increase the gross unit selling price for subject merchandise as a result of profit earned on the sale of services (*i.e.*, freight).<sup>421</sup> Finally, although SeAH argues that different dumping margins may result depending on the manner in which an exporter presents its prices, we agree with Maverick that SeAH’s argument does not take into account the fact that the Department’s freight revenue cap is applied when the customer agrees to pay for delivery and the manufacturer charges that customer over costs incurred, but is not applied when that manufacturer pays for delivery.

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<sup>418</sup> See *Welded Steel Pipe from Vietnam*, and accompanying Issues and Decision Memorandum at Comment 7.

<sup>419</sup> See *Dongguan Sunrise Furniture Co. v. United States*, 865 F. Supp. 2d 1216 (CIT 2012) (*Dongguan Sunrise Furniture Co.*).

<sup>420</sup> *Id.*, 865 F. Supp. 2d at 1249-1250.

<sup>421</sup> See, e.g., *Welded Steel Pipe from Vietnam*, and accompanying Issues and Decision Memorandum at Comment 7; *Multilayered Wood Flooring from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011), and accompanying Issues and Decision Memorandum at Comment 39; and *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 2.

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

Comment 21: International Freight for Certain Third-Country Sales

*SeAH's Arguments:*

- In the *Preliminary Results*, the Department incorrectly valued international freight for containerized shipments to Canada by using the average cost of bulk shipments to Canada.<sup>422</sup> The Department should instead rely on the amounts SeAH reported for its containerized shipments to Canada.
- SeAH provided a press release explaining that international freight for containerized shipments was much higher than that for bulk shipments. It also provided documentation showing that ocean freight costs for U.S. containerized shipments were higher than ocean freight costs for bulk shipments, and also higher than the reported international freight for containerized shipments to Canada.<sup>423</sup>
- SeAH compares the international freight rates it reported for its containerized shipments to information placed on the record by Maverick for ocean freight from Japan to Vancouver<sup>424</sup> in support of its contention that the Department should use its reported expenses.
- The Department's longstanding practice is to request that respondents report ocean freight based on the actual, shipment-specific costs.

*Maverick's Rebuttal Arguments:*

- There is a disparity between international freight expenses reported for SeAH's Canadian and U.S. sales when one compares the POR weighted-average amounts reported for the two markets. This disparity is even greater when one compares the international freight rates provided by SeAH's affiliate, SeAH L&S, and unaffiliated freight providers.
- In a supplemental questionnaire response, SeAH explained that international freight rates for containerized shipments (used for most of its Canadian sales) were normally higher than the rates for bulk shipments (used for U.S. sales), and that more volume was shipped to the United States.<sup>425</sup> SeAH's explanation did not justify the difference in the international freight costs reported for each market.
- In a subsequent submission, SeAH provided an article about containerized and bulk shipping, along with other information, but that information did not justify the price differences or relate to subject merchandise.<sup>426</sup>

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<sup>422</sup> See SeAH Case Brief, at 15-16 (citing SeAH Preliminary Analysis Memorandum, at 8).

<sup>423</sup> *Id.*, at 16 (citing SeAH August 31, 2016 Submission, at Attachments 1 and 2, respectively).

<sup>424</sup> *Id.*, at 16-17 (citing Maverick August 19, 2016 Submission, at 8).

<sup>425</sup> See Maverick Rebuttal Brief, at 39 (citing SeAH BCSQR, at 34).

<sup>426</sup> *Id.*, at 39-40 (citing SeAH BC2SQR, at 20 and SeAH August 31, 2016 Submission, at 3-4 and Attachments 1 and 2).

- In addition, SeAH originally reported that its U.S. and Canadian sales were shipped by unaffiliated ocean freight carriers, but later provided information showing that SeAH L&S was involved in providing international freight.<sup>427</sup>
- Finally, SeAH should have reported vessel-specific international freight expenses for inventory sales through PMT. The Department asked SeAH to do so, and certain documentation provided by SeAH shows that this was possible.<sup>428</sup>
- For the foregoing reasons, SeAH's international freight expenses are distorted and should be adjusted accordingly.

Department's Position:

We disagree with Maverick that SeAH has not provided justification for the difference in the weighted-average international freight expenses reported for SeAH's Canadian and U.S. sales. As we explained in Comment 5.G. and Comment 7, above, the record establishes the reason for the difference. Specifically, the record evidence shows that SeAH's shipments of OCTG to one Canadian customer were made in containers, and that the per-unit international freight rates for these shipments were higher than the per-unit rates for bulk shipments to Canadian and U.S. customers.

However, we disagree with SeAH that we should rely on the amounts SeAH reported for its containerized shipments to Canada and not make the adjustment we made in the *Preliminary Results* to SeAH's Canadian international freight expenses. As explained in Comment 7, above, the Department made an adjustment to SeAH's Canadian international freight expenses to account for the difference between the reported per-unit rates for containerized and bulk shipments. Specifically, we set international freight expenses for Canadian containerized shipments equal to the weighted-average international freight expenses for Canadian bulk shipments.<sup>429</sup> This adjustment places the per-unit rates for Canadian containerized shipments on par with the per-unit rates for Canadian and U.S. bulk shipments. Given the difference between the per-unit rates SeAH reported for containerized and bulk shipments, and because SeAH has not justified why the adjustment from the *Preliminary Results* is not warranted, we have continued to make the same adjustment for the final results.

As noted in Comment 5.G, above, we agree with Maverick that SeAH did not inform the Department of SeAH L&S's involvement in providing international freight in its initial questionnaire response. However, as explained in Comment 5.G., SeAH clarified in its later submissions that for containerized shipments of OCTG to Canada, SeAH L&S acted as a freight forwarder which, in turn, arranged for transport with unaffiliated transport companies.<sup>430</sup> Thus, as explained in Comment 7, because we are making an adjustment to SeAH's international freight expenses for its containerized shipments to Canada, we find that it is not necessary to address the issue of whether these shipments, which were arranged by SeAH L&S, were made at arm's length.

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<sup>427</sup> *Id.*, at 40-41 (citing BCQR, at 43 and 84; SeAH BCSQR, at Appendix SB-16; and SeAH BC2SQR, at 20).

<sup>428</sup> *Id.*, at 41-42 (citing SeAH BCQR, at Appendices C-9 through C-13 and C-15).

<sup>429</sup> See SeAH Preliminary Analysis Memorandum, at 8 and Attachment 2.

<sup>430</sup> See SeAH August 31, 2016 Submission, at 5; see also SeAH BC2SQR, at 22.

Finally, as the Department explained in Comment 5.H., above, the Department disagrees with Maverick that SeAH should have reported vessel-specific international freight expenses for inventory sales through PMT. The Department finds that SeAH has sufficiently explained why it was not feasible for it to report international freight expenses on a vessel-specific basis. Specifically, the record indicates that PMT's computer system does not contain the information that would enable SeAH to link each PMT inventory sale with the corresponding import, and, thus, linking each PMT inventory sale to the corresponding import would involve a manual tracing of information that would take a substantial amount of time.

Comment 22: SeAH's Useable Cost Database

*SeAH's Argument:*

- For the *Preliminary Results*, the Department relied on SeAH's cost database submitted with the August 15, 2016, section D submission. For the final results, the Department should use the company's September 26, 2016, revised cost database that reflects only the reallocation of negative variances.

*Maverick's Rebuttal Arguments:*

- SeAH's revised database cannot be used because it does not contain the full amount of HRC cost consumed or the amount of scrap claimed as an offset. Specifically, SeAH combined the scrap offset field with direct material costs in the revised file, thereby impeding the Department's ability to make the necessary adjustments to HRC costs and scrap offset. As such, any adjustments made to SeAH's HRC costs as reported in the revised cost database would not be made on the full costs of raw material input used in the production of OCTG.
- The Department should ignore the revised cost database and continue applying the HRC adjustments that were made for the preliminary results.

Department's Position:

According to SeAH, the reported control number (CONNUM)-specific costs were calculated based on the actual production costs recorded in each production order.<sup>431</sup> When the Department identified that SeAH reported the significantly higher HRC costs for certain plain-end products compared to the coupled and threaded products, SeAH specifically explained that the reported raw material costs could differ "even when the two CONNUMs used the same specification of the hot-rolled coil, when the two CONNUMs were produced at different times during the review period."<sup>432</sup> Thus, the Department asked SeAH to revise its reported HRC costs based on the POR weighted-average grade-specific HRC consumption costs because the reported HRC costs in the cost database on August 15, 2016 were based on the production order-specific HRC consumption costs and the differences in HRC costs between products were unrelated to the product physical characteristics. Subsequently, as explained in Comment 5.C and Comment 12, SeAH submitted three revised cost databases on September 26, 2016: (1) the POR weighted-

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<sup>431</sup> See SeAH DQR, at 18-22.

<sup>432</sup> See SeAH DE2SQR, at 60.

average grade-specific HRC costs with negative variances (*i.e.*, revised cost database version 1); (2) the production order-specific HRC costs with corrected variances (*i.e.*, revised cost database version 2); and (3) the POR weighted-average grade-specific HRC costs with the corrected variances (*i.e.*, revised cost database version 3).

We disagree with SeAH that we should use the cost database that reflects only corrected negative variances (*i.e.*, revised cost database version 2). Specifically, because the HRC costs reported in the revised cost database version 2 reflect the production order-specific HRC consumption costs, this methodology resulted in unusual cost variations, and, therefore, the differences in HRC costs between products were unrelated to the product physical characteristics, (*e.g.*, fluctuation of raw material prices, inefficient production runs, limited production of specific CONNUMs, *etc.*). Thus, we find that the HRC costs reported in the revised cost database version 2 do not reasonably reflect the costs associated with the production and sales of the subject merchandise.

We also disagree with Maverick that we should ignore SeAH's revised cost databases and continue to apply the HRC cost adjustment that were made at the *Preliminary Results*. As explained in Comment 5.C and Comment 12 above, SeAH provided the revised cost database which corrected both the HRC costs and the negative variances (*i.e.*, the revised cost database version 3). Further, SeAH explained that why it had to eliminate the separate scrap offset field in the cost database and combine the costs of HRC and scrap offset for the revised cost database version 3.<sup>433</sup> SeAH submitted the revised cost database version 3 on September 26, 2016, in order to comply with the Department's requests and the combined HRC costs and scrap offset field does not prevent the Department from making any adjustments to these costs.

Thus, we used SeAH's submitted cost database that reflects the POR weighted-average grade-specific HRC costs with the corrected variances for the final results (*i.e.*, revised cost database version 3). However, we find that significant variations in HRC costs related to production timing differences still persist and, therefore, we have weight-averaged SeAH's reported material costs by reported OCTG grade.

#### Comment 23: Use of Average HRC Cost by Grade for SeAH

##### *SeAH's Arguments:*

- For the *Preliminary Results*, the Department unnecessarily recalculated SeAH's reported HRC costs by assigning a single POR weighted-average HRC cost for each grade code. It should not adopt such an approach for the final results.
- SeAH's normal cost accounting system calculates production-order specific costs and the company reported the cost of production based on the actual costs as recorded in its system.
- Although the Department stated that such an adjustment was to mitigate unreasonable HRC cost differences among products sharing the same grade, it never explained what was "unreasonable" regarding these differences.

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<sup>433</sup> See SeAH D3SQR, at 3.

- SeAH explained that HRC costs may vary from CONNUM to CONNUM for reasons that have nothing to do with the specification of the HRC itself. For example, cost variations may arise due to the relative size of production runs, timing differences, or production on different lines within a factory.
- The Department’s authority to limit the difference-in-merchandise (DIFMER) adjustment to cost differences related to physical characteristics does not authorize it to disregard the actual costs as reported in a respondent’s normal books and records when calculating the COP for the separate sales-below-cost test.

*Maverick’s Rebuttal Arguments:*

- SeAH’s claim that the Department did not explain what it considered to be unreasonable about the company’s HRC cost differences is inaccurate. The Department made clear that cost differences must be attributable to differences in the physical characteristics of the merchandise.
- The statute gives the Department the authority to depart from a respondent’s normal books and records and to recalculate the reported costs if those costs do not “reasonably reflect the costs associated with the production and sale of the merchandise.”<sup>434</sup>
- The Department has made many such adjustments in other cases to mitigate cost differences that are unrelated to physical characteristics.<sup>435</sup>
- This authority extends to the sales-below-cost test and to require separate cost information would violate the Department’s well-known practice of using one cost database.<sup>436</sup>
- The Department should continue to adjust SeAH’s reported HRC costs so that they reflect the POR-average HRC costs.

*Department’s Position:*

We disagree with SeAH that the production order-specific HRC costs recorded in its normal books and records reasonably reflect the costs associated with the production and sales of the subject merchandise.

Section 773(f)(1)(A) of the Act instructs the Department to calculate costs based on a respondent’s normal books and records if they are kept in accordance with home country generally accepted accounting principles (GAAP) and reasonably reflect the costs associated with the production and sale of the merchandise. Accordingly, the Department will normally rely on a company’s normal books and records if two conditions are met: 1) the books are kept in

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<sup>434</sup> See 773(f)(1)(A) of the Act.

<sup>435</sup> See *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 78 FR 35248 (June 12, 2013) (CWSP from Korea I) and accompanying Issues and Decision Memorandum at Comment 6; *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 37284 (July 1, 2014) (CWSP from Korea II) and accompanying Issues and Decision Memorandum at Comment 1; and *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2014-2015*, 81 FR 62712 (September 12, 2016), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>436</sup> See *CWSP from Korea I*, and accompanying Issues and Decision Memorandum at Comment 6.

accordance with the home country's GAAP; and 2) the books reasonably reflect the cost to produce and sell the merchandise. As explained Comment 22, the recorded product costs in SeAH's normal books and records are based on the production order-specific costs<sup>437</sup> and, thus, it resulted in significantly higher HRC costs being allocated to certain plain-end products compared to HRC costs allocated to certain coupled and threaded products. SeAH even explained that raw material cost could differ "even when the two CONNUMs used the same specification of the hot-rolled coil, when the two CONNUMs were produced at different times during the review period."<sup>438</sup> Consequently, while SeAH's normal books and records are kept in accordance with Korean GAAP, the HRC costs in its normal books and records do not reasonably reflect the actual production costs of the merchandise because the differences in HRC costs between products were unrelated to the product physical characteristics (*e.g.*, fluctuation of raw material prices, inefficient production runs, limited production of specific CONNUMs, *etc.*).<sup>439</sup>

Further, we disagree with SeAH that the Department's authority to limit the DIFMER adjustment to cost differences related to physical characteristics does not authorize it to disregard the actual costs as reported in a respondent's normal books and records when calculating the COP for the separate sales-below-cost test. At the outset of this review, the Department identified the physical characteristics that are the most significant in differentiating the costs between products. These are the physical characteristics that define unique products, *i.e.*, the CONNUMs, for sales-comparison purposes and the level of detail within each physical characteristic (*e.g.*, different grades, sizes of a product, *etc.*) reflects the importance the Department places on comparing the most similar products in price-to-price comparisons. Thus, under sections 773(f)(1)(A) and 773(a)(6)(C)(ii) and (iii) of the Act, a respondent's reported costs should reflect meaningful cost differences attributable to these different physical characteristics. This ensures that the product-specific costs we used for the sales-below-cost test, CV, and DIFMER adjustment accurately reflect the precise physical characteristics of the products whose sales prices are used in the Department's dumping calculations.

For these reasons, the Department requested SeAH to revise its cost database submitted on August 15, 2016, and to comply with this request, SeAH provided the revised cost database reflecting the POR weighted-average grade-specific HRC costs with the corrected variances on September 26, 2016. However, the significant variation in the reported HRC costs for identical grades continues to persist. Thus, while SeAH cooperated with the Department's requests, the information provided by SeAH is not perfect and requires further adjustment. Therefore, as a facts available adjustment, we have weight averaged SeAH's reported material costs by reported OCTG grade for the final results.

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<sup>437</sup> See SeAH DQR, at 18-22.

<sup>438</sup> See SeAH DE2SQR, at 60.

<sup>439</sup> See *Welded Line Pipe from Korea*, and accompanying Issues and Decision Memorandum at Comment 5; *CWSP from Korea I*, and accompanying Issues and Decision Memorandum at Comment 6; and *CWSP from Korea II*, and accompanying Issues and Decision Memorandum at Comment 1.

## Comment 24: Procedural Issue Regarding Service of Case Brief

### *SeAH's Arguments:*

- Maverick's counsel failed to serve SeAH's counsel with its case brief in accordance with the Department's regulations, which require that case briefs be served on other interested parties "simultaneously" with their filing with the Department.<sup>440</sup>
- Specifically, Maverick's counsel did not serve the final business proprietary and public versions on SeAH's lead counsel as required by the regulations. This substantially impeded the ability of SeAH's counsel to consult with its client about the issues raised in Maverick's case brief.
- Maverick's counsel falsely claimed that SeAH's counsel's office was closed when it attempted delivery, because SeAH's counsel's office and building were open at that time.<sup>441</sup> At any rate, an attempt to provide service after normal business hours is not in accordance with the regulation's requirement of simultaneous service.
- The Department should find that Maverick's counsel's failure to provide service was intentional, and thus should reject Maverick's case brief for failure to file in accordance with the requirements of the Department's regulations.

### *Department's Position:*

Interested parties' case briefs in the instant review were due on February 9, 2017. For interested parties which filed "bracketing not final" versions of their case briefs, the final business proprietary (BPI) and public versions were, thus, required to be filed with the Department by the close of business on February 10, 2017.

SeAH argues that Maverick's counsel did not provide the requisite service of the final BPI and public versions of Maverick's case brief by the close of business on February 10, 2017.<sup>442</sup> Maverick, on the other hand, asserts that it did not fail to properly serve SeAH's counsel.<sup>443</sup> This is a case of one counsel's word against the other's, and without evidence sufficient to resolve this factual dispute among lawyers, the Department is unable to make a finding whether or not the service occurred properly.

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<sup>440</sup> See SeAH Rebuttal Brief, at 2, citing 19 CFR 351.303(f)(3).

<sup>441</sup> *Id.*, at 3, citing Letter from Maverick to the Department, "Certain Oil Country Tubular Goods from the Republic of Korea: Response to SeAH's Request to Reject Maverick's Case Brief," dated February 13, 2017 (Maverick February 13, 2017 Submission), at 2 and Letter from SeAH to the Department, "Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea for the –Response to Wiley Rein's February 13 Letter," dated February 15, 2017 (SeAH February 15, 2017 Submission), at Attachment 1.

<sup>442</sup> *Id.*, at 3; see also Letter from SeAH to the Department, "Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea for the – Failure of Wiley Rein to Serve Case Brief in Accordance with Requirements of the Regulations," dated February 13, 2017 (SeAH February 13, 2017 Submission), at 1-2 and SeAH February 15, 2017 Submission, at 2-4 and Attachment 1.

<sup>443</sup> See Maverick February 13, 2017 Submission, at 2-3 and Letter from Maverick to the Department, "Certain Oil Country Tubular Goods from the Republic of Korea: Reply to SeAH's February 15, 2017 Letter," dated February 16, 2017, at 2-3.

In any event, the Department determines that, even if SeAH did not receive a copy of the final BPI and public versions of Maverick’s case brief by the close of business on February 10, 2017, SeAH did not suffer substantial prejudice. As SeAH concedes, its counsel received a copy of the “bracketing not final” version of Maverick’s case brief on February 9, 2017.<sup>444</sup> Thus, on February 9, 2017, SeAH possessed a copy of Maverick’s case brief, which means that it had full knowledge of the issues, argument and facts raised by Maverick. Any changes in the final BPI and public versions would have related only to the bracketing of confidential information, not the substance of the submission.

Further, during business hours on February 10, 2017, SeAH requested an extension to the deadline for filing rebuttal briefs, which at that time were due on February 14, 2017.<sup>445</sup> On February 10, 2017, the Department granted an extension until February 16, 2017, for parties to file rebuttal briefs.<sup>446</sup> Thus, SeAH, along with all other interested parties, was given additional time to consult with counsel and prepare its rebuttal brief.

#### Comment 25: Procedural Issue Regarding Sanctions for Improper Conduct

##### *SeAH’s Arguments:*

- Maverick accuses SeAH and, by implication, its counsel of dishonest and manipulative behavior that is inconsistent with any evidence.
- Lawyers appearing before the Department do not have the right to distort the facts, attempt to mislead the Department, or make knowingly false statements.
- The April 2013 amendments to the Department’s regulations made it clear that such conduct would not be tolerated.<sup>447</sup>
- Maverick’s case brief constitutes “improper conduct” under the Department’s regulations, and its falsehoods threaten the integrity of the Department’s proceedings.
- The Department should impose the most severe sanctions available against Wiley Rein (the law firm representing Maverick) and the individual attorneys and non-attorney representatives at that firm who have engaged in this behavior.<sup>448</sup> Such sanctions should include suspending Wiley Rein from practice before the Department, as well as referring the misconduct of the individual attorneys at Wiley Rein who are responsible for its submissions to the appropriate bar authorities.

##### Department’s Position:

As an initial matter, the Department notes that SeAH, in its rebuttal brief, responded to each of the issues which Maverick raised its case brief. For these final results, the Department analyzed

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<sup>444</sup> See SeAH February 13, 2017 Submission, at 1.

<sup>445</sup> See Letter from SeAH to the Department, “Oil Country Tubular Goods from the Republic of Korea – Request for Extension of Briefing Schedule,” dated February 10, 2017.

<sup>446</sup> See Letter from the Department to All Interested Parties, “Revised Briefing Schedule,” dated February 10, 2017. The Department acknowledges that this letter was not officially accepted on ACCESS until February 13, 2017.

<sup>447</sup> See SeAH Rebuttal Brief, at 4, citing *Regulation Strengthening Accountability of Attorneys and Non-Attorney Representatives Appearing Before the Department*, 74 FR 22773, 22775 (April 17, 2013).

<sup>448</sup> *Id.*, at 4-5, citing 19 CFR 351.313.

the arguments Maverick raised with respect to each issue, along with SeAH's corresponding rebuttal arguments, and made our determinations on the basis of the facts on the record.

This is an antidumping proceeding, not a disciplinary proceeding. The Department does not make determinations on whether to sanction law firms, attorneys, and non-attorney representatives in issues and decision memoranda accompanying final determinations or results. To the extent that SeAH's counsel believes that Maverick's counsel has engaged in improper conduct, its recourse may be to report Maverick's counsel to the appropriate bar authorities.

### **C. NEXTEEL-Specific Issues**

#### Comment 26: Whether to Apply Total Adverse Facts Available to NEXTEEL

##### *Maverick's Arguments:*

Maverick asserts that NEXTEEL withheld key information from the Department regarding a lawsuit between POSCO Daewoo and one of its U.S. customers, Atlas Tubular LP (Atlas), and that NEXTEEL failed to report other information. Maverick contends that, due to NEXTEEL's failure to act to the best of its ability in responding to the Department's questionnaires in the instant review, the Department should apply total adverse facts available (AFA) to NEXTEEL for these final results. Maverick argues that the Department should apply, as AFA, the highest dumping rate from the petition, 158.53 percent.

##### Department's Position:

Section 776(a) of the Act provides that the Department, subject to section 782(d) of the Act, will apply "facts otherwise available" if necessary information is not available on the record or an interested party: 1) withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified.

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA,<sup>449</sup> the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on assumptions about information an interested party would have provided if the interested party had complied with the Department's request for information.<sup>450</sup> In addition, the SAA explains that the Department may employ an adverse inference "to ensure that the party does not

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<sup>449</sup> See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015).

<sup>450</sup> See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>451</sup> Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.<sup>452</sup> It is the Department’s practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.<sup>453</sup>

The Department has examined the record evidence with respect to each of the issues raised by Maverick and finds that none of them, either individually or collectively, merits the application of total AFA to NEXTEEL. Based on our analysis below, we find that the application of total AFA to NEXTEEL is not warranted for these final results.

### *Maverick’s Arguments*

#### *A. Lawsuit Between POSCO Daewoo and Atlas*

- By withholding important information regarding certain sales that are subject to the lawsuit between POSCO Daewoo and Atlas, NEXTEEL and POSCO purposefully tried to conceal that significant adjustments are applicable to NEXTEEL’s U.S. sales.
- There are two groups of OCTG that are subject to the lawsuit and have an impact on the prices that NEXTEEL reported in the instant review: pipe that remains unpaid and pipe that was disposed of at considerable discounts.<sup>454</sup>
- NEXTEEL and POSCO Daewoo provided a revised sales file with certain information relevant to the lawsuit, but did so only weeks before the *Preliminary Results*, which prevented the Department from properly making adjustments for this information. As a result, NEXTEEL and POSCO Daewoo failed to act to the best of their ability and impeded the Department’s review, thereby warranting application of total AFA to NEXTEEL.
- Had NEXTEEL and POSCO Daewoo revealed the lawsuit from the outset of this review, the Department would have known that POSCO Daewoo made price concessions to Atlas on \$88 million worth of subject merchandise and that Atlas declined to pay for \$28 million worth of subject merchandise during the POR.
- Throughout most of this review, NEXTEEL and POSCO Daewoo provided no information on the disposition of the unpaid pipe. When the Department asked NEXTEEL to explain what occurred with the pipe, NEXTEEL did not answer, but,

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<sup>451</sup> See SAA, at 870 and *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

<sup>452</sup> See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); and *Preamble*, 62 FR at 27340.

<sup>453</sup> See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum at page 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

<sup>454</sup> See *Maverick Case Brief*, at 8 and Exhibit 1 (citing Letter from POSCO Daewoo to the Department, “Oil Country Tubular Goods from the Republic of Korea: Supplemental Section C Questionnaire Response,” dated June 15, 2016 (POSCO Daewoo CSQR), at Exhibit S-4A).

rather, NEXTEEL and POSCO Daewoo stated that it takes years to process warranty claims and that POSCO Daewoo had received no valid claims.<sup>455</sup>

- POSCO Daewoo belatedly provided unsolicited partial payment information for pipes subject to the lawsuit without explaining why these specific sales remained unpaid or had partial payments applied to them.<sup>456</sup> It is important to know why these sales were unpaid in order to determine how to treat them.
- Throughout this review, NEXTEEL has also tried to prevent the Department from examining information related to the lawsuit by claiming that it is not affiliated with POSCO Daewoo and that it is POSCO Daewoo which possesses the information related to the lawsuit.<sup>457</sup> However, the Department confirmed in the *Preliminary Results* that NEXTEEL and POSCO Daewoo are affiliated;<sup>458</sup> therefore, POSCO and NEXTEEL cannot claim that they are not affiliated.

*NEXTEEL's Rebuttal Arguments:*

- The Department should ignore Maverick's request for total or partial AFA for NEXTEEL's reported data, as it did in the *Preliminary Results*. No facts in this review have changed since the *Preliminary Results*; thus, there is no basis for the Department to change course and apply AFA. Application of AFA would violate section 782(d) of the Act, which requires prompt notification of any perceived shortcomings in a response.
- Contrary to Maverick's characterizations of NEXTEEL and POSCO Daewoo as non-cooperative, NEXTEEL and POSCO Daewoo have responded fully to all requests from the Department, including information related to the lawsuit between POSCO Daewoo and Atlas.
- POSCO Daewoo had no unreported post-sale discounts, as alleged by Maverick. The final invoice price was reported in the GRSUPRU field, and no price changes or "concessions" were given outside or after the issuance of the invoices. Unpaid sales do not constitute unreported price adjustments, but rather reflect sales for which POSCO Daewoo has not received payment and is suing its customer.
- The Department should reject Maverick's claim that prices should be adjusted to reflect the amount received from Atlas for outstanding sales, consistent with its practice in previous cases.<sup>459</sup> The Department should not use AFA or FA for reported payment

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<sup>455</sup> *Id.*, at 11 (citing Letter from NEXTEEL to the Department, "Oil Country Tubular Goods from the Republic of Korea: Supplemental Section C Questionnaire Response," dated August 31, 2016 (NEXTEEL C2SQR), at 2 and Letter from POSCO Daewoo and POSCO Daewoo America Corp. to the Department, "Oil Country Tubular Goods from the Republic of Korea: Response to Petitioners' Deficiency Comments on NEXTEEL's and POSCO Daewoo's Supplemental Section C Questionnaire Response," dated August 8, 2016 (POSCO August 8, 2016 Letter), at 16).

<sup>456</sup> *Id.*, at 11-12 (citing Letter from POSCO Daewoo to the Department, "Oil Country Tubular Goods from the Republic of Korea: Supplemental Section C Questionnaire Response," dated August 31, 2016 (POSCO Daewoo C2SQR), at 3, and accompanying U.S. sales database).

<sup>457</sup> *Id.*, at 14-15 (citing POSCO August 8, 2016 Letter, at 2-3, n.3; POSCO Daewoo CSQR, at 1; and NEXTEEL C2SQR, at 1-3).

<sup>458</sup> *Id.*, at 15 (citing Preliminary Decision Memorandum, at 7).

<sup>459</sup> See NEXTEEL Rebuttal Brief, at 12 (citing *Certain Crystalline Silicone Photovoltaic Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 76970 (December 23, 2014), and accompanying Issues and Decisions Memorandum at Comment 11).

information, as POSCO Daewoo has been fully cooperative in providing information related to litigation with Atlas.

*Department's Position:*

We find that NEXTEEL's reporting of information related to the lawsuit between POSCO Daewoo and Atlas does not warrant the application of total AFA to NEXTEEL for these final results. However, as fully detailed in Comment 27, below, we find that certain information was missing from the information reported by NEXTEEL, such that we find it appropriate to apply facts otherwise available.

With respect to arguments relating to total AFA, we find that the record does not support the allegation that NEXTEEL withheld from the Department the information regarding the existence of a lawsuit between POSCO Daewoo and Atlas, resulting from Atlas' refusal to accept and pay for certain pipes it had ordered. NEXTEEL provided information relevant to the lawsuit between POSCO Daewoo and Atlas, including a revised sales file.<sup>460</sup> While we find that the information reported in POSCO Daewoo's sales database is missing certain information, as detailed below in Comment 27, we find that this omission of data is not sufficient to support the application of total AFA to NEXTEEL, in that we do not find that it indicates a complete failure to cooperate. Therefore, we have continued to calculate a weighted-average dumping margin for NEXTEEL for these final results, but we have applied "facts otherwise available" with respect to NEXTEEL's reported payment dates for certain sales related to the lawsuit between POSCO Daewoo and Atlas. See Comment 27, below, for additional analysis.

*B. Expenses Incurred by a Certain Affiliate*

*Maverick's Arguments:*

- NEXTEEL withheld information pertaining to a certain affiliate and failed to disclose fully cost information concerning that affiliate.<sup>461</sup> This is another example of NEXTEEL's failure to cooperate with the Department.
- NEXTEEL's claims that the affiliate "has never commenced operations," "was strictly a paper company," and "never had any activity" were inaccurate,<sup>462</sup> because it is nearly impossible for a corporate entity to exist in the United States without incurring costs.
- NEXTEEL did not provide the affiliate's internal financial statements and trial balance, and, thus, significant costs related to this entity that should have been included in NEXTEEL's U.S. expenses are missing from the record of this review.

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<sup>460</sup> See POSCO Daewoo CSQR, at 2-8 and Exhibits S-2, S-3A, S-3B, S-4A, S-4B, S-6, S-8, S-9A, and S-9B and POSCO Daewoo C2SQR, at 1-3, Exhibit SC-1, and accompanying U.S. sales database.

<sup>461</sup> See Maverick Case Brief, at 17 (citing Letter from NEXTEEL to the Department, "Oil Country Tubular Goods from the Republic of Korea: Section A Response," dated March 18, 2016 (NEXTEEL AQR), at A-8 and Exhibit A-5-B, and Letter from NEXTEEL to the Department, "Oil Country Tubular Goods from the Republic of Korea: Supplemental Section D Questionnaire Response," dated August 15, 2016 (NEXTEEL DSQR), at Exhibit SD-1-A, page 18).

<sup>462</sup> *Id.*, at 18 (citing Letter from NEXTEEL to the Department, "Oil Country Tubular Goods from the Republic of Korea: Supplemental Section A Questionnaire Response," dated September 2, 2016 (NEXTEEL A2SQR), at 1 and Exhibit SA-1).

*NEXTEEL's Rebuttal Argument:*

- There is no basis to adjust NEXTEEL's reported expense data to incorporate expenses incurred by the affiliate at issue, as it had no active operations during the POR. Evidence on the record shows that, in 2014 and 2015, the company had no receipts, sales, cost of goods sold, profit, rents, income, or compensation of employees. Thus, the Department should not apply AFA for the final results.

*Department's Position:*

We agree with NEXTEEL, and we do not find a basis to make adjustments or apply AFA related to this affiliate. We find that evidence on the record supports NEXTEEL's claim that this affiliate had no active operations during the POR. Specifically, we find that this affiliate's 2014 and 2015 tax returns show no evidence of active operations.<sup>463</sup> As a result, we have made no changes from the *Preliminary Results* with respect to our treatment of this affiliate.

*C. Expenses and Revenues Booked by NEXTEEL and a Certain Affiliate*

*Maverick's Argument:*

- Discrepancies exist with respect to certain expenses and revenues booked by NEXTEEL and its affiliate,<sup>464</sup> and NEXTEEL failed to provide an explanation for these discrepancies. Thus, NEXTEEL did not act to the best of its ability and hindered the Department's review.

*NEXTEEL's Rebuttal Argument:*

- NEXTEEL has accounted for any perceived "discrepancies" regarding certain revenues and expenses booked by NEXTEEL and its affiliate. With respect to one of the expenses at issue, NEXTEEL accounted for them by reporting them as a direct selling expense in the field USBROKU. Registering these expenses for both NEXTEEL and its affiliate would result in double counting, as the expense is incurred only once.

*Department's Position:*

We agree with NEXTEEL, and we find that the record does not support the application of AFA for this issue. The Department issued supplemental questions to NEXTEEL relating to NEXTEEL and its affiliate's revenues and expenses. We find that NEXTEEL sufficiently responded to the Department's requests for information and supported its statements in its questionnaire responses relating to revenues and expenses booked by NEXTEEL and its affiliate.<sup>465</sup> Thus, we find that the application of AFA is not appropriate for this issue.

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<sup>463</sup> See NEXTEEL A2SQR, at Exhibit SA-1.

<sup>464</sup> See Maverick Case Brief, at 19-20 (citing NEXTEEL A2SQR, at 2).

<sup>465</sup> See NEXTEEL A2SQR, at 2-4.

#### *D. Inventory Movement Schedule*

##### *Maverick's Argument:*

- Maverick asserts that the Department requested an inventory movement schedule to support a reconciling line item in NEXTEEL's cost reconciliation. However, NEXTEEL's submitted exhibit 6-A does not contain all of the requested information associated with inventory movement schedule. Thus, because of this deficiency and those noted above, total AFA should be applied to NEXTEEL.<sup>466</sup>

##### *NEXTEEL's Rebuttal Argument:*

- NEXTEEL contends that, contrary to Maverick's assertions, it has provided the requested inventory movement schedule.<sup>467</sup>

##### *Department's Position:*

Regarding Maverick's assertion that NEXTEEL did not provide all of the information requested in its inventory movement schedule, we disagree. Record evidence shows that the requested inventory movement schedule was provided in the manner requested by the Department in NEXTEEL's August 15, 2016, supplemental questionnaire response.<sup>468</sup> Because this information was submitted as requested in a timely manner, we find that NEXTEEL has acted to the best of its ability and has not impeded this administrative review.

#### *E. Hot-Rolled Coil Grades Used to Produce OCTG*

##### *Maverick's Arguments:*

- Maverick asserts that the Department found in the less-than-fair-value investigation that only specific HRC grades can be used to make OCTG. Thus, subject merchandise should only include grades of steel that can be used to produce OCTG.
- According to Maverick, NEXTEEL's reported costs contain HRC grades that do not qualify for producing OCTG. By improperly reporting non-OCTG HRC grades, NEXTEEL has impeded the proceeding by distorting the Department's test for whether an alternative cost methodology is warranted. The Department should either apply total AFA to NEXTEEL or remove the non-OCTG grades from NEXTEEL's reported costs.<sup>469</sup>

##### *NEXTEEL's Rebuttal Arguments:*

- NEXTEEL contends that it provided the data requested by the Department, which shows that an alternative cost methodology is not warranted. NEXTEEL claims it originally provided all data for all grades of purchased HRC, regardless of whether it was used in

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<sup>466</sup> See Maverick Case Brief, at 21.

<sup>467</sup> See NEXTEEL Rebuttal Brief, at 16.

<sup>468</sup> See NEXTEEL DSQR, at Exhibits SD-6-A and SD-6-B.

<sup>469</sup> See Maverick Case Brief, at 31-33.

the production of OCTG, to identify its total universe of hot rolled coil purchases during the POR. The Department later requested, and NEXTEEL submitted, a list of the specific grades used in the production of OCTG.<sup>470</sup>

Department's Position:

Regarding Maverick's assertion that NEXTEEL's reported costs include HRC grades of steel that could not be used to produce OCTG, we disagree. While NEXTEEL provided information showing its total POR purchases of all HRC, record evidence shows that NEXTEEL only included HRC grades that could be used to produce OCTG in its reported costs.<sup>471</sup> Further, NEXTEEL provided the necessary information needed to test whether an alternative cost methodology was warranted.<sup>472</sup> Because NEXTEEL's reported costs only include the appropriate HRC grade, and the case record has the information necessary to analyze whether an alternative cost methodology is warranted, application of AFA is not warranted.

Comment 27: NEXTEEL's Unpaid U.S. Sales to Atlas

Maverick's Arguments:

- If the Department does not apply total AFA to NEXTEEL, the Department should apply partial AFA to the sales subject to the lawsuit between POSCO Daewoo and Atlas, or, alternatively, adjust NEXTEEL's reported gross unit prices for the sales subject to the lawsuit.
- NEXTEEL and POSCO Daewoo attempted to conceal the lawsuit between POSCO Daewoo and Atlas, which resulted from Atlas' refusal to accept and pay for certain pipes it had ordered.
- It is clear from the record that NEXTEEL reported unpaid sales due to the lawsuit.
- The unpaid sales will either remain unpaid or not be paid at the full reported value. Regardless of whether the sales were unpaid because the merchandise was defective or the market collapsed, the difference between the ultimate sales price and the price that POSCO Daewoo is seeking to obtain represents a substantial price adjustment that must be made.
- The unsolicited partial payment information submitted by POSCO Daewoo clarified how much less it actually received for the pipes.<sup>473</sup> Based on the lawsuit, Atlas owes POSCO Daewoo \$28 million for the unpaid pipe.
- NEXTEEL did not provide information which would allow the Department to determine the actual amounts that NEXTEEL is likely to receive for these sales. Therefore, the Department should apply partial AFA to the sales subject to the lawsuit using a dumping margin of 158.53 percent, which is the highest dumping margin alleged in the petition. Another option would be to assign a dumping margin of 112.36 percent, which represents the median between the highest and lowest margins alleged in the petition, to certain sales subject to the lawsuit.

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<sup>470</sup> See NEXTEEL Rebuttal Brief, at 23-24.

<sup>471</sup> See NEXTEEL DQR, at Exhibit D-15 and NEXTEEL DSQR, at Exhibits SD-10 and SD-19.

<sup>472</sup> See NEXTEEL DSQR, at Exhibit SD-8.

<sup>473</sup> See Maverick Case Brief, at 24-25 (citing POSCO Daewoo C2SQR, at 3).

- Alternatively, as neutral facts available, the Department could adjust NEXTEEL’s gross unit prices for the sales at issue. For the partially paid sales, the Department could apply the discounts reported in the partial payment field or make some other adjustment to the gross unit price. For the unpaid sales, the Department should value these as zero-priced sales, or as scrap.

*NEXTEEL’s Rebuttal Arguments:*

- POSCO Daewoo did not renegotiate its sales price subject to litigation. Therefore, the Department has no basis to apply an adjustment to reported prices or consider only the paid portion of the sales.
- The reported prices are supported by sales documentation. POSCO Daewoo is seeking payment through litigation from the customer for unpaid sales in the amount of the agreed upon sales terms.
- Disregarding the data or concluding that partial payment amount is the final price would ignore the Department’s practice with respect to unpaid sales.

*Department’s Position:*

For the reasons discussed in Comment 26.A, above, we find that the record does not support the application of AFA with respect to the sales subject to the lawsuit between POSCO Daewoo and Atlas. However, we have continued to apply facts otherwise available to certain unpaid or partially paid sales reported by NEXTEEL.

As described in Comment 26.A, above, NEXTEEL provided information concerning the lawsuit between POSCO Daewoo and Atlas, including a revised sales database.<sup>474</sup> However, payment information for certain of these sales was missing from POSCO Daewoo’s sales database.<sup>475</sup> After considering comments from interested parties, we have revised our treatment of these sales for the final results. POSCO Daewoo’s sales database is missing payment date information, which is necessary for the Department’s margin calculation, for certain of NEXTEEL’s sales relating to the lawsuit between POSCO Daewoo and Atlas. Therefore, we find that the use of “facts otherwise available” is appropriate, pursuant to section 782(d) of the Act, because necessary information is not available on the record. As facts available, we have used, as the date of payment, the signature date of the *Preliminary Results*, *i.e.*, October 5, 2016. For further information, *see* the NEXTEEL Final Analysis Memorandum.<sup>476</sup>

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<sup>474</sup> See POSCO Daewoo CSQR, at 2-8 and Exhibits S-2, S-3A, S-3B, S-4A, S-4B, S-6, S-8, S-9A, and S-9B and POSCO Daewoo C2SQR, at 1-3, Exhibit SC-1, and accompanying U.S. sales database.

<sup>475</sup> See POSCO Daewoo’s August 31, 2016 U.S. database.

<sup>476</sup> See Memorandum from Deborah Scott, International Trade Compliance Analyst, AD/CVD Operations, Office VI, to the File, “Analysis of Data Submitted by NEXTEEL Co., Ltd. for the Final Results of the 2014-2015 Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea,” dated April 10, 2017 (NEXTEEL Final Analysis Memorandum).

## Comment 28: Whether the Unpaid Sales Constitute Bad Debt

### *Maverick's Arguments:*

- POSCO Daewoo, through its lawsuit with Atlas, is seeking to receive full payment for all of the sales at issue, along with reimbursement for expenses associated with these sales.<sup>477</sup> Therefore, the unpaid or partially paid sales do not constitute bad debt.
- Through the lawsuit, POSCO Daewoo and Atlas in effect renegotiated the price of the pipe at issue. Regardless of whether Atlas refused to pay for the pipe at issue because it was defective or the market collapsed, adjustments are justified, and, thus, it is not correct to treat these unpaid sales as bad debt.<sup>478</sup>

### Department's Position:

We agree with Maverick. The Department normally accounts for a respondent's bad debt based on the historical experience of the company.<sup>479</sup> The Department has previously stated that "the amount of bad debt expense must be reasonably anticipated based on the historical experience of the company."<sup>480</sup> Here, the record contains no information to suggest that POSCO Daewoo's current situation with respect to its unpaid or partially paid sales represent the usual experience of POSCO Daewoo, or that they were reasonably foreseeable. Thus, we have continued to not treat the unpaid amount of POSCO Daewoo's U.S. sales to Atlas as bad debt for the final results.

## Comment 29: Upgradeable HRC

### *Maverick's Arguments:*

- Maverick states that the Department's first supplemental section D questionnaire requested that NEXTEEL provide upgradeable information in the COP database. Maverick contends that while the Department did not specifically request the same information in subsequent supplemental questionnaires, NEXTEEL should have continued to provide upgradeable information in its subsequent COP databases.
- Maverick asserts that in order to account for upgradeability of certain products, for the final results, the Department should merge the earlier COP databases containing the upgradeable information, with the most current COP databases.<sup>481</sup>

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<sup>477</sup> See *Maverick Case Brief*, at 27 (citing POSCO August 8, 2016 Letter, at 5).

<sup>478</sup> *Id.* (citing POSCO Daewoo CSQR, at 6).

<sup>479</sup> See, e.g., *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea; and Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 66 FR 45279 (August 28, 2001), at Comment 2.

<sup>480</sup> See *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 70 FR 3677 (January 26, 2005) (finding that the respondent had a bad debt account and experienced bad debt in years prior to the POR, thereby expecting to incur some bad debt during the instant POR).

<sup>481</sup> See *Maverick Case Brief*, at 33-34.

*NEXTEEL's Rebuttal Arguments:*

- NEXTEEL contends that the Department should not include the upgradeability data in the final results, as doing so would amount to a revision of the product-matching criteria. According to NEXTEEL, the Department refrains from modifying the product matching criteria in subsequent segments absent: 1) compelling reasons to do so; and, 2) opportunity for all parties to comment on any revision to the product-matching hierarchy. If a product match change is desired, the Department requires the placement of such evidence on the record at the earliest stage.
- In supporting its contention, NEXTEEL cites *CORE from Korea 12<sup>th</sup> AR*,<sup>482</sup> where the Department found that the petitioner failed to present sufficient evidence of changes in industry practice or any other compelling reason to revise the product-match criteria.
- NEXTEEL continues by pointing out that, in the instant case, Maverick has not demonstrated a compelling reason to change the product-match criteria at this late stage.<sup>483</sup>

*Department's Position:*

We disagree with Maverick. The Department's established, long-standing practice states that we will not modify the physical characteristics which together define the CONNUM unless there is evidence demonstrating that: (1) the current physical characteristics are not reflective of the subject merchandise, (2) there have been industry-wide changes to the product that merit a modification, or (3) there is some other compelling reason to change the current physical characteristics. Inherent in this practice is the view that the physical characteristics should remain consistent throughout the life of an antidumping order (unless one of the above-described situations occurs) so that parties may have a predictable means for establishing their pricing behavior to eliminate dumping in future administrative reviews.<sup>484</sup> Further, as a matter of procedure, changes to the physical characteristics are generally not implemented until a subsequent administrative review to allow all parties sufficient opportunity to adjust to the change in practice.

In the instant review, no party requested that the Department review whether the physical characteristics which are used to identify identical and similar products sold in the comparison market accurately reflect subject merchandise. Nor has an interested party indicated that there are industry-wide changes or a compelling reason to change the current physical characteristics which define the subject merchandise. Instead, Maverick argued its case brief that the Department had requested upgradability information in an alternative cost database and that NEXTEEL did not continue to provide the alternative databases in its last submission. However, Maverick did not request a change in the physical characteristics, and the Department is not

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<sup>482</sup> See NEXTEEL Rebuttal Brief, at 25 (citing *Notice of Final Results of the Twelfth Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 72 FR 13086, (March 20, 2007) (CORE from Korea 12<sup>th</sup> AR)).

<sup>483</sup> *Id.*, at 24-26.

<sup>484</sup> See *Carbazole Violet Pigment 23 from India*, 75 FR 38076 (July 1, 2010), and accompanying Issues and Decision Memorandum at Comment 2.

considering a change in physical characteristics in this administrative review; thus, we find that the use of NEXTEEL’s earlier COP data is not necessary.

Comment 30: Transferred Quantities of OCTG in NEXTEEL’s COP Data

*Maverick’s Arguments:*

- Maverick asserts that in the OCTG investigation, the Department found that a portion of NEXTEEL’s “transferred out” quantities represented write-offs, and the Department correspondingly adjusted NEXTEEL’s costs.
- Maverick contends that record evidence in this current administrative review shows the same information regarding “transferred out” quantities and, thus, a similar adjustment should be made to NEXTEEL’s cost of production in the current review.<sup>485</sup>

*NEXTEEL’s Rebuttal Arguments:*

- NEXTEEL contends that if the Department reclassified non-prime OCTG as scrap and made the adjustment for the “transfer out” quantities, this would result in double counting the non-prime products as scrap.<sup>486</sup>

*Department’s Position:*

We agree with NEXTEEL’s contention that making Maverick’s proposed adjustment would result in double-counting. In the *Preliminary Results*, the Department made an adjustment for non-prime pipe products by allocating the manufacturing cost, less the sales revenue of non-prime pipe to OCTG pipe.<sup>487</sup> As part of that adjustment, the Department accounted for the transferred-out quantities as noted by Maverick. As such, to avoid double counting, for the final results, we have continued to account for the transferred-out quantities in our adjustment made in the *Preliminary Results*.

Comment 31: Sales Adjustment for Certain Expenses

*Maverick’s Arguments:*

- As discussed in Comment 26.C, above, NEXTEEL did not adequately explain the discrepancies related to certain expenses and revenues booked by NEXTEEL and its affiliate.<sup>488</sup>
- If the Department does not apply adverse inferences to NEXTEEL, the Department should make a sales adjustment by allocating the costs at issue over NEXTEEL’s U.S. sales of OCTG.

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<sup>485</sup> See Maverick Case Brief, at 36-37.

<sup>486</sup> See NEXTEEL Rebuttal Brief, at 28-29.

<sup>487</sup> See NEXTEEL Preliminary Cost Memorandum.

<sup>488</sup> See Maverick Case Brief, at 37 (citing NEXTEEL A2SQR, at 2).

*NEXTEEL's Rebuttal Argument:*

- NEXTEEL already reported the expenses at issue as a direct selling expense in the field USBROKU.<sup>489</sup> Thus, no adjustment is necessary.

*Department's Position:*

We disagree with Maverick. The record shows that NEXTEEL reported the expenses at issue in the field USBROKU (U.S. brokerage and handling).<sup>490</sup> Thus, the Department determines that no adjustment is necessary for these final results.

Comment 32: Major Input Adjustment for Hot-Rolled Coil

*NEXTEEL's Arguments:*

- For the *Preliminary Results*, the Department applied a major input adjustment to HRC NEXTEEL purchased from POSCO. NEXTEEL contends that the Department's calculation was inconsistent for different finished grades of HRC that used the same input HRC.
- Specifically, NEXTEEL argues that, depending on the finished grade, the Department used either all purchases or only POSCO purchases in determining the proportion that certain grades represent of the total purchases. Using only POSCO purchases overstates the adjustment for specific finished grades.
- NEXTEEL asserts that, while input grades can be used to produce different products of finished grades, a coil can only be used once. Thus, NEXTEEL argues that the Department should use a weighted average, based on the total quantity of purchases, to account for consumption of raw materials.<sup>491</sup>

*Maverick's Arguments:*

- Maverick argues that the Department's major input adjustment is calculated correctly on an input grade-specific basis.
- According to Maverick, the Department's calculation correctly used all purchases or POSCO purchases only based on NEXTEEL's business proprietary information.
- Maverick asserts that there is no basis to calculate one single adjustment as NEXTEEL argues; rather, the Department has found in the past that grade specific adjustments are less distortive.
- Maverick contends that the Department should apply the major input adjustment based on the methodology from the investigation: grade-specific comparison of the transfer price to the market price based on the percentage difference between POSCO's prices charged for HRC to NEXTEEL and POSCO's prices charged to unaffiliated customers.

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<sup>489</sup> See NEXTEEL Rebuttal Brief, at 29 (citing NEXTEEL CQR, at Exhibit C-11).

<sup>490</sup> See NEXTEEL CQR, at Exhibit C-11.

<sup>491</sup> See NEXTEEL Case Brief, at 23-24.

- Alternatively, the Department should apply a particular market situation adjustment, proffered by Maverick in its particular market situation allegations, to NEXTEEL’s HRC costs.<sup>492</sup>

Department’s Position:

As discussed in Comment 3, above, we are making an adjustment for a finding of a particular market situation in Korea. Therefore, as Maverick alternatively suggested, we have applied an adjustment for the particular market situation in Korea, rather than applying the major input rule. Accordingly, it is unnecessary to reach the issue of whether the major input rule should apply here on a grade-specific basis.

Comment 33: Cost Adjustment for Downgraded, Non-OCTG Pipe

*NEXTEEL’s Arguments:*

- For the *Preliminary Results*, the Department allocated the manufacturing cost less the sales revenue of downgraded, non-OCTG pipe to OCTG pipe.
- In *OCTG from Ukraine*,<sup>493</sup> the Department found that non-prime OCTG is subject merchandise, thus making the Department’s “non-prime” adjustment in the instant case inappropriate.
- Further, the Department’s calculation compared the weighted-average COM of all products to the average sales value of downgraded, non-OCTG pipe. Instead, the Department should compare the weighted-average COM of downgraded, non-OCTG pipe to the average sales value of downgraded, non-OCTG pipe.<sup>494</sup>

*Maverick’s Rebuttal Arguments:*

- Maverick contends that the Department should continue to make an adjustment for downgraded, non-OCTG pipe because NEXTEEL indicated that the downgraded, non-OCTG pipe cannot be used as OCTG.
- Further, Maverick argues that the Department should make no change to the calculation of the “non-prime” adjustment because the COP data do not breakout costs for prime and “non-prime” products.<sup>495</sup>

Department’s Position:

We agree with Maverick that, consistent with the *Preliminary Results*, we should continue to allocate the COM less the sales revenue of downgraded non-OCTG pipe to the COP for OCTG pipe. Further, we agree with Maverick that the COP data do not break out costs for prime and

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<sup>492</sup> See Maverick Case Brief, at 28-31; see also Maverick Rebuttal Brief, at 20.

<sup>493</sup> See NEXTEEL Case Brief, at 25 (citing *Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods from Ukraine*, 79 FR 41969 (July 18, 2014) (*OCTG from Ukraine*)).

<sup>494</sup> *Id.*, at 24-25; see also NEXTEEL Rebuttal Brief, at 27-28.

<sup>495</sup> See Maverick Case Brief, at 35-36; see also Maverick Rebuttal Brief, at 20-21.

downgraded, non-OCTG pipe. Therefore, consistent with the *Preliminary Results*, we find that it is reasonable to use the weighted-average COM of all products compared to the average sales value of downgraded, non-OCTG pipe products in calculating the “non-prime” adjustment to the COP for OCTG.

The issue here is whether the downgraded non-OCTG pipe can still be used in the same applications as the subject merchandise (*i.e.*, whether it is still OCTG).<sup>496</sup> The downgrading of a product from one grade to another will vary from case to case. Sometimes, the downgrading is minor and the product is still OCTG, while at other times, the downgraded product differs significantly and it is no longer OCTG and cannot be used in “down hole” or “in the well” OCTG applications. In the latter case, the downgraded non-OCTG pipe market value is usually significantly impaired, often to a point where its full production cost cannot be recovered. Instead of attempting to judge the relative values and qualities between grades, the Department has adopted a practical approach of looking at whether the downgraded product can still be used in the same applications as the subject merchandise.<sup>497</sup>

Whether a product can be used for its originally intended use is an important distinction, because if a product cannot be used in the same applications as the subject merchandise, and the market value of the downgraded product as a result is not sufficient to recover production costs, we need to consider then the proper valuation and allocation of its costs to the subject merchandise. In so doing, we have sought guidance from GAAP as it relates to the valuation of inventories. In order to avoid the overstatement of inventory accounts on the balance sheet, GAAP does not allow companies to value products held in inventory at an amount greater than their market price. This principle is known as the “lower of cost or market” (LCM) rule, and it attempts to measure the loss in value, for presentation on the balance sheet, of a company’s inventory. The LCM rule recognizes that it is not always appropriate to value an inventory item at its allocated production costs if there is evidence that the market value of that item cannot recover those costs.<sup>498</sup> Given that the market value of a downgraded product may be significantly impaired when compared to the subject merchandise, we do not consider it reasonable in such instances to assign full production costs to value the downgraded merchandise. We believe that, under these circumstances, a more appropriate methodology is to assign a value to the downgraded products based on the price at which they can be sold in the marketplace, and allocate the remaining cost to the subject merchandise.

NEXTEEL argues that in *OCTG from Ukraine*,<sup>499</sup> the Department found non-prime OCTG is, in fact, subject merchandise and, therefore, no adjustment to NEXTEEL’s cost is appropriate. The

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<sup>496</sup> The Department has previously addressed whether it is relevant to discuss the production of different qualities/grades of pipe within a “by-product vs. co-product” framework.” See, *e.g.*, *Final Results of Antidumping Duty Administrative Review of Circular Carbon Steel Pipes and Tubes from Thailand*, 77FR 61,738 (October 11, 2012) (*Circular Welded Pipe from Thailand*) (in which the Department noted that “{t}echnically, the issue of whether to include the production quantity of the down-graded B and C pipe in the total production quantity of subject merchandise is not a joint product issue.”).

<sup>497</sup> *Id.*

<sup>498</sup> See *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review*, 71 FR 28659 (May 17, 2006), and accompanying Issues and Decision Memorandum, at Comment 1.

<sup>499</sup> See *OCTG from Ukraine* and accompanying Issues and Decision Memorandum, at Comment 2.

facts of the instant case differ significantly from *OCTG from Ukraine* where the merchandise in question entered the United States as OCTG and was later downgraded due to the products failing inspection after importation. With this distinction in mind, we have reviewed the information on the record of this review related to NEXTEEL's downgraded merchandise. NEXTEEL stated in its response that downgraded, non-OCTG pipe is identified during the final test of the production process as "non-prime" merchandise and is valued based on the full production costs, in the same manner as other OCTG products.<sup>500</sup> We note, however, that the company's downgraded, non-OCTG pipe cannot be used in the same "down hole" or "in the well" applications as the subject OCTG products.<sup>501</sup> Pipes that are downgraded at the final stage of production on the OCTG lines do not meet the strict technical requirements specified in the API 5CT standards for OCTG, and are, therefore, unsuitable for use in oil or gas well applications.<sup>502</sup> Further, as a practical matter, nobody would place downgraded, non-OCTG products in the oil or gas well because of liability issues regarding a spill and insurance concerns. NEXTEEL classifies downgraded non-OCTG products as "non-prime" merchandise that is generally used for structural purposes. The difference between the costs assigned to these products and the sales revenue earned on the downgraded, non-OCTG merchandise is in large part because these products are not OCTG, do not meet OCTG specification requirements, and cannot be used in the same applications as the specialized, high-value OCTG products. As discussed above, we find that under these circumstances, it is more appropriate to value the downgraded, non-OCTG products at issue using a LCM-based approach. Therefore, for these final results, we have adjusted NEXTEEL's reported costs to value the downgraded, non-OCTG products at their sales price, while allocating the difference to the OCTG cost of production.

NEXTEEL's argument that the Department should have compared the weighted-average COM of downgraded, non-OCTG pipe to the average sales value of the downgraded, non-OCTG products is flawed. Specifically, NEXTEEL contends that the Department should calculate the weighted-average COM of "non-prime" products by extending and summing the CONNUM-specific per-unit weighted-average COM by the CONNUM-specific quantity of "non-prime" products produced, and dividing the summed result by the total quantity of "non-prime" products produced. However, NEXTEEL's methodology fails to recognize the fact that the CONNUM-specific per-unit weighted-average COM is a mix of products that includes both prime OCTG and downgraded, non-OCTG products, whereas its methodology assumes that the CONNUM-specific per-unit average COM only represents the cost of "non-prime" products. The record does not contain the CONNUM-specific average COM of only "non-prime" products within each CONNUM; therefore, it is reasonable to use the quantity of both OCTG and downgraded, non-OCTG products within a CONNUM to calculate the weighted-average COM of all products because the reported weighted-average COM includes all products. Therefore, for the final results, we have continued to calculate the adjustment for NEXTEEL's downgraded, non-OCTG pipe products by comparing the weighted-average COM of all products to the average sales value of downgraded, non-OCTG products and allocating the difference to the OCTG cost of production.

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<sup>500</sup> See NEXTEEL DSQR, at 7.

<sup>501</sup> *Id.*

<sup>502</sup> *Id.*

## Comment 34: Suspended Losses

### *NEXTEEL's Arguments:*

- During the POR, NEXTEEL suspended production lines involved in producing OCTG. In its normal books and records, NEXTEEL recorded the related suspension costs as part of cost of goods sold (COGS), not as part of the cost of goods manufactured.
- For the *Preliminary Results*, the Department reclassified these costs as G&A expenses and deducted the loss from the COGS denominator.
- NEXTEEL contends that the suspended loss is not related to the overall company, but instead reflects maintenance expenses on a production line that was temporarily suspended and should be considered part of the COM the specific products produced on that line.
- NEXTEEL argues that even if the Department determines that the shutdown costs should be allocated to all products, and not just the products affected by the line, then an adjustment to COM would be more appropriate than an adjustment to G&A expenses given that these costs are classified as COGS.
- Finally, NEXTEEL contends that the Department should not reclassify additional expenses or offsets in the G&A expense ratio as requested by Maverick.<sup>503</sup>

### *Maverick's Arguments:*

- Maverick asserts that the Department should continue to classify suspended losses as G&A expenses. These expenses consist of direct expenses plus the costs allocated to these lines from common cost centers.
- Maverick notes that the production lines could produce OCTG, but were not in operation. Thus, the cost represents a burden to the company as a whole, and the Department appropriately included the suspended loss in G&A expenses.
- Additionally, the Department should revise the G&A expenses to include several business proprietary expenses NEXTEEL excluded and disallow certain business proprietary offsets included in the reported G&A expenses.<sup>504</sup>

### *Department's Position:*

We disagree with NEXTEEL and have classified the suspended losses as G&A expenses and deducted the loss from the COGS denominator. It is the Department's normal practice to include routine shutdown expenses (*i.e.*, maintenance shutdowns) in a respondent's reported costs. In *Cement from Mexico*,<sup>505</sup> the Department found that shutdown costs related to one of the respondent's facilities were properly included in the COM. However, in the instant review, the suspended loss is not related to a routine shutdown; rather, it relates to NEXTEEL's suspension of production on certain lines for an extended period of time. Unlike a routine maintenance

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<sup>503</sup> See NEXTEEL Case Brief at 25-27; see also NEXTEEL Rebuttal Brief, at 26-27.

<sup>504</sup> See Maverick Case Brief at 34-35; see also Maverick Rebuttal Brief, at 21-24.

<sup>505</sup> See *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 17148 (Apr. 9, 1997) (*Cement from Mexico*), and accompanying Issues and Decision Memorandum at Comment 9.

shutdown, once a production line is suspended, it no longer relates to the ongoing or remaining production. A company can suspend production lines for numerous reasons, for example a company may decide to suspend a production line while the company assesses whether it should permanently close the production line or the company has no current sales or necessity to inventory the product produced on those production lines. Regardless of the reason for the suspension, in contrast to the routine maintenance shutdowns, there are no longer products produced on those production lines or current intentions to produce products on those lines that can bear the burden of the costs associated with those production lines. As such, because NEXTEEL suspended the production line for an extended period of time during the POR, we consider the associated costs to be related to the general operations of the company as a whole, and not specific to products associated with that production line. Therefore, for the final results, we have continued to include NEXTEEL's suspended losses as a part of its G&A expenses.

Further, Maverick asserted that the Department should include several expenses NEXTEEL excluded from its G&A expenses. Likewise, Maverick contends that certain offsets included in the reported G&A expenses should be disallowed. We disagree with Maverick that these items should be included in the G&A expenses. However, because these specific items are NEXTEEL's business proprietary information, *see* the NEXTEEL Final Cost Calculation Memorandum<sup>506</sup> for further details regarding these items.

#### Comment 35: Valuation Allowances of Raw Materials and Finished Goods Inventories

##### *NEXTEEL's Arguments:*

- In the *Preliminary Results*, the Department deducted the change in the inventory valuation allowances from the COGS denominator used in the calculations of the G&A and financial expense ratios. The Department stated that the reported COM did not include the changes in the inventory valuation.
- NEXTEEL argues that the COGS reflects the original acquisition cost of the raw materials in accordance with the Department's practice. Accordingly, deducting the change in the inventory valuation allowance from the COGS results in understating the COGS because the total acquisition cost for the materials is not included. Thus, the Department should revise the COGS denominator, used to calculate the G&A and financial expense ratios in the *Preliminary Results*, to not include the changes in the inventory valuation.<sup>507</sup>

##### *Maverick's Rebuttal Arguments:*

- Maverick contends that the Department's objective is not to improve the company's financial reporting, but to calculate the cost of production in conformity with its books and records. As the Department noted, the items in question were recorded in NEXTEEL's books and records, but excluded from the reported costs. Thus, it is

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<sup>506</sup> *See* NEXTEEL Final Cost Calculation Memorandum.

<sup>507</sup> *See* NEXTEEL Case Brief, at 27-29.

appropriate to deduct them from the COGS used as the denominator in calculating the G&A and financial expense ratios.<sup>508</sup>

Department's Position:

We agree with Maverick that the reported COM does not include the inventory valuation allowance and, likewise, the COGS denominator should not include the inventory valuation allowance. We note that NEXTEEL's COGS in its audited 2015 financial statements includes the inventory valuation allowances,<sup>509</sup> while the costs reported to the Department do not include this allowance. Therefore, not including the inventory valuation allowance in the COGS denominator does not understate the COGS, it ensures the COGS denominator used in calculating the G&A and financial expense ratios is on the same basis, as to what it is applied to. Therefore, we reduced the COGS by the amount of the inventory valuation allowances.

Comment 36: Affiliation

*NEXTEEL's Arguments:*

- The Department erroneously determined in the *Preliminary Results* that NEXTEEL is affiliated with POSCO and POSCO Daewoo.
- The Department found "control" between NEXTEEL and POSCO Daewoo under section 771(33)(G) of the Act, but the Department normally applies a high standard when determining whether a close supplier relationship results in affiliation.
- The SAA clarifies that the Department will not find that control exists as a result of a close supplier relationship unless "the supplier or buyer becomes reliant upon another," and the Department's regulations state that such a relationship must have the potential to impact decisions regarding the production, pricing or cost of the merchandise.<sup>510</sup>
- In examining whether there was a close supplier relationship in the investigation, the Department looked at the volume of HRC that NEXTEEL purchased from POSCO as a percentage of total HRC purchases, and the volume of NEXTEEL's sales to POSCO's affiliate, Daewoo International (now POSCO Daewoo), as a percentage of total sales. The Department found affiliation primarily based on these percentages, stating that "{ t}he combination of {POSCO's} involvement on both the production and sales side creates a unique situation where POSCO is operationally in a position to exercise restraint or direction over NEXTEEL."<sup>511</sup>
- Information on the record of the instant review shows that the fact pattern has changed since the investigation. In particular, the record establishes that NEXTEEL's purchases of HRC from suppliers other than POSCO and POSCO's affiliates have increased, and NEXTEEL's sales through POSCO Daewoo have decreased.<sup>512</sup>

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<sup>508</sup> See Maverick Rebuttal Brief, at 24-25.

<sup>509</sup> See NEXTEEL DSQR, at Exhibit SD-1A.

<sup>510</sup> See NEXTEEL Case Brief, at 3 (citing the SAA, at 838 and 19 CFR 351.102(b)(3), respectively).

<sup>511</sup> *Id.*, at 3-4 (citing Letter from NEXTEEL to the Department, "Oil Country Tubular Goods from the Republic of Korea: NEXTEEL's Pre-Preliminary Comments," dated September 26, 2016, at 3).

<sup>512</sup> *Id.*, at 4-5 (citing Letter from NEXTEEL to the Department, "Oil Country Tubular Goods from the Republic of Korea: Supplemental Section C Questionnaire Response," dated June 8, 2016, at 2-5 and Exhibits SC-4 and SC-5).

- If POSCO were in a position to exercise restraint or control over NEXTEEL, one would expect NEXTEEL to sell only through POSCO Daewoo, or to purchase HRC only through POSCO. Since the facts on the record of the instant review do not support a finding of reliance or control, the Department should find for these final results that NEXTEEL is not affiliated with POSCO or POSCO Daewoo.

*Maverick's Rebuttal Arguments:*

- The information on the record supports that NEXTEEL is affiliated with POSCO and POSCO Daewoo. This was the Department's determination in the *Preliminary Results*, and the Department should remain consistent in the final results.
- The CIT recently upheld the Department's finding from the original investigation in *Husteel v. United States*,<sup>513</sup> and there have been no significant changes with respect to affiliation.
- The Department stated in the original investigation and the *Preliminary Results* that the relationship between NEXTEEL, POSCO, and POSCO Daewoo goes beyond that of a "close supplier relationship." POSCO is involved in both the production and sale of NEXTEEL's OCTG, so POSCO is in a position to exercise restraint or direction over NEXTEEL.
- A significant majority of NEXTEEL's OCTG operations relied on HRC produced by POSCO during the POR, even following the collapse in drilling activity, and HRC is the largest input used to produce OCTG.
- NEXTEEL also depends on POSCO for its sales operations, as POSCO Daewoo accounted for a significant majority of NEXTEEL's U.S. sales of OCTG during the POR.
- POSCO normally provides NEXTEEL with marketing support, and the two companies share technology and market information regarding OCTG. These facts on the record have not been disputed.
- Information on the record regarding the lawsuit between Atlas and POSCO Daewoo shows that the relationship between those two companies extends to NEXTEEL, as it was POSCO Daewoo that gave NEXTEEL access to Atlas.
- NEXTEEL's access to Atlas, through POSCO Daewoo, appears to have also depended on the favorable pricing offered through NEXTEEL's affiliation with POSCO and POSCO Daewoo. As such, NEXTEEL's ability to make sales to Atlas was based on NEXTEEL's ability to sell OCTG at lower prices than it sold OCTG to other customers.
- The Department has recognized that a supplier relationship between affiliated parties, and the corresponding ability to control, continues to exist even when a party is not an exclusive supplier to the other.

*NEXTEEL's Rebuttal Arguments:*

- Many issues raised by Maverick in its case brief are based on the assumption that NEXTEEL is affiliated with POSCO Daewoo; however, the record does not support this assumption.

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<sup>513</sup> See Maverick Rebuttal Brief, at 5 (citing *Husteel Co. v. United States*, 98 F. Supp. 3d 1315, 1349-51 (Ct. Int'l Trade 2015)).

- The Department erroneously determined in the *Preliminary Results* that NEXTEEL is affiliated with POSCO and POSCO Daewoo, and should disregard POSCO’s cost data and POSCO’s sales data for the purposes of calculating a weighted-average dumping margin for NEXTEEL.
- The Department’s affiliation ruling in the investigation of this proceeding was based on a finding of “control” under section 771(33)(G) of the Act. The SAA clarifies that the Department will not find that control exists as a result of a close supplier relationship unless “the supplier or buyer becomes reliant upon another,” and the Department’s regulations state that such a relationship must have the potential to impact decisions regarding the production, pricing or cost of the merchandise and be “so significant that it could not be replaced.”
- Information on the record of the instant review shows that the fact pattern concerning the volume of sales made through POSCO Daewoo has changed since the investigation. NEXTEEL’s purchases of HRC from suppliers other than POSCO have increased, and NEXTEEL’s sales to POSCO Daewoo have decreased to the point that neither the relationship with POSCO nor POSCO Daewoo is “so significant that {they} could not be replaced.”
- The facts of this review demonstrate that the standard for affiliation by virtue of reliance and control do not exist. The Department should reexamine, based on information on the record of this proceeding regarding the changed fact pattern, its affiliation finding in this administrative review.
- Maverick’s proposed alterations to arm’s-length adjustment, based on insufficient record evidence, are incorrect. Should the Department continue to apply an arm’s-length test and major-input analysis in this review, the Department should continue to follow its standard practice.

*Department’s Position:*

We continue to find that NEXTEEL and its supplier of steel coil, POSCO, are affiliated within the meaning of section 771(33)(G) of the Act. We also continue to find that NEXTEEL is affiliated with POSCO Daewoo, pursuant to section 771(33)(F) of the Act, because NEXTEEL and Daewoo (which is wholly owned by POSCO) are under the common control of POSCO.

In accordance with 771(33) of the Act, the following persons shall be considered affiliated: (A) members of a family, including brothers and sisters, spouse, ancestors, and lineal descendants; (B) any officer or director of an organization and such organization; (C) partners; (D) employer and employee; (E) any person directly or indirectly owning, controlling, controlled by, or holding with power to vote, five percent or more of the voting stock or shares of any organization and such organization; (F) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) any person who controls any other person and such other person. To find affiliation between two companies, at least one of the criteria above must be applicable.

Section 771(33) of the Act further provides that “{f}or purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.” The Department’s regulations at 19 CFR

351.102(b)(3) state that, in finding affiliation based on control, the Department will consider, among other factors: (i) corporate or family groupings; (ii) franchise or joint venture agreements; (iii) debt financing; and (iv) close supplier relationships. Control between persons may exist in close supplier relationships in which either party becomes reliant on one another.<sup>514</sup> With respect to close supplier relationships, the Department has determined that the threshold issue is whether either the buyer or seller has, in fact, become reliant on the other. Only if such reliance exists does the Department then determine whether one of the parties is in a position to exercise restraint or direction over the other.<sup>515</sup> The Department will not, however, find affiliation on the basis of this factor unless the relationship has the potential to affect decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.<sup>516</sup>

In establishing whether there is a close supplier relationship, the Department normally looks to whether one of the parties has become reliant on the other. However, in this situation, the argument for affiliation goes beyond a close supplier relationship. POSCO is involved in both the production and sales sides of NEXTEEL's operations involving subject merchandise. The combination of its involvement on both the production and sales sides creates a unique situation where POSCO is operationally in a position to exercise restraint or direction over NEXTEEL in a manner that affects the pricing, production, and sale of OCTG. The preamble to the Department's regulations states that section 771(33) of the Act, which refers to a person being "in a position to exercise restraint or direction," properly focuses the Department on the *ability* to exercise "control," rather than the actual exercise of control over specific transactions. In this case, given POSCO's involvement as a supplier, as well as its involvement in the sales process, POSCO is in a unique position to exercise restraint or control over NEXTEEL.

NEXTEEL argues that, since the investigation, NEXTEEL's purchases of HRC from suppliers other than POSCO and POSCO affiliates have increased, while NEXTEEL's sales through POSCO Daewoo have decreased. Despite changes to the percentages of NEXTEEL's purchases from, and sales to, POSCO and POSCO's affiliates, we continue to find that the record supports continuing to find that NEXTEEL is affiliated with POSCO and POSCO Daewoo. During the POR, NEXTEEL purchased the majority of its HRC inputs from POSCO for the production of OCTG and sold significant amounts of the OCTG to POSCO Daewoo.<sup>517</sup> Thus, we continue to find that, while the exact percentages of NEXTEEL's input purchases and OCTG sales may have changed between the period of investigation and the current POR, these purchases and sales are, nonetheless, significant and support a continued finding that NEXTEEL is affiliated with POSCO and POSCO Daewoo, for the reasons discussed in the *Preliminary Results*.<sup>518</sup>

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<sup>514</sup> See, e.g., SAA at 838.

<sup>515</sup> See, e.g., *Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011), and accompanying Issues and Decision Memorandum at Comment 21.

<sup>516</sup> See 19 CFR 351.102(b)(3).

<sup>517</sup> See *Preliminary Results*, and accompanying Preliminary Decision Memorandum at 6-7.

<sup>518</sup> *Id.*

## Comment 37: Universe of U.S. Sales

### *NEXTEEL's Arguments:*

- In the *Preliminary Results*, the Department incorrectly excluded pre-POR sales with POR entry dates and included POR sales with post-POR entry dates. For the final results, instead of including only those U.S. sales with sale dates in the POR, the Department should correct NEXTEEL's margin program to include all, and only those, sales that entered the United States during the POR.
- Citing various decisions by the Department, NEXTEEL claims the Department's established practice is to compute AD margins only on those sales which actually entered during the POR.<sup>519</sup>
- Consistent with the Department's instructions in the original questionnaire, NEXTEEL reported U.S. sales data for sales with entry dates during the POR because it knew the date of entry for all of its U.S. sales.<sup>520</sup>
- The Department should not include POR sales with post-POR entry dates in its calculations, because those sales will be included in the margin calculations in the next administrative review, and the Department's liquidation instructions for the instant review will only cover sales that entered the United States during this POR.
- To amend the universe of sales to include the direct EP sales that entered during the POR, and linked CEP sales that were sold during the POR, the Department should make specific changes to the margin calculation program using NEXTEEL's proffered SAS programming language.<sup>521</sup>

### *Maverick's Rebuttal Arguments:*

- To the extent that the Department modifies the universe of NEXTEEL's U.S. sales to include only those sales that entered the United States during the POR, the Department should ensure that it applies the appropriate adjustments for sales that entered during the POR and are subject to the lawsuit between POSCO Daewoo and Atlas.
- The issue is whether NEXTEEL properly reported the U.S. price for sales subject to the lawsuit that entered and were not sold.
- NEXTEEL has refused to provide information regarding those sales and total AFA is warranted.
- If the Department does not apply total AFA to NEXTEEL, it should apply partial AFA to those sales by using the highest dumping margin alleged in the petition.
- If partial AFA is not applied, the Department should adjust the gross unit prices reported for those sales and treat unpaid pipe as scrap.

### *Department's Position:*

It is the Department's longstanding practice to calculate a respondent's weighted-average dumping margin, whenever possible, based on the sale prices associated with all entries of

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<sup>519</sup> See NEXTEEL Case Brief, at 19.

<sup>520</sup> *Id.*, at 19-20 (citing NEXTEEL AQR, at Exhibit A-1 and NEXTEEL CQR, at C-35.)

<sup>521</sup> *Id.*, at 21.

subject merchandise into the United States during the POR.<sup>522</sup> As such, the Department agrees with NEXTEEL that it should modify the universe of sales used in NEXTEEL's margin program to include all U.S. sales with reported entry dates during the POR.

Regarding Maverick's argument that Department must apply the appropriate adjustments for sales that entered during the POR and are subject to the lawsuit between POSCO Daewoo and Atlas, we have already addressed Maverick's arguments concerning the lawsuit. Specifically, as explained in Comments 26 and 27, above, the Department finds that the application of total or partial AFA to NEXTEEL is not warranted for these final results. While we have applied the "facts otherwise available" to determine the date of payment for unpaid and partially paid sales subject to the lawsuit between POSCO Daewoo and Atlas, our determination to define the universe of U.S. sales in NEXTEEL's margin program does not impact our treatment of sales subject to the lawsuit between POSCO and Atlas.

Accordingly, for these final results, the Department made the necessary changes to the margin program to include all U.S. sales with reported dates of entry during the POR. For details regarding these changes, *see* the NEXTEEL Final Analysis Memorandum.<sup>523</sup>

#### Comment 38: U.S. Freight and Storage

##### *NEXTEEL's Arguments:*

- The Department erred in the *Preliminary Results* by computing an adjustment for freight and storage expenses that POSCO Daewoo temporarily bore as a result of its dispute with a certain customer. These expenses were unrelated to NEXTEEL's and POSCO Daewoo's U.S. sales, and, thus, they should not be deducted.
- These expenses will be reimbursed once this dispute is resolved, at which time the exact amount of the litigation-related expenses will be finalized.
- If the Department continues to adjust for these expenses, the Department should revise its calculation by making an adjustment only to the specific invoices subject to the litigation, and basing it on the total weight of those invoices. NEXTEEL proposes SAS programming language to implement this change.<sup>524</sup>

##### *Maverick's Rebuttal Arguments:*

- The Department should continue to deduct certain freight and storage expenses incurred by POSCO Daewoo.
- NEXTEEL's claim that these expenses should not be deducted because POSCO Daewoo will ultimately be reimbursed is unsubstantiated, and, therefore, should be rejected.
- This adjustment should be based on partial AFA and, thus, it should be applied to all sales.

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<sup>522</sup> See section 751(a)(2)(A) of the Act.

<sup>523</sup> See NEXTEEL Final Analysis Memorandum.

<sup>524</sup> See NEXTEEL Case Brief, at 22-23 (citing POSCO Daewoo CSQR, at Exhibits S-4 and S-4A and NEXTEEL Preliminary Analysis Memorandum, at Attachment 4.

Department's Position:

During the POR, POSCO Daewoo incurred freight and warehousing expenses as a result of its dispute with a certain U.S. customer concerning sales of OCTG.<sup>525</sup> Thus, we disagree with NEXTEEL that we should disregard these expenses from the calculation of NEXTEEL's margin. However, because only certain sales in POSCO Daewoo's database are subject to this dispute,<sup>526</sup> we agree with NEXTEEL that it is appropriate to apply these expenses only to the specific invoices subject to the litigation. Further, we agree with NEXTEEL that it is appropriate to allocate these expenses to the total quantity on the invoices subject to the lawsuit. Accordingly, for these final results, we have revised our calculation of the freight and storage expenses at issue by allocating them to the total quantity of the invoices subject to the lawsuit, and applying the resulting ratio only to the invoices subject to the lawsuit. For more information, *see* the NEXTEEL Final Analysis Memorandum.

**VIII. RECOMMENDATION**

We recommend following the above methodology for these final results.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

4/10/2017

X *Ronald K. Lorentzen*

Signed by: RONALD LORENTZEN

\_\_\_\_\_  
Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

April 10, 2017

\_\_\_\_\_  
Date

<sup>525</sup> See POSCO Daewoo CSQR, at 7 and Exhibit S-9A.

<sup>526</sup> See POSCO Daewoo CSQR, at Exhibit S-4A.