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April 11, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
2015-2016 Administrative Review of the Antidumping Duty Order
on Certain Oil Country Tubular Goods from the Republic of Korea

I. SUMMARY

The Department of Commerce (Commerce) 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) September 1, 2015 through August 31, 2016. This administrative review covers 31 producers or exporters of the subject merchandise. Based upon our analysis of the comments received, we made certain changes from the *Preliminary Results*.¹ We revised the margin calculation for one of the mandatory respondents, SeAH Steel Corporation (SeAH), and continue to find that SeAH sold the subject merchandise in the United States at prices below the normal value (NV) during the POR. For the other mandatory respondent, NEXTEEL Co., Ltd. (NEXTEEL), we recommend applying adverse facts available (AFA) because it failed to cooperate to the best of its ability. In addition, we continue to find that Hyundai RB Co., Ltd. (Hyundai RB), Samsung, Samsung C&T Corporation (Samsung C&T), and SeAH Besteel Corporation (SeAH Besteel) made no shipments of the subject merchandise during the POR. We

¹ See *Certain Oil Country Tubular Goods from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 46963 (October 10, 2017) (*Preliminary Results*), and accompanying Decision Memorandum (Preliminary Decision Memorandum).



recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

II. BACKGROUND

On October 10, 2017, Commerce published the *Preliminary Results* of this administrative review.² In accordance with 19 CFR 351.309(c), we invited interested parties to comment on the *Preliminary Results*.³ On November 30, 2017, the following parties submitted case briefs: petitioner Maverick Tube Corporation and TenarisBayCity (collectively, Maverick); petitioner United States Steel Corporation (U.S. Steel); SeAH; NEXTEEL; and non-examined respondent ILJIN Steel Corporation (ILJIN).⁴ On December 8, 2017, the following parties submitted rebuttal briefs: Maverick; U.S. Steel; SeAH; NEXTEEL; ILJIN; non-examined respondent Husteel Co., Ltd. (Husteel); and non-examined respondent Hyundai Steel Company (Hyundai Steel).⁵

On January 19, 2018, Maverick and U.S. Steel collectively filed a duty reimbursement allegation with respect to NEXTEEL.⁶ On January 25, 2018, Commerce issued a letter to interested parties, accepting the petitioners’ duty reimbursement allegation because they had established good cause for Commerce to extend the time limit to place information on the record.⁷ We also stated in that letter that we were establishing a time period for interested parties to submit comments on the duty reimbursement allegation. On February 2, 2018, we issued a letter to the petitioners regarding their duty reimbursement allegation, asking that they provide the requisite request for business proprietary information treatment and explanation for their single and

² See *Preliminary Results*, 82 FR at 46963.

³ See *Preliminary Results*, 82 FR at 46964.

⁴ See, respectively, Letter from Maverick, “*Certain Oil Country Tubular Goods from the Republic of Korea: Case Brief*,” dated November 30, 2017 (Maverick Case Brief); Letter from U.S. Steel, “*Oil Country Tubular Goods from the Republic of Korea*,” dated November 30, 2017 (U.S. Steel Case Brief); Letter from SeAH, “*Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea – Case Brief of SeAH Steel Corporation*,” dated November 30, 2017 (SeAH Case Brief); Letter from NEXTEEL, “*Oil Country Tubular Goods from the Republic of Korea: NEXTEEL’s Affirmative Case Brief*,” dated November 30, 2017 (NEXTEEL Case Brief); and Letter from ILJIN, “*Oil Country Tubular Goods from the Republic of Korea: Case Brief*,” dated November 30, 2017 (ILJIN Case Brief).

⁵ See, respectively, Letter from Maverick, “*Certain Oil Country Tubular Goods from the Republic of Korea: Rebuttal Brief*,” dated December 8, 2017 (Maverick Rebuttal Brief); Letter from U.S. Steel, “*Oil Country Tubular Goods from the Republic of Korea*,” dated December 8, 2017 (U.S. Steel Rebuttal Brief); Letter from SeAH, “*Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea – Rebuttal Case Brief of SeAH Steel Corporation*,” dated December 8, 2017 (SeAH Rebuttal Brief); Letter from NEXTEEL, “*Oil Country Tubular Goods from the Republic of Korea: NEXTEEL’s Rebuttal Brief*,” dated December 8, 2017; Letter from ILJIN, “*Oil Country Tubular Goods from the Republic of Korea: Rebuttal Case Brief*,” dated December 8, 2017 (ILJIN Rebuttal Brief); Letter from Husteel, “*Oil Country Tubular Goods from the Republic of Korea, Case No. A-580-870: Rebuttal Brief*,” dated December 8, 2017 (Husteel Rebuttal Brief); and Letter from Hyundai Steel, “*Oil Country Tubular Goods from the Republic of Korea: Hyundai Steel’s Rebuttal Brief*,” dated December 8, 2017 (Hyundai Steel Rebuttal Brief).

⁶ See Maverick and U.S. Steel Letter, “*Oil Country Tubular Goods from The Republic of Korea: Duty Reimbursement and Further Information in Support of Duties as a Cost Allegation*,” dated January 19, 2018 (Petitioners’ January 19, 2018 Letter).

⁷ See Letter to Interested Parties, “*Oil Country Tubular Goods from the Republic of Korea: Deadline to Comment on Allegation*,” dated January 25, 2018.

double bracketing, and that they also unbracket certain public documents referenced in their submission.⁸ Also on February 2, 2018, NEXTEEL and Maverick and U.S. Steel submitted comments on the duty reimbursement allegation.⁹ On February 6, 2018, Maverick resubmitted the petitioners' duty reimbursement allegation in order to address the issues regarding treatment of business proprietary information and bracketing identified in their original duty reimbursement allegation.¹⁰ On February 7, 2018, SeAH requested that it be permitted to respond to Petitioners' February 2, 2018 Letter.¹¹ On February 23, 2018, Commerce granted SeAH's request,¹² and on March 5, 2018, SeAH filed comments on Petitioners' February 2, 2018 Letter.¹³

On March 30, 2018, Commerce issued a letter in which we stated that we were rejecting NEXTEEL's rebuttal brief because it contained untimely filed new factual information, and that NEXTEEL could refile its rebuttal brief without the information in question.¹⁴ On April 3, 2018, NEXTEEL resubmitted its rebuttal brief after removing the information in question,¹⁵ and on that same date, filed a separate letter in which it requested that Commerce "reverse its decision to reject the brief and... consider NEXTEEL's arguments in full for purposes of the upcoming final results of this administrative review."¹⁶ On April 5, 2018, Maverick submitted a letter opposing NEXTEEL's request for Commerce to reconsider its rejection of NEXTEEL's rebuttal brief.¹⁷

On January 23, 2018, Commerce exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from January 20 through 22, 2018.¹⁸ If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the

⁸ See Letter to Maverick and U.S. Steel, dated February 2, 2018.

⁹ See, respectively, Letter from NEXTEEL, "Oil Country Tubular Goods from the Republic of Korea: NEXTEEL's Response to Additional Duty Absorption Comments," dated February 2, 2018 (NEXTEEL February 2, 2018 Letter) and Letter from Maverick and U.S. Steel, "Oil Country Tubular Goods from The Republic of Korea: Comments on Duty Reimbursement Allegation," dated February 2, 2018 (Petitioners' February 2, 2018 Letter).

¹⁰ See Letter from Maverick, "Oil Country Tubular Goods from The Republic of Korea: Resubmission of Petitioners' Duty Reimbursement and Further Information in Support of Duties as a Cost Allegation," dated February 6, 2018. Throughout this memorandum, we refer to the duty reimbursement allegation by the date of its original submission.

¹¹ See Letter from SeAH, "Oil Country Tubular Goods from the Republic of Korea – Comments on Wiley Rein's February 2 Letter," dated February 7, 2018.

¹² See Letter to SeAH, dated February 23, 2018.

¹³ See Letter from SeAH, "Oil Country Tubular Goods from the Republic of Korea – Response to Wiley Rein's February 2 Letter," dated March 5, 2018 (SeAH March 5, 2018 Letter).

¹⁴ See Letter to NEXTEEL, "Oil Country Tubular Goods from the Republic of Korea: Rejection of NEXTEEL's Rebuttal Brief," dated March 30, 2018.

¹⁵ See Letter from NEXTEEL, "Oil Country Tubular Goods from the Republic of Korea: NEXTEEL's Resubmission of Rebuttal Brief," dated April 3, 2018 (NEXTEEL Rebuttal Brief).

¹⁶ See Letter from NEXTEEL, "Oil Country Tubular Goods from the Republic of Korea: Request to Reconsider Rejection of Rebuttal Brief," dated April 3, 2018.

¹⁷ See Letter from Maverick, "Certain Oil Country Tubular Goods from the Republic of Korea: Opposition to NEXTEEL's Request for Reconsideration of Rejection of NEXTEEL's Rebuttal Brief," dated April 5, 2018.

¹⁸ See Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

next business day. On January 31, 2018, Commerce extended the deadline for the final results of this administrative review until April 11, 2018.¹⁹

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

III. 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, 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.

¹⁹ See Memorandum, "Certain Oil Country Tubular Goods from the Republic of Korea: Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2015-2016," dated January 31, 2018.

IV. DUTY ABSORPTION

In the *Preliminary Results*, Commerce indicated that it would make a determination in the final results of this review as to whether SeAH and NEXTEEL absorbed AD duties during the instant POR.²⁰ For these final results, we find that SeAH and NEXTEEL have absorbed AD duties. For more information, *see* Comment 5 in the section “Discussion of the Issues,” below.

V. MARGIN CALCULATIONS AND APPLICATION OF AFA

For SeAH, Commerce calculated constructed export price (CEP) and NV using the same methodology as stated in the *Preliminary Results*, except that we recalculated the general and administrative (G&A) expense ratio for SeAH’s U.S. affiliate by reversing an offset for claim income and applying the revised G&A ratio in the margin program for SeAH.

For NEXTEEL, Commerce found that NEXTEEL withheld necessary information and, thus, failed to cooperate to the best of its ability in responding to Commerce’s requests for information. Therefore, we find that the application of adverse facts available, pursuant to section 776(a)-(b) of the Act, is warranted with respect to NEXTEEL for these final results. For more information on this issue, *see* Comment 6 in the section “Discussion of the Issues,” below.

VI. RATE FOR NON-EXAMINED COMPANIES

The statute and Commerce’s regulations do not address the establishment of a rate to be applied to companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce 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}.”

For these final results, we calculated a weighted-average dumping margin that is not zero, *de minimis*, or determined entirely on the basis of facts available for SeAH, and we determined NEXTEEL’s margin entirely on the basis of facts available. Because SeAH’s weighted-average dumping margin is the only margin that is not zero, *de minimis*, or determined entirely on the basis of facts available, in accordance with our standard practice, Commerce assigns to the companies not individually examined the 6.75 percent weighted-average dumping margin calculated for SeAH for these final results.

²⁰ *See* Preliminary Decision Memorandum, at 6.

VII. DISCUSSION OF THE ISSUES

General Issues

- Comment 1: Particular Market Situation
- Comment 2: Additional Particular Market Situation Adjustments
- Comment 3: Allegation of Improper Political Influence
- Comment 4: Calculation of ILJIN's Margin
- Comment 5: Duty Absorption
- Comment 6: Duty Reimbursement and Application of Adverse Facts Available
- Comment 7: Calculation of Constructed Value Profit
- Comment 8: Differential Pricing
- Comment 9: Rate for Non-Examined Respondents

SeAH-Specific Issues

- Comment 10: Interested Party Standing
- Comment 11: Reporting of Grade Codes
- Comment 12: Freight Revenue Cap
- Comment 13: Treatment of General and Administrative Expenses Incurred by SeAH's U.S. Affiliate in Further Manufacturing Costs
- Comment 14: Calculation of General and Administrative Expenses Incurred by SeAH's U.S. Affiliate
- Comment 15: Treatment of Interest Expenses for SeAH's U.S. Affiliate in Further Manufacturing Costs

NEXTEEL-Specific Issues

- Comment 16: NEXTEEL's Warranty Expense Calculation
- Comment 17: POSCO Daewoo's Warranty Expense Calculation
- Comment 18: POSCO Daewoo's Further Manufacturing Costs
- Comment 19: Suspended Production Losses
- Comment 20: Cost Adjustment for Downgraded, Non-OCTG Pipe
- Comment 21: Programming Errors

Comment 1: Particular Market Situation

Background:

In the *Preliminary Results*, Commerce determined that a particular market situation (PMS) existed in Korea which distorted the cost of production (COP) of OCTG, based on the cumulative effect of: (1) Korean subsidies on the hot-rolled coil (HRC) input; (2) Korean imports of HRC from China; (3) strategic alliances between Korean HRC and OCTG producers; and (4) distortions in the Korean electricity market. In the *Preliminary Results*, we quantified the impact of the PMS in Korea by making an upward adjustment to the respondents' reported HRC costs,

basing that adjustment on the subsidy rates, net of export subsidies, from the countervailing duty (CVD) investigation in *Hot-Rolled Steel Flat Products from Korea*.²¹

SeAH's Comments:

- Two of the factors leading to Commerce's PMS finding in the *Preliminary Results*, strategic alliances and government control over electricity costs, are entirely irrelevant to SeAH. Regarding strategic alliances, Commerce has consistently found that SeAH and POSCO are not affiliated.²² As for electricity, Commerce found that the prices SeAH paid for electricity did not confer any subsidy benefit.²³
- With respect to HRC, there is no evidence that the prices SeAH paid were affected by subsidies allegedly provided to POSCO or Chinese suppliers' alleged predatory practices, as shown by the following:
 - The subsidy finding in *Hot-Rolled Steel Flat Products from Korea* was based completely on AFA.
 - There is no evidence of any findings of dumping against Chinese coil producers by the Korean government.
 - SeAH's largest supplier of HRC was a Japanese producer; thus, even if POSCO and Chinese suppliers sold HRC at unreasonably low prices, the effect on SeAH's production costs would be minimal.
 - A comparison of the average prices, by grade, for SeAH's purchases of HRC from POSCO and SeAH's Japanese supplier substantiates that POSCO's prices were not unfairly low.²⁴
 - SeAH only purchased one grade of HRC from Chinese suppliers that it used to make OCTG during the POR. SeAH also bought this grade from its Japanese supplier (but not from POSCO). A comparison of the average purchase prices from SeAH's Chinese and Japanese suppliers shows that they were nearly the same.²⁵
- Record evidence disproves the argument that SeAH's HRC costs do not reflect the cost of production in the ordinary course of trade. Rather, the record confirms that the prices SeAH

²¹ See *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016) (*Hot-Rolled Steel Flat Products from Korea Final Determination*), as amended in *Certain Hot-Rolled Steel Flat Products from Brazil and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders*, 81 FR 67960 (October 3, 2016) (collectively, *Hot-Rolled Steel Flat Products from Korea*).

²² See SeAH Case Brief, at 18, footnote 38 (citing *Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 742 (January 7, 2016) (*Stainless Steel Pipe from Korea Preliminary Results*) and accompanying Decision Memorandum at 7-8, and *Welded Line Pipe from the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 80 FR 29620 (May 22, 2015) (*Welded Line Pipe from Korea LTFV Preliminary Determination*) and accompanying Decision Memorandum at 18).

²³ *Id.*, at 18 (citing *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015) (*Welded Line Pipe from Korea (CVD)*), and accompanying Issues and Decision Memorandum at VI.B.1 and Comment 1).

²⁴ See SeAH Case Brief, at 20 (citing SeAH's August 25, 2017 section D and E supplemental questionnaire response (SeAH August 25, 2017 SQR), at Appendix SD-4).

²⁵ *Id.*, at 20-21 (citing SeAH August 25, 2017 SQR, at Appendix SD-4).

paid POSCO and its Chinese suppliers for HRC were consistent with market prices, as shown by the prices SeAH paid its Japanese supplier.

- Based on the foregoing, there is no basis on which to make a PMS adjustment for SeAH.
- However, if Commerce does make a PMS adjustment to SeAH's costs, it should not rely on POSCO's subsidy rate from *Hot-Rolled Steel Flat Products from Korea*. Instead, Commerce should rely on the subsidy rate calculated for POSCO in *Cut-to-Length Plate from Korea*,²⁶ as this case is more recent than *Hot-Rolled Steel Flat Products from Korea*, covered a period more contemporaneous with the instant POR, and was not based entirely on AFA.

NEXTEEL's Comments:

- No finding of PMS and no adjustments for PMS are warranted in this case.
- Commerce's finding in the *Preliminary Results* that a PMS existed with respect to NEXTEEL's HRC inputs is contrary to the statute, because the statute contains two elements, namely; (1) the particular market situation exists; and (2) the respondent's costs do not accurately reflect the COP in the ordinary course of trade. Commerce failed to recognize that NEXTEEL's COPs accurately reflect the COP in the ordinary course of trade.²⁷
- Commerce made no new factual findings in the *Preliminary Results* and merely relied on the results from *OCTG from Korea POR I*.^{28,29}

The Preliminary Results Do Not Account for Key Factual Changes Since OCTG from Korea POR I

- POSCO's subsidy rate from *Hot-Rolled Steel Flat Products from Korea* is irrelevant because it covered 2014 (*i.e.*, it is not contemporaneous), was based on total AFA, and does not relate to OCTG.
- In *Cut-to-Length Plate from Korea*, Commerce found that POSCO does not receive the subsidies for which Commerce applied AFA in *Hot-Rolled Steel Flat Products from Korea*.³⁰ Also, *Cut-to-Length Plate from Korea* covered 2015, which overlaps with the instant POR, and was based on calculations, not AFA.
- Commerce verified POSCO's COP information related to hot-rolled steel, and made no mention of subsidies, distortion, or government distortions in POSCO's costs.³¹

²⁶ See *Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 82 FR 16341 (April 4, 2017) (*Cut-to-Length Plate from Korea*).

²⁷ See NEXTEEL Case Brief, at 2-3 (citing section 504 of the Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA)).

²⁸ See *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014–2015*, 82 FR 18105 (April 17, 2017) (*OCTG from Korea POR I*).

²⁹ See NEXTEEL Case Brief, at 2 (citing Preliminary Decision Memorandum, at 17).

³⁰ *Id.*, at 6 (citing *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 63168 (September 14, 2016) (*Cut-to-Length Plate from Korea Preliminary Determination and Cut-to-Length Plate from Korea*)).

³¹ *Id.*, at 7 (citing NEXTEEL Letter, "Oil Country Tubular Goods from the Republic of Korea: NEXTEEL Particular Market Situation Comments," dated August 7, 2017, at Exhibit 6).

- While it is improper to use CVD calculations in an AD case, if Commerce continues to make a CVD-based PMS adjustment for the final results, it should rely on the *Cut-to-Length Plate from Korea Preliminary Determination* or *Cut-to-Length Plate from Korea*.
- Commerce has not cited any current evidence that POSCO's sales to NEXTEEL reflected distorted or artificially low prices.
- As for Chinese HRC, NEXTEEL obtained a negligible amount of HRC from Chinese producers during the POR.
- The volume of imports from China into Korea is not significant enough to have an impact on the Korean market, which operates under normal market conditions.
- Neither the petitioners nor Commerce's *Preliminary Results* refer to any data which indicate that Chinese imports constitute a "flood" relative to the overall production of hot-rolled steel sheet products in Korea. Only about 20 percent of hot-rolled steel imports into Korea come from China.³²
- The petitioners point to no evidence that Chinese overcapacity is directed to the Korean market.
- Regarding electricity, record evidence contemporaneous with the instant POR shows that NEXTEEL's electricity rates reflected market principles.³³
- Commerce has found no countervailable subsidies with respect to electricity.³⁴

NEXTEEL's Reported HRC Costs Were Incurred within the Ordinary Course of Trade

- Commerce's PMS finding in the *Preliminary Results* is based on its PMS finding in *OCTG from Korea POR 1*, where it found a PMS existed due to the cumulative effect of four factors, three of which it could not quantify.
- Since *OCTG from Korea POR 1*, Commerce's PMS analysis has evolved. Commerce has abandoned the "totality of the circumstances" test used in *OCTG from Korea POR 1* and now uses a data-driven, quantitative analysis.³⁵

³² *Id.*, at 9 (citing NEXTEEL Letter, "Oil Country Tubular Goods from the Republic of Korea: Particular Market Situation Rebuttal Comments and Factual Information," dated August 15, 2017 (NEXTEEL August 15, 2017 Letter), at Exhibit 1 and 7, and Maverick Letter, "Certain Oil Country Tubular Goods from the Republic of Korea: Submission of Factual Information Relating to Particular Market Situation Allegations," dated August 7, 2017 (Maverick August 7, 2017 Letter), at Exhibit 10).

³³ *Id.*, at 11 (citing NEXTEEL August 15, 2017 Letter, at Exhibit 10).

³⁴ *Id.*, at 12 (citing, *inter alia*, *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49946 (July 29, 2016), and accompanying Issues and Decision Memorandum at Comment 2, and *Hot-Rolled Steel Flat Products from Korea Final Determination*, and accompanying Issues and Decision Memorandum at Comment 2).

³⁵ *Id.*, at 14-17 (citing *Steel Concrete Reinforcing Bar from Taiwan: Final Determination of Sales at Less Than Fair Value*, 82 FR 34925 (July 27, 2017) (*Rebar from Taiwan*), and accompanying Issues and Decision Memorandum at Comment 1; *Biodiesel from Argentina: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, *Preliminary Affirmative Determination of Critical Circumstances, in Part*, 82 FR 50391 (October 31, 2017) (*Biodiesel from Argentina Prelim*), and accompanying Decision Memorandum at 23; and *Biodiesel from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 50379 (October 31, 2017) (*Biodiesel from Indonesia Prelim*), and accompanying Decision Memorandum at 23).

- NEXTEEL placed information on the record of this review which demonstrates that its prices are reflective of market reality and not outside the ordinary course of trade, including Steel Benchmark data,³⁶ COMTRADE data,³⁷ and GTA import data.³⁸
- Commerce’s failure to consider these data for the *Preliminary Results* renders that decision contrary to record evidence and the law. These data demonstrate that a PMS does not exist for NEXTEEL’s HRC purchases because they are reflective of world market prices.
- The PMS adjustment applied in the *Preliminary Results* resulted in a high valuation for NEXTEEL’s HRC inputs that is not supported by the record.
- Based on the foregoing, Commerce must reverse its PMS finding for the final results. However, if Commerce continues to find that it is necessary to make an adjustment to NEXTEEL’s costs under the PMS provisions, Commerce should ensure that any such adjustment considers these benchmarks such that the result lines up with HRC market values.

Commerce Should Reverse Its Use of AFA CVD Calculations

- Using an adjustment for HRC purchases from POSCO based on its AFA rate in another proceeding introduces inaccuracies into the calculations and impermissibly punishes NEXTEEL, without any finding of non-cooperation on NEXTEEL’s part.
- Commerce has acknowledged that the AFA rate in *Hot-Rolled Steel Flat Products from Korea* was not reflective of commercial reality. It is contradictory for Commerce to find that it cannot accurately calculate a subsidy rate in one proceeding, while also determining in another proceeding that the same inaccurate subsidy rate can “appropriately quantify” a PMS adjustment.

Strategic Alliances

- Commerce made no effort on the record of this review to confirm or corroborate the existence of a strategic alliance between the OCTG and HRS producers or how a strategic alliance might have contributed to a PMS.
- NEXTEEL’s relationships with its suppliers are not atypical or different from the business relationships of producers and input suppliers across industries and countries. There is nothing outside the ordinary course of trade with respect to this market. No adjustment to NEXTEEL’s costs is warranted under the statute based on such claims.
- Commerce’s *Preliminary Results* PMS findings with respect to the alleged “strategic alliance” between NEXTEEL and POSCO have been fully discredited by the Court of International Trade (CIT).

³⁶ *Id.*, at 18-19 (citing NEXTEEL August 15, 2017 Letter, at Exhibits 5 and 6).

³⁷ *Id.*, at 19-20 (citing NEXTEEL August 15, 2017 Letter, at Exhibit 7, and Maverick August 7, 2017 Letter, at Exhibit 10).

³⁸ *Id.*, at 20 (citing NEXTEEL August 15, 2017 Letter, at Exhibit 9).

ILJIN's Comments:

- Commerce rendered an affirmative PMS decision in the *Preliminary Results* on the strength of its affirmative PMS finding in *OCTG from Korea POR 1*.
- In *OCTG from Korea POR 1*, Commerce found that four factors collectively resulted in a PMS in Korea; however, Commerce issued that finding with no empirical support or explanation as to how the four factors collectively distorted the OCTG market in Korea.
- The standards for evaluating the existence of a PMS have changed since *OCTG from Korea POR 1*. Since then, Commerce has issued a number of PMS decisions, each time providing a detailed, factual analysis.³⁹
- The *Preliminary Results* demonstrate that a detailed, factual analysis of the impact of the alleged conditions is impossible in the instant review, because Commerce found that no such distortions exist, as evidenced by Commerce's inability to quantify an impact with respect to Chinese HRC, strategic alliances, and the Korean electricity market.⁴⁰
- Although Commerce stated in the *Preliminary Results* that it quantified an impact with respect to Korean HRC, a close reading of Commerce's decision shows that it did not do so, but, rather, assumed that a PMS existed based on *OCTG from Korea POR 1* to justify a PMS adjustment.
- Furthermore, Commerce erred in trying to quantify the impact of Korean HRC by using an AFA rate that did not represent the producer's commercial realities, instead of using the more recent decision in *Cut-to-Length Plate from Korea* where Commerce found the producer did not receive any measurable benefit from the subsidy programs that largely made up the AFA rate.⁴¹
- It is contradictory for Commerce to determine that four factors collectively contribute to the existence of a PMS in Korea, yet simultaneously conclude that it cannot quantify the impact of three of those four factors.
- The *Preliminary Results* does not contain any evidence to support the conclusion that the conditions in the Korean market have remained unchanged since *OCTG from Korea POR 1*.
- Based on the foregoing, Commerce should reverse its affirmative PMS determination from the *Preliminary Results* and issue a negative PMS finding for the final results.

Maverick's Rebuttal Comments:

- Under the PMS provision in the Trade Preferences Extension Act of 2015 (TPEA), Commerce has the broad authority to address situations in a foreign market where inputs are purchased and where inherent distortions in the market prevent a fair comparison. Commerce has the authority to choose any alternative methodology to account for distorted prices and costs as reported.

³⁹ See ILJIN Case Brief, at 7-8 (citing, *inter alia*, *Rebar from Taiwan*, and accompanying Issues and Decision Memorandum at Comment 1 and *Certain Softwood Lumber Products from Canada: Final Affirmative Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 82 FR 51806 (November 8, 2017) (*Certain Softwood Lumber from Canada*), and accompanying Issues and Decision Memorandum at Comment 17).

⁴⁰ *Id.*, at 8-9 (citing Preliminary Decision Memorandum, at 19-20).

⁴¹ *Id.*, at 9-10 (citing *Cut-to-Length Plate from Korea Preliminary Determination* and *Cut-to-Length Plate from Korea*).

- Commerce should continue to find that a PMS exists in Korea, and continue to increase reported costs for HRC purchased from Korean suppliers using the subsidy rates in *Hot-Rolled Steel Flat Products from Korea*.

Existence of a Particular Market Situation in Korea

- The four alleged factors combine to cause a distortion in the price and cost of steel production in Korea, preventing an accurate comparison.
- NEXTEEL and SeAH are mandatory respondents in the instant review and in the first administrative review, where Commerce first found the existence of a PMS in Korea. The facts in the instant review are also largely identical to the facts in the first administrative review, and the same evidence is on the record of the instant review. Therefore, Commerce should continue to find that a PMS exists in Korea such that OCTG costs of production were distorted and warrant corrective adjustments.
- Since Commerce's analysis in the first administrative review, the PMS in Korea has worsened as a result of the Korean government's efforts to subsidize and unfairly boost domestic steel producers.
- None of the Korean OCTG producers refute the evidence on the record regarding the existence and impact of Chinese overcapacity in the Korean market, of the Korean government's subsidization of the steel industry (HRC in particular).
- SeAH raises arguments that Commerce already addressed and rejected in its *Preliminary Results*, particularly with respect to strategic alliances and distorted electricity prices.
- SeAH's argument that Korean government subsidization had no impact on the prices SeAH paid for its HRC has no merit, and its supporting reasons have previously been raised and rejected.
- While sales made below the cost of production indicates that a sale is made outside the ordinary course of trade, specific evidence of this relationship between prices and costs is not necessarily required to find that prices are outside the ordinary course of trade. Evidence on the record supports a finding that SeAH and other Korean OCTG producers' paid HRC prices are outside the ordinary course of trade.
- The rates from *Hot-Rolled Steel Flat Products from Korea* are an appropriate basis for making the PMS adjustment and do not constitute AFA applied to the parties in this proceeding. Commerce's subsidy determination is consistent with the United States' WTO obligations.
- The PMS allegation is not an upstream subsidy allegation as argued by SeAH; it is a separate claim brought under the TPEA for the antidumping portion of the statute.
- A dumping determination in Korea against Chinese HRC is not a prerequisite to the existence of a PMS in Korea. Evidence on the record demonstrates the impact of unfairly traded Chinese HRC in Korea.
- Arguments made by NEXTEEL and ILJIN concerning the existence of a PMS in Korea are meritless and have been previously raised and rejected. NEXTEEL and ILJIN fail to present any factual changes since the first administrative review.
- NEXTEEL's attempt to rely on verification reports in support of its argument are not convincing because verification reports do not draw conclusions as to whether reported information was successfully verified, and subsidies, distortions, and government interference are not typically covered in an antidumping verification.

- NEXTEEL ignores record evidence showing that Chinese volumes of HRC exports to Korea have increased over the past several years, as prices have declined, as well as record evidence showing that Korean electricity prices are lower than several other countries in the data.
- NEXTEEL and ILJIN's claims about Commerce's changed practice in its PMS analysis is misguided. The PMS provision under the TPEA does not direct Commerce how to assess whether a PMS exists or how to address the existence of PMS. Each case presents a unique set of facts, which should be evaluated on a case-by-case basis.
- The benchmark data in NEXTEEL's submissions, including Steel Benchmarker data and GTA import data into Italy, should be disregarded.
- NEXTEEL's argument regarding strategic alliances is meritless because this argument was not considered by the court in *Husteel I*.⁴²

Particular Market Situation Adjustment

- SeAH and NEXTEEL's arguments concerning use of POSCO's subsidy rate from *Hot-Rolled Steel Flat Products from Korea* have already been addressed by Commerce in the first administrative review and the *Preliminary Results*.
- Commerce should continue using rates from *Hot-Rolled Steel Flat Products from Korea*, which are more appropriate than the CVD rates from *Cut-to-Length Plate from Korea* or world market prices.

U.S. Steel's Rebuttal Comments:

- For the final results, Commerce should continue to determine that a PMS existed in Korea during the instant POR and make an upward adjustment to NEXTEEL's and SeAH's reported HRC costs as a result. To this end, U.S. Steel makes the arguments specified below.

Korean Government Subsidization of HRC

- The record demonstrates that Korean hot-rolled steel producers received subsidies during the POR, as evidenced by the 58.68 percent rate determined for POSCO in *Hot-Rolled Steel Flat Products from Korea*.
- Since there have been no administrative reviews or other proceedings in which Commerce found that POSCO stopped receiving subsidies, or received fewer subsidies than in *Hot-Rolled Steel Flat Products from Korea*, the results of that investigation remain relevant to the instant POR and should continue to be used as a basis for adjusting respondents' HRC costs.
- The record shows that during the instant POR, the Korean government increased the amount of subsidies granted to Korean hot-rolled steel producers in response to the onslaught of Chinese hot-rolled steel imports into Korea.⁴³
- Commerce's findings in *Hot-Rolled Steel Flat Products from Korea* are more specific to the HRC input used to produce OCTG.

⁴² See Maverick Rebuttal Brief, at 34 (citing *Husteel v. United States*, 98 F.3d 1315, 1359 (CIT 2015) (*Husteel I*)).

⁴³ See U.S. Steel Rebuttal Brief, at 4 (citing U.S. Steel Letter, "Oil Country Tubular Goods from the Republic of Korea," dated August 7, 2017 (U.S. Steel August 7, 2017 Letter), at Exhibits 5, 6, 9, 10, 12, and 13).

- It is irrelevant that POSCO's rate in *Hot-Rolled Steel Flat Products from Korea* was based on AFA, because POSCO would have responded to Commerce's requests for information if it could have demonstrated its subsidy rates were lower than the AFA rate used by Commerce.

Chinese HRC Imports

- Chinese HRC continued to flood the Korean market during the POR, causing Korean domestic HRC prices to plummet. As a result, Commerce should continue to find that imports of Chinese hot-rolled steel contributed to the existence of a PMS in Korea for HRC, and, thus, should make an upward adjustment to respondents' cost of any HRC imports.
- Contrary to NEXTEEL's argument that Chinese import volumes are not large enough to affect the Korean market, the record shows that, since 2010, China has exported massive volumes of low-priced, hot-rolled steel to Korea. The volume of exports increased from 2015 to 2016, while prices fell 8 percent from \$340.39 per net ton to \$313.08 per net ton.⁴⁴
- NEXTEEL is incorrect that Chinese exports have affected the Korean market no differently than other markets. Instead, the record shows that Korea has been one of the largest destinations for Chinese steel, including flat-rolled products, and the Korean industry has recognized the impact of Chinese steel imports on the domestic steel market.⁴⁵
- The Korean government has proposed a major restructuring of the Korean steel industry, and many of the findings in the government's proposal uphold the existence of a PMS in Korea.⁴⁶

Arguments Regarding Benchmarks for HRC

- Commerce should reject NEXTEEL's arguments regarding benchmarks for HRC.
- NEXTEEL is incorrect that Commerce's analysis regarding the existence of a PMS has evolved since *OCTG from Korea POR 1*, such that Commerce now benchmarks input prices against world market prices.
- In *Rebar from Taiwan*, Commerce stated that the record did not contain the same facts and allegations as did *OCTG from Korea POR 1*. In *Rebar from Taiwan*, the PMS allegation centered on whether the price of Chinese billets was lower than the price of Taiwanese billets and, thus, Commerce examined those countries' billet prices.⁴⁷
- In *Biodiesel from Argentina Prelim*, Commerce found that one source of market distortion could be adequate to find a PMS, and examined whether an export tax on soybeans had an impact on soybean pricing in Argentina.⁴⁸ Similarly, in *Biodiesel from Indonesia Prelim*, Commerce assessed whether an export tax on crude palm oil affected the pricing of crude palm oil in Indonesia.⁴⁹
- Nevertheless, the benchmarks on the record establish that low-priced Chinese HRC put downward pressure on Korean HRC prices, contributing to a PMS for HRC. For example,

⁴⁴ *Id.*, at 7 (citing U.S. Steel August 7, 2017 Letter, at Exhibit 1).

⁴⁵ *Id.*, at 8-9 (citing U.S. Steel August 7, 2017 Letter, at Exhibits 2, pp. 43-44, 3, p. 98, 4, 6, 7, 8, and 11).

⁴⁶ *Id.*, at 10 (citing U.S. Steel August 7, 2017 Letter, at Exhibit 11 and Maverick August 7, 2017 Letter, at 4 and Exhibit 5).

⁴⁷ *Id.*, at 12-13 (citing *Rebar from Taiwan*, and accompanying Issues and Decision Memorandum at Comment 1).

⁴⁸ *Id.*, at 13 (citing *Biodiesel from Argentina Prelim*, and accompanying Decision Memorandum at 23-24).

⁴⁹ *Id.* (citing *Biodiesel from Indonesia Prelim*, and accompanying Decision Memorandum at 22-23).

the data which NEXTEEL placed on the record demonstrate that Chinese HRC prices were substantially lower than HRC prices in Western Europe and on the world export market, and the Korean government's restructuring proposal asserts that the price differential between Chinese HRC imports and Korean HRC was \$118 per metric ton.⁵⁰

- NEXTEEL's comparison of its own costs for OCTG-grade HRC to benchmarks for standard-grade HRC is inapposite, because NEXTEEL's benchmarks reflect broad basket categories that are not specific to OCTG-grade HRC. The record shows that OCTG-grade HRC commands a premium over standard HRC grades, similar to Commerce's findings in other cases.⁵¹

Strategic Alliances

- Despite NEXTEEL's arguments to the contrary, Commerce should continue to find that strategic alliances existed and were a factor in the PMS for HRC in Korea during the POR.
- NEXTEEL's reliance on *Husteel I* is misplaced, because in that case, the CIT upheld Commerce's decision not to make a major input adjustment. In contrast, the issue in the instant review is whether strategic alliances contribute to a PMS in Korea, and there is additional evidence on the record of this review showing that strategic alliances exist.
- Commerce should reject SeAH's argument that it has no strategic alliances, because Commerce found POSCO and SeAH to be affiliated in past AD/CVD proceedings.⁵² While POSCO did not have an equity ownership in SeAH during the instant review, POSCO held equity interests in the following SeAH affiliates: SeAH Changwon Integrated Special Steel, POSCO SeAH Wire(Nantong) Co., Ltd., and POS-SEAHSTEELWIRE (TIANJIN) CO., Ltd.⁵³ Also, SeAH and POSCO jointly developed a certain grade of HRC, and SeAH obtained all its Korean-made HRC for OCTG production from POSCO during the POR.⁵⁴
- Regarding NEXTEEL, the record shows that there is a strategic alliance between NEXTEEL and POSCO, because POSCO is involved in both the production and sales sides of NEXTEEL's OCTG operations.⁵⁵ During the POR, NEXTEEL sourced a HRC from

⁵⁰ *Id.*, at 15 (citing, e.g., NEXTEEL August 15, 2017 Letter, at Exhibit 5, and Maverick August 7, 2017 Letter, at 4 and Exhibit 5).

⁵¹ *Id.*, at 16 (citing NEXTEEL August 15, 2017 Letter, at Exhibit 6 and *Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation; 2010-2011; Final Results of Administrative Review and Revision of Agreement Suspending Antidumping Duty Investigation*, 77 FR 72820 (December 6, 2012)).

⁵² *Id.*, at 18 (citing, *inter alia*, *Certain Welded Stainless Steel Pipes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 75 FR 27987 (May 19, 2010), and accompanying Issues and Decision Memorandum at Comment 3).

⁵³ *Id.* (citing POSCO Daewoo's February 10, 2017 section A questionnaire response, at A-10, n.3 and Appendix II, pp. 26-27).

⁵⁴ *Id.*, at 18-19 (citing Maverick Letter, "Certain Oil Country Tubular Goods from the Republic of Korea: Other Factual Information Submission for Valuing the Particular Market Situation in Korea," dated May 4, 2017 (Maverick May 4, 2017 Letter), at Exhibit 4, p. 8 and SeAH's March 6, 2017 section D questionnaire response, at D-7).

⁵⁵ *Id.*, at 19 (citing NEXTEEL's February 10, 2017 section A questionnaire response (NEXTEEL February 10, 2017 QR), at A-10 and NEXTEEL's March 6, 2017 section D questionnaire response (NEXTEEL March 6, 2017 DQR), at Exhibit D-6).

POSCO and sold OCTG through POSCO Daewoo, and certain other arrangements existed between the two affiliates.⁵⁶

Electricity Market Distortions

- For the final results, Commerce should continue to find that electricity market distortions contributed toward the PMS in Korea during the POR.
- The benchmark prices to which NEXTEEL cites do not negate Commerce's finding that the largest electricity supplier in Korea is a government-controlled entity, and that electricity in Korea functions as a tool of the government's industrial policy. Nevertheless, these prices demonstrate that the electricity rates established by the Korean government are aberrant.⁵⁷
- Given the similarities between Korea's and Japan's economies and electricity production, Commerce may quantify an adjustment to the respondents' costs based on the difference between the two countries' average electricity rates in 2016.⁵⁸

Commerce Position:

As an initial matter, our finding of particular market situation does not have any effect on NEXTEEL's dumping margin, because we determined that NEXTEEL failed to cooperate to the best of its ability and applied total AFA to NEXTEEL for the final results. However, because this issue affects other respondents, we will address it below.

Section 504 of the TPEA⁵⁹ added the concept of "particular market situation" in the definition of the term "ordinary course of trade," for purposes of constructed value (CV) under section 773(e), and through these provisions for purposes of the COP 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 instant review, petitioner Maverick alleged that a particular market situation exists in Korea which distorts OCTG costs of production based on the following four factors: (1) subsidization of Korean hot-rolled steel products by the Korean government; (2) the distortive pricing of unfairly traded Chinese HRC; (3) strategic alliances between Korean HRC suppliers and Korean OCTG producers; and (4) distortive government control over electricity prices in Korea. Section 504 of the TPEA does not specify whether to consider these allegations individually or collectively. In *OCTG from Korea POR I*, Maverick alleged that a particular market situation existed in Korea based on the same four factors and, upon analyzing the four

⁵⁶ *Id.*, at 19-20 (citing NEXTEEL March 6, 2017 DQR, at Exhibit D-6; NEXTEEL's July 12, 2017 supplemental section A, question 3 questionnaire response (NEXTEEL July 12, 2017 SQR), at Exhibit S-1, p. 12; and POSCO Daewoo's July 14, 2017 supplemental sections A and C questionnaire response, at S-9, Exhibit SA-2-A-1, p. 7, and Exhibit SA-2-B-2-1, p. 3).

⁵⁷ *Id.*, at 20-21 (citing NEXTEEL August 15, 2017 Letter, at Exhibit 10).

⁵⁸ *Id.*, at 21, n.77 (citing NEXTEEL August 15, 2017 Letter, at Exhibit 10).

⁵⁹ *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015).

allegations as a whole, Commerce found that a particular market situation existed in Korea during the 2014-2015 POR.⁶⁰ For the current review, after analyzing Maverick's allegation, as well as the factual information and case briefs subsequently submitted by interested parties, Commerce continues to determine that the circumstances present during the instant review remained largely unchanged from those in the prior review which led to the finding of a particular market situation in Korea in *OCTG from Korea POR I*. Therefore, Commerce continues to find that, based on the collective impact of Korean HRC subsidies, Korean imports of HRC from China, strategic alliances, and government involvement in the Korean electricity market, a particular market situation exists in Korea which distorts the OCTG costs of production.

In the current administrative review, as in *OCTG from Korea POR I*, Commerce considered the four particular market situation allegations as a whole, based on their cumulative effect on the Korean OCTG market through the cost of production for OCTG and its inputs. Based on the totality of the conditions in the Korean market, Commerce continues to find that the allegations represent facets of a single particular market situation. Record evidence shows subsidization of HRC by the Korean government, as well as purchases of HRC by the mandatory respondents from POSCO, which received such subsidies.⁶¹ Record evidence also shows that the subsidies received by Korean hot-rolled steel producers totaled almost 60 percent of the cost of hot-rolled steel, the primary input into OCTG production.⁶² Additionally, Commerce notes that HRC as an input of OCTG constitutes approximately 80 percent of the cost of OCTG production; thus, distortions in the HRC market have a significant impact on production costs for OCTG.⁶³ Further, 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.⁶⁴ 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 suppliers and Korean OCTG producers attempt to compete by engaging in strategic alliances, Commerce agrees that the record evidence supports that such strategic alliances exist in Korea,⁶⁵ and that these strategic alliances may have affected prices in the period covered by the original less-than-fair value

⁶⁰ See *OCTG from Korea POR I* and accompanying Issues and Decision Memorandum, at Comment 3.

⁶¹ See Maverick May 4, 2017 Letter, at Exhibit 12 (containing Letter from Maverick, "Oil Country Tubular Goods from South Korea: Particular Market Situation Case Brief," dated March 1, 2017, at 6 and footnote 18, and sources cited therein).

⁶² *Id.* at Exhibit 12 (containing Letter from Maverick, "Oil Country Tubular Goods from South Korea: Particular Market Situation Case Brief," dated March 1, 2017, at 6-7, citing *Hot-Rolled Steel Flat Products from Korea Final Determination*).

⁶³ *Id.* at Exhibit 4 (containing Letter from Maverick, "Certain Oil Country Tubular Goods from the Republic of Korea: Information and Comments Requiring Immediate Action," dated November 25, 2015, at 3).

⁶⁴ *Id.* at Exhibit 6 (containing Letter from Maverick, "Certain Oil Country Tubular Goods from the Republic of Korea: Particular Market Situations and Other Factual Information Submission," dated September 6, 2016, at Exhibit 4).

⁶⁵ *Id.* at Exhibit 4 (containing Letter from Maverick, "Certain Oil Country Tubular Goods from the Republic of Korea: Information and Comments Requiring Immediate Action," dated November 25, 2015, at Attachment 4).

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, Commerce nonetheless finds that these strategic alliances between certain Korean HRC suppliers and Korean OCTG producers are relevant as an element of Commerce's analysis in that they may have created distortions in the prices of HRC in the past, and 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 present in the electricity market, consistent with the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, 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.⁶⁶ To be clear, our continued 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, continue to lead Commerce 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 in Korea, are distorted and, thus, demonstrate that the costs of HRC to Korean OCTG producers are not in the ordinary course of trade. Thus, Commerce continues to find that various market forces result in distortions which impact the costs of production for OCTG from Korea. Considered collectively, Commerce continues to find that the allegations support a finding that a particular market situation exists during the POR in the instant administrative review.

Interested parties provided comments on the allegations relating to HRC imports from China, strategic alliances, Korean HRC subsidies, and electricity market distortions, as well as the general applicability of Commerce's particular market situation determination. However, we agree with Maverick and U.S. Steel that the alleged factors represent aspects of a particular market situation that prevents an accurate comparison in this administrative review, based on distortions which impact the costs of production for OCTG from Korea. We continue to find that the facts on the record support the existence of a particular market situation, similar to the previous period of review. We disagree with SeAH's and NEXTEEL's arguments that the facts present in the instant review have changed significantly since Commerce's PMS determination in the prior administrative review. Conversely, we find that the same factors that led to the finding that a PMS existed in Korea in *OCTG from Korea POR I* are still present in the current administrative review, and that the facts of this record support the continued finding that a PMS existed during this POR. Moreover, with respect to ILJIN's argument that the *Preliminary Results* did not contain any evidence to support the conclusion that the conditions in the Korean market have remained unchanged since *OCTG from Korea POR I*, we agree with Maverick that facts in the instant review are largely identical to the facts in the first administrative review, and the same evidence is on the record of the instant review.

⁶⁶ *Id.* at Exhibit 5 (containing Letter from Maverick, "Certain Oil Country Tubular Goods from the Republic of Korea: Particular Market Situation Allegation on Electricity," dated February 3, 2016, at 13-14 and Exhibit 2, p. 50).

NEXTEEL contends that POSCO's subsidy rate from *Hot-Rolled Steel Flat Products from Korea* is irrelevant because it covered 2014 (*i.e.*, it is not contemporaneous), was based on total AFA, and does not relate to OCTG. As for the fact that the rates from the CVD investigation on *Hot-Rolled Steel Flat Products from Korea* precede the instant POR in this proceeding, we note that these are the rates still in effect for this proceeding because, to date, no CVD review has been completed. NEXTEEL's contention that the subsidization finding did not pertain to OCTG is misplaced, because it relates to the inputs used in the production of OCTG, and we apply the adjustment to the cost of inputs used in the production of OCTG. Further, this is not a factual change from the immediately preceding administrative review, because the *Hot-Rolled Steel Flat Products from Korea* subsidization findings always related to the inputs in the production of OCTG, rather than to subsidization of the finished OCTG product.

Contrary to the respondents' arguments, and, as explained in the *Preliminary Results*, we continue to find that the subsidy rates from *Hot-Rolled Steel Flat Products from Korea* are more appropriate than the subsidy rates from Commerce's CVD investigation of *Cut-to-Length Plate from Korea*, because the former rates are for hot-rolled steel, the input used to make OCTG, whereas the latter are not. In our view, a one-year difference in the PORs of these two determinations does not outweigh our consideration that one subsidization determination covered the input used in the production of OCTG, while the other one did not. Accordingly, Commerce continues to find that the CVD rates from the investigation on *Hot-Rolled Steel Flat Products from Korea* are an appropriate basis for making a particular market situation adjustment in this review.

Furthermore, we disagree with the respondents' various arguments concerning individual price comparisons for HRC. With respect to SeAH's argument that, because SeAH's largest supplier of HRC was a Japanese producer, unreasonably low HRC prices from POSCO and Chinese suppliers would have a minimal effect on SeAH's production costs, we disagree. This argument makes an unfounded assumption that the prices of the Japanese producer in the Korean market are unaffected by market distortions. However, companies normally compete in the market and have to adjust their pricing in response to the market trends. Accordingly, if the market is distorted, companies either have to adjust to their prices to market distortions or leave the market. For this reason, SeAH's comparison of the average prices, by grade, for SeAH's purchases of HRC from POSCO and SeAH's Japanese supplier does not demonstrate that that POSCO's prices were not distorted,⁶⁷ because both suppliers (POSCO and the Japanese company) competed in the same market. Similarly, a comparison of SeAH's purchases of HRC from Chinese suppliers that it used to make OCTG with the price it paid to its Japanese supplier (but not from POSCO) does not establish that Chinese prices were not distorted, even if the prices were nearly the same, as SeAH contends.⁶⁸ To the contrary, an opposite conclusion could be drawn, namely that its Japanese supplier set its prices in response to distortions in the market caused by the wide availability of unfairly traded Chinese HRC and heavily subsidized Korean HRC.

With respect to SeAH's contention that the Korean government did not make a formal finding that Chinese HRC is being dumped, we do not consider such a finding to be a prerequisite.

⁶⁷ See SeAH Case Brief, at 20 (citing SeAH August 25, 2017 SQR, at Appendix SD-4).

⁶⁸ *Id.*, at 20-21 (citing SeAH August 25, 2017 SQR, at Appendix SD-4).

Although a formal finding of dumping or subsidization could be evidence of the existence of unfair practices, such practices could exist even without a formal finding. In most cases, dumping investigations are initiated based on a petition by the domestic industry, which would require both the demonstration of the existence of dumping and the existence or threat of material injury to the domestic industry. In this case, however, record evidence shows subsidization of HRC producers by the Korean government, as well as purchases of HRC by the mandatory respondents from POSCO, which received such subsidies.⁶⁹

We also disagree with NEXTEEL's and ILJIN's arguments that Commerce's "totality of the circumstances" analysis used in *OCTG from Korea POR I* has been wholly replaced by a different test in *Rebar from Taiwan* and *Biodiesel from Argentina*. In *Rebar from Taiwan*, Commerce acknowledged the "totality of the circumstances" PMS determination made in *OCTG from Korea POR I*, and stated that "the record in this case {(i.e., *Rebar from Taiwan*)} does not include the same facts or allegations as in *OCTG from Korea*."⁷⁰ In *Biodiesel from Argentina*, Commerce stated specifically that "Commerce's conclusions in *OCTG from Korea* are consistent with this {(i.e., the *Biodiesel from Argentina*)} final determination." Commerce further acknowledged that, "in certain contexts, an ordinary course of trade analysis may involve a comparison of specific sales and transactions to the general market," but also stated that "a PMS analysis is, by definition, concerned with distortions in the overall 'market,' rather than distortions in particular sales or transactions in relation to the general market."⁷¹ Accordingly, we find SeAH's and NEXTEEL's arguments unpersuasive, and find that Commerce appropriately analyzed the facts and allegations on the records of each individual case in making its determinations. Furthermore, regarding ILJIN's argument that a detailed, factual analysis of the PMS conditions is impossible because Commerce was unable to quantify an impact with respect to Chinese HRC, strategic alliances, or the Korean electricity market, we find that the lack of appropriate data on the record with which to quantify an adjustment does not constitute evidence that the underlying condition does not exist. Rather, we continue to find that the record demonstrates distortions within the market, but that it does not contain reliable external benchmarks with which to quantify the adjustment.

Regarding NEXTEEL's argument that Commerce's finding in the *Preliminary Results* that a PMS existed with respect to NEXTEEL's HRC inputs is contrary to the statute, because Commerce did not "conduct empirical analysis of NEXTEEL's submitted data to determine whether NEXTEEL's HRC were incurred in the ordinary course of business," no such analysis is necessary. First, as we already explained, NEXTEEL failed to cooperate to the best of its ability and for the purposes of this final determination, we determined its rate based on total AFA. Second, we disagree with the notion that such company-specific analysis is necessary and appropriate in a situation where, as here, there is sufficient evidence demonstrating that the market as a whole is distorted and 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

⁶⁹ See Maverick May 4, 2017 Letter, at Exhibit 12 (containing Letter from Maverick, "Oil Country Tubular Goods from South Korea: Particular Market Situation Case Brief," dated March 1, 2017, at 6 and footnote 18, and sources cited therein).

⁷⁰ See *Rebar from Taiwan* and accompanying Issues and Decision Memorandum at Comment 1.

⁷¹ See *Biodiesel from Argentina: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 8837 (March 1, 2018) (*Biodiesel from Argentina*) and accompanying Issues and Decision Memorandum at Comment 3.

production in the ordinary course of trade. Companies do not operate in a vacuum, but, rather, purchase their inputs in a market. If a particular market is distorted as a whole, it would be illogical to conclude that one company operating in that particular market is insulated from the market distortions with respect to costs.

Concerning NEXTEEL's argument that Chinese imports into Korea are not significant enough to have an impact on the Korean market, we disagree. Record evidence shows that POSCO's profits have been affected by "a deluge of Chinese exports" which "pushed global prices to their lowest in at least a decade."⁷² Despite NEXTEEL's contention that imports of Chinese hot-rolled steel account for only about 20 percent of hot-rolled steel imports into Korea, we find that 20 percent is not an insignificant percentage. To put this into perspective, based on the COMTRADE data provided by Maverick and further analyzed by NEXTEEL, Korean imports of Chinese HRC during calendar year 2016 amounted to 973,881 metric tons out of total imports of 4,903,387 metric tons.⁷³ Even when considering only the HTS categories for HRC that can potentially be used in OCTG, Chinese imports remain at approximately 20 percent of total imports into Korea.⁷⁴

We agree with NEXTEEL that the petitioners have not pointed to any evidence that Chinese overcapacity is directed toward the Korean market. That Chinese steel overcapacity affects the whole world is not disputed. In fact, information on the record indicates that, "according to OECD statistics, China's production capacity will continue to grow until 2017. Therefore, China's oversupply situation does not seem to improve, and is expected to result in increased exports and price decline pressures."⁷⁵ However, we find that the fact that overcapacity affects other markets is irrelevant here, because our particular market situation finding concerns only Korea.

With respect to NEXTEEL's arguments based on a comparison of its purchases with Steel Benchmark data,⁷⁶ COMTRADE data,⁷⁷ and GTA import data,⁷⁸ we find that the data from these sources are for a broader category of products, which do not necessarily include the higher grade HRC used in the production of OCTG. Moreover, as we explained, NEXTEEL's dumping margin is based on total AFA and, thus, our adjustment with respect to the particular market situation did not affect NEXTEEL's dumping margin.

We also disagree with SeAH's and NEXTEEL's arguments that they are not involved in any strategic alliances, and that Commerce should not find a particular market situation on this basis.

⁷² See Maverick May 4, 2017 Letter, at Exhibit 6 (containing Maverick Letter, "Certain Oil Country Tubular Goods from the Republic of Korea: Particular Market Situations and Other Factual Information Submission," dated September 6, 2016, at Exhibit 4, "Posco Posts Smallest Ever Profit Amid Chinese Steel Deluge," Bloomberg (January 28, 2016)).

⁷³ See Maverick August 7, 2017 Letter, at Exhibit 10.

⁷⁴ See NEXTEEL August 15, 2017 Letter, at Exhibit 7.

⁷⁵ See U.S. Steel August 7, 2017 Letter, at Exhibit 2 (containing article, "China's Steel Exports Reaching 100 Mt: What It Means to Asia and Beyond," Asian Steel Watch (January 2016)).

⁷⁶ *Id.*, at 18-19 (citing NEXTEEL August 15, 2017 Letter, at Exhibits 5 and 6).

⁷⁷ *Id.*, at 19-20 (citing NEXTEEL August 15, 2017 Letter, at Exhibit 7, and Maverick August 7, 2017 Letter, at Exhibit 10).

⁷⁸ *Id.*, at 20 (citing NEXTEEL August 15, 2017 Letter, at Exhibit 9).

We agree with U.S. Steel that record evidence supports that such strategic alliances exist in Korea,⁷⁹ and continue to find that these strategic alliances between certain Korean HRC suppliers and Korean OCTG producers are relevant as an element of Commerce's analysis. Further, we evaluate the existence of a particular market situation based on the totality of circumstances in the market. Accordingly, to the extent that strategic alliances may have a distortive effect on the market as a whole, in our view, it is unnecessary for every company operating in the market to be a member of a strategic alliance.

With respect to the particular market situation adjustment to the respondents' costs of production, as explained in the *Preliminary Results*, Commerce disagrees with the respondents' argument that the CVD rates applied in *Hot-Rolled Steel Flat Products from Korea* are not an appropriate basis for the adjustment. The respondents argue that it would not be appropriate to make a particular market situation adjustment based on the CVD rate applied to POSCO in *Hot-Rolled Steel Flat Products from Korea*, because that rate was based on total AFA and does not overlap with the instant POR. Regarding the fact that POSCO's CVD rate was based on total AFA, we disagree that this alone should discredit its use in making a particular market situation adjustment. The AFA rate only applied to POSCO, because POSCO failed to cooperate to the best of its ability, and we only applied POSCO's rate as an adjustment to the HRC sourced from POSCO. For HRC sourced from other Korean companies, we applied the all-others rate, which was not based on AFA. Moreover, we find that POSCO could have chosen to act to the best of its ability in responding to Commerce's requests for information in *Hot-Rolled Steel Flat Products from Korea*, but may have chosen not to do so because full cooperation might have resulted in a higher CVD rate. Further, we find NEXTEEL's argument that it was contradictory for Commerce to find that it could not accurately calculate a subsidy rate for POSCO in *Hot-Rolled Steel Flat Products from Korea*, yet use that same subsidy rate to quantify a PMS adjustment, to be misplaced. In determining to apply AFA to POSCO in *Hot-Rolled Steel Flat Products from Korea*, Commerce did not find that the AFA rate itself was inaccurate, but, rather, that we could not calculate an accurate rate for POSCO in that proceeding due to POSCO's failure to submit "complete, accurate and reliable data."⁸⁰ Therefore, there is no basis for NEXTEEL's assertion that POSCO's AFA rate from *Hot-Rolled Steel Flat Products from Korea* cannot be used to quantify a particular market situation adjustment.

Regarding SeAH's argument that Commerce previously found that the prices SeAH paid for electricity did not confer any subsidy benefit, we disagree that this should have an impact on our PMS determination in this case. As an initial matter, as indicated in Comment 2, below, because we were unable to quantify the effect of distortions in the electricity market, we did not include an adjustment factor for electricity in the PMS adjustment. However, the fact that we were not able to quantify the amount of the distortion does not undermine the fact that the government's policies have an effect on electricity prices.

⁷⁹ See Maverick May 4, 2017, at Exhibit 1 (containing Letter from Maverick, "Certain Oil Country Tubular Goods from the Republic of Korea: Information and Comments Requiring Immediate Action," dated November 25, 2015, at Attachment 4).

⁸⁰ See *Hot-Rolled Steel Flat Products from Korea Final Determination*, and accompanying Issues and Decision Memorandum at Comment 5.

With respect to the alternative calculation methods proposed by the respondents, we agree with Maverick and U.S. Steel that none represent an appropriate basis for the particular market situation adjustment. For example, as noted by U.S. Steel, the benchmarks on the record show evidence of the particular market situation, in that Chinese HRC put a downward pressure on Korean HRC prices.⁸¹ In addition, we disagree with NEXTEEL's comparison of its own costs for OCTG-grade HRC to benchmarks for standard-grade HRC because the comparison is not specific to OCTG-grade HRC.

Comment 2: Additional Particular Market Situation Adjustments

Maverick's Comments:

- Commerce correctly found in the *Preliminary Results* that a PMS exists in Korea that distorts the COP for OCTG, and made an adjustment for Korean subsidies on HRC. For the final results, Commerce should make additional adjustments to account for the effects of Chinese overcapacity on the prices of HRC from Chinese and Japanese suppliers; strategic alliances; and distorted electricity costs in Korea.
- Section 504 of the TPEA provides Commerce with the authority to use "any" methodology for a PMS adjustment.

HRC from Chinese Suppliers

- To counter the effect of Chinese overcapacity on HRC from Chinese suppliers, Commerce should make an upward adjustment to the cost of Chinese HRC purchases based on the simple average of the subsidy rates from the European Union's recent final determination involving hot-rolled steel flat products from China (*i.e.*, 22.99 percent).⁸²
- Alternatively, Commerce could adjust HRC purchases from Chinese suppliers using:
 - the CVD rates in Commerce's determination in *Cold-Rolled Steel Flat Products from China*,⁸³
 - the price difference between reported and adjusted Korean steel prices, consistent with *Biodiesel from Indonesia Prelim*, in which Commerce used a world market price to account for the PMS;⁸⁴ or
 - the percentage difference between the average price of Korean hot-rolled steel imports from China for the POR and the average price of all other non-Chinese and non-Japanese imports.⁸⁵
- Commerce failed to provide a reason why the European Union's decision was inappropriate for making a PMS adjustment, especially since that decision stated that the covered hot-

⁸¹ See, e.g., NEXTEEL August 15, 2017 Letter, at Exhibit 5, and Maverick August 7, 2017 Letter, at 4 and Exhibit 5.

⁸² See Maverick Case Brief, at 12 (citing Maverick August 7, 2017 Letter, at Exhibit 8).

⁸³ *Id.* (citing Maverick August 7, 2017 Letter, at Exhibit 3 (containing *Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Partial Affirmative Critical Circumstances Determination*, 81 FR 32729 (May 24, 2016) (*Cold-Rolled Steel Flat Products from China*), and accompanying Issues and Decision Memorandum).

⁸⁴ *Id.*, at 13 (citing *Biodiesel from Indonesia Prelim*, and accompanying Decision Memorandum at 22-23).

⁸⁵ *Id.*, at 13-14 (citing Maverick August 7, 2017 Letter, at 6 and Exhibit 11).

rolled steel products are used in “energy pipelines;” was contemporaneous with the instant POR; considered Chinese overcapacity; and acknowledged that more Chinese imports flood the Korean market than the European Union.⁸⁶

- Commerce routinely utilizes data from foreign authorities in other AD/CVD contexts, *e.g.*, for surrogate values or benchmark data.

HRC from Japanese Suppliers

- China’s excess capacity has affected the Japanese steel industry adversely;⁸⁷ therefore, to account for the distortions affecting Japanese HRC prices, Commerce should make an upward adjustment to the cost of HRC purchases from Japanese suppliers.
- Commerce should adjust Japanese HRC purchases based on the dumping margins from Commerce’s determination on *Hot-Rolled Steel Flat Products from Japan*,⁸⁸ or based on the weighted-average of the adjustments made to Korean and Chinese HRC purchases.
- Alternatively, Commerce could adjust the cost of Japanese HRC purchases based on:
 - the percentage difference between the average price of POR Korean hot-rolled imports from Japan and the average price of all other non-Chinese and non-Japanese imports;⁸⁹ or
 - the price difference between reported and adjusted Korean steel prices, consistent with *Biodiesel from Indonesia Prelim*.⁹⁰
- In the *Preliminary Results*, Commerce tied its decision not to quantify the effect of Japanese HRC to its inability to quantify the impact of Chinese HRC. However, the record contains ample evidence by which to account for the distortions in Chinese HRC sold in Korea; thus, Commerce should also account for the distortions in Japanese HRC sold in Korea.
- In the *Preliminary Results*, Commerce declined to use the dumping rates from *Hot-Rolled Steel Flat Products from Japan*, because it involved company-specific comparisons of Japanese prices to U.S. prices. However, Japanese prices in Korea are even lower than they are in the United States, due to distorted Chinese imports in a market with no duties on Chinese HRC.
- China’s excess steel capacity has placed downward pressure on all coil prices in the Korean market, including Japanese prices. In particular, Korean hot-rolled steel imports from countries other than Japan and China entered at an average price of \$384.79 per metric ton, while Japanese imports entered at \$366.02 per metric ton and Chinese imports entered at \$339.26 per metric ton.⁹¹
- The entire Korean HRC market is distorted; thus, Commerce cannot acknowledge that distortions affect the whole market, but only make adjustments to some prices in that market.

⁸⁶ See Maverick Case Brief, at 15 (citing Maverick August 7, 2017 Letter, at Exhibit 8).

⁸⁷ *Id.*, at 16 (citing U.S. Steel August 7, 2017 Letter, at Exhibit 7).

⁸⁸ *Id.*, at 17 (citing Maverick August 7, 2017 Letter, at Exhibit 4 (containing *Certain Hot-Rolled Steel Flat Products from Japan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 53409 (August 12, 2016) (*Hot-Rolled Steel Flat Products from Japan*), and accompanying Issues and Decision Memorandum).

⁸⁹ *Id.* (citing Maverick August 7, 2017 Letter, at 6 and Exhibit 11).

⁹⁰ *Id.* (citing *Biodiesel from Indonesia Prelim*, and accompanying Decision Memorandum at 22-23).

⁹¹ *Id.*, at 19 (citing Maverick August 7, 2017 Letter, at Exhibit 11).

Strategic Alliances between Korean HRC Suppliers and Korean OCTG Producers

- In the *Preliminary Results*, Commerce stated that it could not quantify the effect of strategic alliances on HRC costs. However, Maverick previously requested that Commerce collect additional information from respondents on their relationships with HRC suppliers and the prices that the suppliers offer to respondents as opposed to other customers.
- Because Commerce did not collect the additional data, Commerce should rely on existing percentage differences in price from the investigation to make an upward adjustment.⁹²

Distorted Electricity Costs in Korea

- For the final results, Commerce should make an adjustment for electricity market distortions.
- Commerce stated in the *Preliminary Results* that the record did not contain sufficient information to make a PMS adjustment for electricity. However, the record does contain appropriate sources, namely, industrial sector electricity rates from Japan, New Zealand, and Italy,⁹³ and Commerce has not identified any specific deficiencies regarding this information.

U.S. Steel's Comments:

- For the final results, Commerce should make an upward adjustment to the cost of all HRC purchases by respondents, not just HRC purchased from Korean HRC producers.
- In the *Preliminary Results*, Commerce found that cheaper Chinese steel products have placed downward pressure on steel prices in Korea, and that the deluge of Chinese steel imports resulted from significant overcapacity in Chinese steel production; thus, it is not logical to limit the PMS adjustment for HRC purchases only to HRC from Korean manufacturers.⁹⁴
- Commerce can quantify the impact of HRC from China and other countries by applying the all-others rate determined in the European Union's CVD investigation of hot-rolled steel flat products from China (*i.e.*, 35.9 percent).⁹⁵
- This rate accurately measures the subsidies that Chinese HRC producers received, because it was determined by a respected administering authority with expertise in identifying and measuring countervailable subsidies after conducting a thorough investigation.
- Regarding Commerce's concern about relying on the decision of another administering authority, the courts have acknowledged that Commerce may rely on "less than perfect" information when that is the only information available, particularly when doing so leads to the calculation of more accurate margins.⁹⁶

⁹² *Id.*, at 22 (citing Maverick May 4, 2017 Letter, at Exhibit 1, page 13 and Exhibit 2, Attachment at pages 5-21).

⁹³ *Id.*, at 23 (citing Maverick May 4, 2017 Letter, at Exhibit 3 and Maverick August 7, 2017 Letter, at Exhibit 9).

⁹⁴ See U.S. Steel Case Brief, at 15-16 (citing Preliminary Decision Memorandum, at 18).

⁹⁵ *Id.*, at 16 (citing Maverick August 7, 2017 Letter, at 5 and Exhibit 8).

⁹⁶ *Id.*, at 17 (citing *Nippon Steel Corp. v. United States*, 350 F. Supp. 2d 1186, 1198 (Ct. Int'l Trade 2004)).

SeAH's Rebuttal Comments:

- The TPEA allows Commerce to adjust a respondent's CV only after finding that a PMS exists such that the cost of materials and processing does not accurately reflect the COP in the ordinary course of trade. Neither Maverick or U.S. Steel has identified "the cost of production in the ordinary course of trade" for SeAH's products or shown that such a "cost of production" differs from the input costs that SeAH reported; thus, there is no basis to adjust SeAH's CV under the TPEA.
- Maverick's and U.S. Steel's assertions that Commerce should rely on past Commerce determinations and decisions by the European Union are erroneous because:
 - A subsidy finding does not indicate that the benefit affected the prices charged by the subsidy recipient;
 - A finding of dumping reflects a comparison of prices charged in two markets, and does not imply that prices were below the COP in the ordinary course of trade;
 - Subsidy and dumping determinations are valid only for the particular period examined;
 - The prices for steel products in a single product category (*e.g.*, HRC) may vary significantly by grade and time period, which means that the average unit values for purchases may be distorted by product mix or time period differences; and
 - Reliance on determinations by Commerce or another investigating agency in which SeAH was not an interested party raises critical issues regarding due process.⁹⁷
- Commerce's finding in *Hot-Rolled Steel Flat Products from Korea* does not mean that POSCO passed subsidies along to its customers via lower prices. Also, that investigation covered the 2014 calendar year, so it provides no information about any subsidies POSCO received during the instant POR. Further, because SeAH was not an interested party in that investigation, it would be a violation of SeAH's due process rights to consider that decision binding with regard to SeAH.
- Likewise, the petitioners' argument that Commerce should adjust SeAH's purchases of Chinese HRC based on the European Union's subsidy investigation on hot-rolled steel from China is inapposite, because Commerce cannot rely on foreign governments' decisions; the Chinese producers did not necessarily pass subsidy benefits along to their customers in the form of lower prices; the European Union's investigation covered the 2015 calendar year, and does not overlap with the last eight months of the POR; and SeAH was not a party to that investigation, which raises the issue of due process.
- SeAH also disagrees with Maverick's contention that SeAH's purchases of Japanese HRC should be adjusted based on *Hot-Rolled Steel Flat Products from Japan*, because that case compared U.S. prices to Japanese producers' home market prices and, thus, is irrelevant to the prices of Japanese producers' exports to Korea. Further, the period covered in that investigation does not overlap with the instant POR.
- Regarding Maverick's argument that Commerce should make an adjustment for SeAH's electricity purchases, Commerce has determined that SeAH did not receive any subsidies for electricity,⁹⁸ and Maverick has not provided any evidence of distortions in Korean electricity pricing for the instant POR.

⁹⁷ See SeAH Rebuttal Brief, at 13 (citing *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 327, n.7 (1979)).

⁹⁸ *Id.*, at 17 (citing *Welded Line Pipe from Korea (CVD)*, and accompanying Issues and Decision at Comment 1).

- As a separate matter, Maverick's claim concerning strategic alliances has nothing to do with SeAH, because Commerce has found consistently that SeAH is not affiliated with POSCO.⁹⁹

NEXTEEL's Rebuttal Comments:

- Commerce should reject the petitioner's claims that Commerce should further increase and expand its particular market situation adjustment based on the alleged distortions in manufacturing costs caused by Chinese HRC imports, strategic alliances between certain producers and suppliers in Korea, and the Government of Korea's involvement in electricity.
- In the *Preliminary Results*, Commerce correctly found that HRC purchased from Chinese suppliers and the effect of Chinese HRC prices on Japanese HRC that is, in turn, imported into Korea could not be quantified based on the information on the record.
- Commerce should also reject U.S. Steel's claims that all imports of HRC should be adjusted for the final results. These positions cannot be supported by the evidence in the record of this proceeding, and the petitioner has made no specific claims with respect to these allegations and NEXTEEL's specific costs.
- Commerce should continue to find that it would be inappropriate to use the European Union's subsidy decision of HRC from China. The EU's case is a completely different proceeding involving a foreign authority, without any explanation or evidence on the record in the proceeding. The EU's case also only partially covers the POR in the instant case.
- Commerce should continue to find that it would be inappropriate to use the *Cold-Rolled Steel Flat Products from China* determination. Cold-rolled steel is not an input to produce OCTG and this case does not cover the POR in the instant review, but covers 2014.
- Commerce, in the *Preliminary Results*, was unable to quantify the impact of either strategic alliances or the effects of any alleged electricity intervention based on the facts of the record. Commerce correctly found that it cannot merely insert arbitrary quantitative values when adjusting for a particular market situation on these points.

Husteel's Rebuttal Comments:

- Commerce's finding in the *Preliminary Results* that a PMS exists in Korea is based mainly on its PMS determination in *OCTG from Korea POR 1*. However, since *OCTG from Korea POR 1*, Commerce's practice has evolved to acknowledge that PMS findings must be based on evidence of distortions for particular producers in a particular market.¹⁰⁰
- The PMS adjustment in the *Preliminary Results* for Korean subsidies on HRC was not appropriate, because it was based on an AFA rate from a CVD proceeding, and Commerce has no legal basis for applying an AFA rate to cooperating respondents or for applying CVD subsidies to an AD proceeding.

⁹⁹ *Id.*, at 14-15 (citing *Stainless Steel Pipe from Korea Preliminary Results*, and accompanying Decision Memorandum at 7-8 and *Welded Line Pipe from Korea LTFV Preliminary Determination*, and accompanying Decision Memorandum at 18).

¹⁰⁰ See Husteel Rebuttal Brief, at 2 (citing, *inter alia*, *Rebar from Taiwan*, and accompanying Issues and Decision Memorandum at Comment 1 and *Certain Softwood Lumber from Canada*, and accompanying Issues and Decision Memorandum at Comment 17).

- If Commerce continues to make a PMS adjustment for Korean subsidies on HRC using CVD rates, it should rely upon non-AFA rates from the most contemporaneous decisions available, such as *Cut-to-Length Plate from Korea*.¹⁰¹
- Commerce incorrectly found that Chinese HRC contributed to a PMS in Korea. Rather, the record shows that NEXTEEL's and SeAH's costs were not distorted by Chinese HRC; their HRC purchases were made in the ordinary course of trade; and the volume of Chinese HRC imports into Korea was not significant, compared to the volume of Korean-produced HRC.¹⁰²
- Commerce properly declined to make a PMS adjustment for Chinese and Japanese HRC, as the sources cited by the petitioners do not quantify the alleged distortions for these particular respondents in this particular market.
- Commerce should reject the petitioners' assertion that an adjustment be made for strategic alliances. The record does not show that strategic alliances exist and Commerce found in the *Preliminary Results* that there is no specific evidence on the record that strategic alliances directly caused distortions in HRC prices during the instant POR. Further, the CIT dismissed the petitioners' arguments regarding strategic alliances in the investigation, finding them so insignificant as to not merit Commerce's consideration.¹⁰³
- Commerce should also reject the petitioners' contention that an adjustment be made for electricity costs. Commerce has repeatedly determined that electricity is not being provided in Korea for less than adequate remuneration, and the CIT recently upheld Commerce's final determination in welded line pipe from Korea that electricity prices in Korea were in line with market principles and provided no benefit to the Korean steel producers in that case.¹⁰⁴

Hyundai Steel's Rebuttal Comments:

- Hyundai Steel fundamentally disagrees with Commerce's PMS adjustment, and argues that the additional PMS adjustments proposed by the petitioners would merely add more distortions.
- Hyundai Steel supports the mandatory respondents' rebuttal briefs and arguments on the PMS issue in this case.

ILJIN's Rebuttal Comments:

- Commerce correctly determined not to make an adjustment based on the European Union's subsidy determination on hot-rolled steel flat products from China, because that case does not necessarily cover the same scope as the HRC used to make OCTG; the period at issue only partially overlaps with the instant POR; and was conducted by a foreign authority. In addition, that decision does not relate to Chinese HRC imports to Korea, nor does it address the impact of those subsidies on the pricing of imports of HRC from China.

¹⁰¹ *Id.*, at 3 (citing *Cut-to-Length Plate from Korea* and accompanying Issues and Decision Memorandum at 16-22).

¹⁰² *Id.*, at 3-4 (citing NEXTEEL Case Brief, at 9-11, and SeAH Case Brief, at 19).

¹⁰³ *Id.*, at 5 (citing *Husteel I*, 98 F.3d at 1359 (Ct. Int'l Trade 2015)).

¹⁰⁴ *Id.*, at 6 (citing *Hot-Rolled Steel Flat Products from Korea Final Determination* and accompanying Issues and Decision Memorandum at Comments 1-3, and *Maverick Tube Corp. v. United States*, Ct. No. 15-303, Slip Op. 17-146, 2017 WL 4864914 (Ct. Int'l Trade Oct. 27, 2017)).

- There is a big difference between using foreign authorities' data for surrogate values or benchmark data and relying on a subsidy calculation by a foreign authority; Commerce's rejection of the latter is consistent with past practice.¹⁰⁵
- It is contradictory for the petitioners to object to making an adjustment based on the subsidy rates from *Cut-to-Length Plate from Korea* because that product is not an input to OCTG, yet advocate for using the subsidy rates from *Cold-Rolled Steel Flat Products from China* when the latter case did not involve an input to OCTG and, further, covered the wrong time period.
- The subsidy rates from *Cut-to-Length Plate from Korea* are more pertinent than the rates from *Hot-Rolled Steel Flat Products from Korea*, because they are more current and are based on the Korean steel producers' actual experience, not AFA.
- In the *Preliminary Results*, Commerce properly determined not to make an adjustment to Japanese HRC based on the European Union's subsidy determination on Chinese HRC, because that decision does not relate to Japanese HRC imported into Korea. Commerce also properly found that there was no evidence that Japanese prices were distorted.
- A comparison of Chinese and Japanese HRC import values to Korean HRC purchase prices shows that the latter are significantly higher and not distortive; thus, a PMS does not exist for HRC. The higher Korean HRC prices also establish that Commerce's PMS adjustment cannot quantify any alleged price difference for Korean HRC.
- Commerce's inability to quantify any distortions due to alleged strategic alliances and electricity prices shows that neither factor exists to a degree that each supports a PMS finding; thus, it must reject the petitioners' request to make adjustments for these factors.

Commerce Position:

As explained in Comment 1, above, Commerce continues to find that a particular market situation existed in Korea during the POR, which distorted the cost of production of OCTG, based on the cumulative effect of: (1) Korean subsidies on the hot-rolled coil (HRC) input; (2) Korean imports of HRC from China; (3) strategic alliances between Korean HRC and OCTG producers; and (4) distortions in the Korean electricity market. In the current administrative review, as in *OCTG from Korea POR I*, Commerce considered the four particular market situation allegations as a whole, based on their cumulative effect on the Korean OCTG market through the cost of production for OCTG and its inputs.

After consideration of interested parties' comments regarding the application of additional adjustments, we continue to find that the subsidy rates from *Hot-Rolled Steel Flat Products from Korea* are the best information available on the record with which to make an adjustment, and that the record of this review does not contain appropriate data with which to make further adjustments. With respect to HRC purchased from Chinese suppliers, we have continued not to make an adjustment for these final results. As we explained in the *Preliminary Results*, we find that the information on the record of this review does not permit us to quantify the effect of

¹⁰⁵ See ILJIN Rebuttal Brief, at 4 (citing *Final Negative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Turkey*, 67 FR 55815 (August 30, 2002), and accompanying Issues and Decision Memorandum at Comment 1 ("Furthermore, we agree with respondents that the 1991 European Commission finding cited by the petitioners is inapplicable to the facts and laws of the instant proceeding. Nothing in the Act or {Commerce}'s regulations requires us to accord any precedential value to countervailing duty determinations of foreign authorities.")).

imports of Chinese HRC on Korean HRC inputs. Even if Commerce were able to quantify the impact of Chinese HRC inputs on the particular market situation in Korea, we are reluctant to make an adjustment based on a subsidy determination by another administering authority, namely, the European Union. Although findings by foreign administering authorities may be considered by Commerce, Commerce is not required to accept their findings, let alone specific findings regarding the levels of dumping or subsidization. We seek to make an accurate adjustment that would correct distortions in costs and, thus, are reluctant to incorporate a margin or subsidies rate that is based on specific calculations and methodologies of a foreign investigating authority. Also, we find that it would not be appropriate to make an adjustment based on Commerce's CVD determination on *Cold-Rolled Steel Flat Products from China*, as cold-rolled steel is not an input used in OCTG production.

Because we are unable to quantify the effect of Chinese imports on Korean HRC, we, likewise, cannot quantify the effect of Chinese HRC prices on Japanese HRC that is, in turn, imported into Korea. Even if we were able to do so, we continue to find that, as previously noted in the *Preliminary Results* and above, it would not be appropriate to make an adjustment based on a European Union determination, because it is a foreign administering authority. We also find that it would be inappropriate to make an adjustment using rates from Commerce's AD final determination in *Hot-Rolled Steel Flat Products from Japan*, since that proceeding did not measure the effect of Chinese HRC prices on Japanese HRC, but, rather, involved company-specific comparisons of Japanese home market prices to U.S. prices. Regarding Maverick's suggestion that we make an adjustment to Japanese HRC based on import data, we continue to find that the record evidence does not allow us to quantify an adjustment. We find that the import data referenced by Maverick in its case brief reflect data for a broader category of products than the higher grade HRC used in the production of OCTG.¹⁰⁶

Additionally, Commerce continues to find, as in the *Preliminary Results*, 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 do not enable Commerce to quantify the impact of such alliances on the costs of HRC in this particular POR, although such alliances may impact the way customer-supplier relationships are structured and contribute to the existence of a particular market situation. Lastly, we continue to find that we are unable to quantify the effect of the electricity market on the particular market situation. In particular, we find that the information on the record is insufficient for quantifying the impact of government intervention with respect to electricity on the cost to produce OCTG. However, as explained in the *Preliminary Results*, Commerce continues to develop the concepts and types of analysis that are necessary to address future allegations of particular market situations under section 773(e) of the Act.¹⁰⁷

¹⁰⁶ See Maverick Case Brief, at 19-21 (citing, in particular, Maverick August 7, 2017 Letter, at Exhibit 11).

¹⁰⁷ See Preliminary Decision Memorandum, at 20.

Comment 3: Allegation of Improper Political Influence

NEXTEEL's Comments:

- Commerce reversed its PMS findings in the first administrative review under political pressure from the White House. Improper political interference by a White House Policy Advisor does not provide a justification for finding a PMS.
- Commerce cannot employ the PMS provisions in the TPEA without reference to record evidence and without due consideration of the implications of its actions. For the final results, Commerce should return to its reasoned preliminary conclusion in the first administrative review and find that no PMS exists for NEXTEEL.

Maverick's Rebuttal Comments:

- Commerce already reviewed and rejected claims regarding improper political pressure in the first administrative review.

U.S. Steel's Rebuttal Comments:

- Contrary to NEXTEEL's claims, the email correspondence between White House advisor Peter Navarro and Commerce Secretary Wilbur Ross is not evidence of improper political pressure.
- Nothing in the email correspondence suggests that Mr. Navarro was trying to force Commerce to make a decision based on factors outside the antidumping statute or TPEA, and there is no sign that the email influenced Commerce's decision-making process.¹⁰⁸

Commerce Position:

We disagree with the arguments that Commerce's decision process regarding the particular market situation in Korea was improperly politically influenced. Instead, Commerce analyzed the allegations and information on the records of the instant review and the first administrative review in reaching its determinations.

In the prior administrative review, Commerce placed a memorandum on the record containing an email message from the Director of the National Trade Council to Commerce.¹⁰⁹ Commerce placed the communication on the record of that administrative review 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)." No such email communications were received regarding the instant administrative review; accordingly, the record of this review does not contain the above-referenced memorandum.

¹⁰⁸ *Id.*, at 22-23 (citing *OCTG from Korea POR I*, and accompanying Issues and Decision Memorandum, at Comment 4).

¹⁰⁹ See *OCTG from Korea POR I*, and accompanying Issues and Decision Memorandum, at Comment 4.

As we stated in *OCTG from Korea POR I*, other government agencies are free to submit their views on questions before Commerce in AD and CVD proceedings, as are members of Congress. Commerce 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 Commerce's statutory deadlines.

Separate and apart from any views expressed by the National Trade Council in the prior administrative review, Commerce 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 Commerce in order to fulfill its function as the agency responsible for administering the AD and CVD laws. In this case, Commerce 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, Commerce 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 from *OCTG from Korea POR I*, which is not on the record of this administrative review, was not considered in this administrative review and did not affect the results of the current administrative review.

Comment 4: Calculation of ILJIN's Margin

ILJIN's Comments:

- In the *Preliminary Results*, Commerce based the rate for the non-examined companies on the weighted average of NEXTEEL's and SeAH's weighted-average dumping margins, which reflected an upward PMS adjustment for HRC.
- Commerce stated in the *Preliminary Results* that 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}.'"¹¹⁰ Thus, Commerce acknowledges that it normally relies on a simple calculation of the average, but not necessarily.
- Three of the four PMS allegations specifically relate to HRC, which ILJIN does not utilize in its production of seamless OCTG. Instead, it uses billets.
- The fourth PMS allegation, which relates to electricity, is also inapposite to ILJIN's seamless OCTG production, as Maverick's allegation referred to electricity as a significant input in both the production of HRC and the conversion of HRC to OCTG.¹¹¹
- Because the rate for the non-examined companies reflects a PMS adjustment for HRC, an input that ILJIN does not use, it is unlawful for Commerce to apply this margin to ILJIN.
- For the final results, Commerce should assign a margin to ILJIN that is calculated without the PMS adjustment.

¹¹⁰ See ILJIN Case Brief, at 13 (citing Preliminary Decision Memorandum, at 6).

¹¹¹ *Id.*, at 15-16.

Maverick's Rebuttal Comments:

- ILJIN is not a mandatory respondent in this review, which means that it has not been individually examined and is not entitled to its own margin.
- Both seamless and welded OCTG are within the scope of the order on OCTG from Korea.
- The PMS in Korea affects the entire Korean steel industry.¹¹²
- The CIT upheld Commerce's decision from the original investigation not to calculate a separate margin for ILJIN.¹¹³
- For the final results, Commerce should reject ILJIN's argument that Commerce should calculate a specific margin for it based on its production of seamless OCTG, rather than welded OCTG, and its argument that none of the PMS conditions apply to ILJIN.

Commerce Position:

We disagree with ILJIN. As noted in Comment 1, above, Commerce continues to find for these final results that a PMS exists in Korea which distorts the COP of OCTG. Further, as explained in Comment 2, above, we continue to quantify the impact of the PMS in Korea by making an upward adjustment to SeAH's reported HRC costs. Commerce calculates margins for individually examined respondents. Because ILJIN was not selected as an individually examined respondent in this review, we have not calculated an individual margin for ILJIN based on ILJIN's own data. Therefore, for these final results, we have continued to calculate ILJIN's margin using our normal methodology for determining the rate for non-examined respondents (*i.e.*, based on rates that are not zero, *de minimis*, or determined entirely on the basis of facts available). For more information concerning this methodology, *see* Comment 8 below. As a result, we disagree with ILJIN's assertions that we should calculate a separate margin for ILJIN because it produces seamless OCTG instead of welded OCTG, thus making the PMS allegations inapplicable to ILJIN.

Comment 5: Duty Absorption

Maverick's Comments:

- Because neither SeAH nor NEXTEEL filed a response to Commerce's duty absorption inquiry, Commerce should deem that duty absorption occurred with respect to the respondents' entries.
- Commerce should revise the margin calculations for SeAH and NEXTEEL to account for AD duties that the respondents absorbed rather than passed on to unaffiliated customers.
- Specifically, Commerce should account for the effect of the respondents' absorbed duties on their reported costs and expenses.

¹¹² See Maverick Rebuttal Brief, at 38 (citing Maverick May 4, 2017 Letter, at Exhibit 14, page 41).

¹¹³ *Id.*, at 39 (citing *Husteel Co. v. United States*, 180 F. Supp. 3d 1330, 1338-39 (*Husteel II*)).

U.S. Steel's Comments:

- Neither respondent filed a response to Commerce's duty absorption inquiry.
- Commerce should deduct from U.S. price the antidumping duties absorbed by SeAH and NEXTEEL because both respondents engaged in duty absorption.
- Commerce is obligated by the plain language of the statute to deduct absorbed AD duties from U.S. price.¹¹⁴
 - Under the plain language of the statute, the absorbed AD duties are import duties incident to bringing the subject merchandise to the place of delivery in the United States.¹¹⁵
 - Even if Commerce finds that AD duties are not import duties within the meaning of section 772(c)(2)(A) of the Act, the other plain language of this provision requires Commerce to deduct AD duties from U.S. price, as such duties constitute other costs, charges, or expenses incident to bringing the merchandise into the United States.
- The remedial effect of the AD statute is completely defeated when respondents absorb the duties rather than requiring their unaffiliated U.S. purchasers to pay for them. Thus, the only reasonable way to interpret the statute to ensure that its remedial effect is achieved is to account for duty absorption by deducting absorbed AD duties from U.S. price.
- Commerce's current practice with respect to absorbed AD duties is inconsistent with its reimbursement regulation. Under that regulation, Commerce deducts from U.S. price any AD duties that the respondent paid directly on behalf of the importer or reimbursed to the importer.¹¹⁶ By not deducting absorbed AD duties from U.S. price, Commerce allows a respondent to achieve the exact same economic result as reimbursement by simply paying for the antidumping duties itself or through an affiliate.
- To achieve the statute's remedial intent, AD duties absorbed by a foreign producer or its affiliate should be treated in the same manner as reimbursed duties under the Department's reimbursement regulation. The deduction for such duties should be based on the initial calculated dumping margin (not the duty deposit). The dumping margin should then be recalculated one time after making the appropriate adjustment to U.S. price.
- Prior decisions by Commerce and the courts do not preclude Commerce from deducting absorbed AD duties from U.S. price.¹¹⁷
- Reducing U.S. price by the amount of absorbed AD duties does not double count the duties, but is essential to fully account for the margin of unfair trade.

SeAH's Rebuttal Comments:

- Commerce should not deduct AD duties from U.S. price in response to a finding of duty absorption by respondents.

¹¹⁴ See U.S. Steel Case Brief, at 2-3 (citing section 772(c)(2)(A) of the Act).

¹¹⁵ *Id.*, at 3-6.

¹¹⁶ *Id.*, at 9 (citing 19 CFR 351.402(f)(1)(i)(A-B)).

¹¹⁷ *Id.*, at 11-14 (citing *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review*, 62 FR 18476, 18485-18486 (April 15, 1997); *Hoogovens Staal v. United States*, 4 F. Supp. 2d 1213, 1217 (Ct. Int'l Trade 1998) (*Hoogovens Staal*); *Wheatland Tube Company v. United States*, 495 F. 3d 1355, 1360-66 (Fed. Cir. 2007); and *Apex Exports v. United States*, 777 F.3d 1373, 1377 (Fed. Cir. 2015) (*Apex Exports*)).

- In the SAA, Commerce expressed that a finding of duty absorption would not warrant the deduction of antidumping duties from U.S. price. The SAA plainly states that a duty absorption inquiry would not affect margin calculations in administrative reviews and that it is not intended to allow for the treatment of antidumping duties as a cost.¹¹⁸
- The SAA confirms that Congress was completely aware of Commerce’s practice prior to the Uruguay Round, which was not to deduct actual antidumping duties, or deposits of antidumping duties, from U.S. price.¹¹⁹
- Commerce does not have the discretion to reverse its interpretation of the statute; instead, any complaints regarding this practice must be taken to Congress.¹²⁰

NEXTEEL’s Rebuttal Comments:

- Commerce should not deduct AD duties as a cost or an import duty.
- Congress, Commerce, and the courts have repeatedly recognized that Commerce cannot use section 751(a)(4) to adjust margins in an administrative review, nor can Commerce determine AD duties to be an import duty under section 772(c)(2)(A) of the Act.
- The statute, SAA and clear precedent confirm that Commerce should not deduct antidumping duties as a cost.
- In its duty absorption inquiry, Commerce did not require NEXTEEL to submit any information, but simply opened the record for NEXTEEL to submit information if it chose to do so, providing an opportunity to rebut a presumption of duty absorption. At that time, Commerce also indicated its intent to follow its “normal policy” regarding duty absorption, and made no indication that it was contemplating the radical departure from settled practice and the law suggested by the petitioners.
- The petitioners’ suggestion that Commerce calculate the respondents’ margins twice – once to calculate the expense and another time to include the expense in the calculations – would not result in an accurate calculation and would only add further distortions.
- EP and CEP can only be reduced by additional costs, charges, or expenses that are quantifiable at the time of sale. Under the U.S. system, which assesses duties retroactively, importers make estimated duty deposits at the time of entry. No additional costs, charges, or expenses are actually incurred at that time; actual AD duties are not established until Commerce completes its review and calculates a margin. Thus, it is impossible to define an additional actual cost, charge, or expense at the time of the review.
- Commerce has found that “calculating an assessment rate, then deducting the assessed duties and recalculating a new assessment rate would, in effect, amount to impermissible double

¹¹⁸ See SeAH Rebuttal Brief, at 2-3 (citing Statement of Administrative Action accompanying the Uruguay Round Agreements Act, as reprinted in 1994 U.S.C.C.A.N. at 4177 (SAA), at 885-886).

¹¹⁹ *Id.*, at 4 (citing *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 60 FR 10900, 10906-07 (February 28, 1995), at Comment 3 and *Color Television Receivers from the Republic of Korea: Final Results of Administrative Review of Antidumping Duty Order*, 58 FR 50333, 50337 (September 27, 1993), at Comment 7).

¹²⁰ *Id.*, at 5 (citing *GPX International Tire v. United States*, 666 F.3d 732, 739-40 (Fed. Cir. 2011)).

counting of the assessed antidumping duties.”¹²¹ Moreover, the CIT has repeatedly upheld this conclusion,¹²² and the Court of Appeals for the Federal Circuit (CAFC) struck down U.S. Steel’s argument attempting to equate AD duty absorption to reimbursement refunds.¹²³

ILJIN’s Rebuttal Comments:

- Section 751(a)(4) of the Act is not a mechanism for adjusting a respondent’s costs or selling price. The SAA makes it clear that the duty absorption inquiry does not affect the margin calculation in administrative reviews or allow Commerce to treat antidumping duties as a cost.¹²⁴
- The petitioners’ suggestion that Commerce’s failure to adjust costs or selling expenses for duty absorption was discretionary is completely meritless and contrary to the law.
- Maverick and U.S. Steel attempt to conflate sections 751(a)(4) and 772(c)(2)(A) of the Act in a way that contradicts both provisions. Maverick argues that both SeAH and NEXTEEL should be subject to an AFA determination of duty absorption for their failure to respond Commerce’s request for information. Both Maverick and U.S. Steel mistakenly argue that this is comparable to an admission of duty absorption, which should be accounted for in the final margin calculations. This is contrary to the express language of the SAA.
- AD duties are not U.S. import duties under section 772(c)(2)(A), as Congress and Commerce have made abundantly clear.¹²⁵
- Under the U.S. system, which assesses duties retroactively, deposits of estimated duties are made at the time of entry. Since no additional costs, charges, or expenses are actually incurred at that time, it is not until the review is completed and a margin is calculated that an actual AD duty expense is established. Thus, it is not possible to define an additional actual cost, charge, or expense at the time of the review. In addition, both Commerce and the courts have acknowledged that this would lead to double counting.¹²⁶
- Therefore, there is no basis to adjust the margins for duty absorption.

Commerce Position:

We agree with Maverick and U.S. Steel, in part. Section 751(a)(4) of the Act provides for Commerce, if requested, to determine, during an administrative review initiated two or four years

¹²¹ See NEXTEEL’s Rebuttal Brief, at 11 (citing *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*; 2011-2012, 78 FR 42492 (July 16, 2013), and accompanying Issues and Decision Memorandum at Comment 2).

¹²² *Id.*, at 11-12 (citing *AK Steel Corp. v. United States*, 988 F. Supp 594, 607 (Ct. Int’l Trade 1997) (*AK Steel*) and *Hoogovens Staal*, 4 F. Supp. 2d, at 1220).

¹²³ *Id.*, at 12 (citing *Apex Exports*, 777 F.3d at 1373).

¹²⁴ See ILJIN Rebuttal Brief, at 11 (citing SAA, at 886 and *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 40848 (July 11, 2012) (*Frozen Warmwater Shrimp from India 2010-2011*) and accompanying Issues and Decision Memorandum at Comment 5).

¹²⁵ *Id.*, at 13 (citing *Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 19153, 19159 (April 12, 2004) (*Stainless Steel Wire Rod from the Republic of Korea*)).

¹²⁶ *Id.*, at 13-14 (citing *Frozen Warmwater Shrimp from India 2010-2011* and accompanying Issues and Decision Memorandum at Comment 5 (citing *AK Steel*, 988 F. Supp, at 607) and *Hoogovens Staal*, 4 F. Supp. 2d, at 1220).

after publication of the AD order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter.¹²⁷ On December 9, 2016, Maverick timely requested that Commerce conduct a duty absorption inquiry to determine whether SeAH, NEXTEEL, and Hyundai HYSCO had absorbed AD duties.¹²⁸ Since the instant review was initiated two years after publication of the AD order on OCTG from Korea, we have conducted a duty absorption inquiry.

In determining whether the antidumping duties have been absorbed by the respondents, we examine the AD duties calculated in the administrative review in which the duty absorption inquiry is requested.¹²⁹ Commerce presumes the duties will be absorbed for those sales sold through their affiliated importers that have been made at less than NV. This presumption can be rebutted with evidence (*e.g.*, an agreement between the affiliated importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise.¹³⁰ Commerce requested that mandatory respondents SeAH and NEXTEEL provide evidence that their unaffiliated purchasers ultimately will pay the AD duties to be assessed on entries of subject merchandise during the instant POR.¹³¹ Neither SeAH nor NEXTEEL submitted any evidence in response to Commerce's request. Accordingly, based on the information on the record, we cannot conclude that SeAH's and NEXTEEL's unaffiliated purchasers in the United States ultimately will pay the full assessed duties. Because SeAH and NEXTEEL did not rebut the duty-absorption presumption with evidence that their unaffiliated U.S. purchasers will pay the full duty ultimately assessed on the subject merchandise, we find, for these final results, that AD duties have been absorbed by SeAH and NEXTEEL on all U.S. sales.

However, we disagree with Maverick and U.S. Steel that we should revise SeAH's and NEXTEEL's margin calculations to account for duty absorption, either by treating absorbed AD duties as a cost, or by deducting such duties from U.S. price. The SAA states the following with respect to duty absorption:

¹²⁷ See also 19 CFR 351.213(j).

¹²⁸ See Maverick Letter, "Oil Country Tubular Goods from the Republic of Korea: Request for Duty Absorption Review," dated December 9, 2016.

¹²⁹ See 19 CFR 351.213(j)(3).

¹³⁰ See, *e.g.*, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2013–2014*, 80 FR 80746 (December 28, 2015) (*Solar Cells from China Preliminary Results*), and accompanying Decision Memorandum at 5, unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013–2014*, 81 FR 39905 (June 20, 2016) (*Solar Cells from China Final Results*), and *Seamless Refined Copper Pipe and Tube From Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 77651 (December 24, 2013), and accompanying Decision Memorandum at 17, unchanged in *Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review; 2011–2012*, 79 FR 36719, 36720 (June 30, 2014).

¹³¹ See Letter to SeAH, "Oil Country Tubular Goods from the Republic of Korea: Duty Absorption," dated September 27, 2017, and Letter to NEXTEEL, "Oil Country Tubular Goods from the Republic of Korea: Duty Absorption," dated September 27, 2017. We did not request this information from Hyundai HYSCO because it was not a mandatory respondent in this segment of the proceeding. As noted below, Commerce does not determine company-specific margins for non-examined companies, and, therefore, there is no basis for making a duty absorption determination with respect to these companies.

The duty absorption inquiry would not affect the calculation of margins in administrative reviews. This new provision of law is not intended to provide for the treatment of antidumping duties as a cost.

An affirmative finding of absorption in an administrative review initiated two years after the issuance of an order is intended to have a deterrent effect on continued absorption of duties by affiliated importers; if they engage in duty absorption, they will know that they will face an additional hurdle that will make it more difficult to obtain revocation or termination. If, in the four-year review, Commerce finds that absorption has taken place, it will take that into account in its determination regarding the dumping margins likely to prevail if an order were revoked.

Commerce will inform the Commission of its findings regarding duty absorption, and the Commission will take such findings into account in determining whether injury is likely to continue or recur if an order were revoked. Duty absorption may indicate that the producer or exporter would be able to market more aggressively should the order be revoked as a result of a sunset review. Thus, the Commission is to consider duty absorption in determining whether material injury is likely to continue or recur.¹³²

The SAA makes it clear that a duty absorption inquiry does “not affect the calculation of margins in administrative reviews,” and “is not intended to provide for the treatment of antidumping duties as a cost.” Rather, as the SAA indicates, Commerce conducts duty absorption inquiries and informs the International Trade Commission (ITC) of its findings, which the ITC then considers in the context of five-year (“sunset”) reviews in determining whether injury is likely to continue or recur if an order were revoked.

The CIT has rejected the notion that duties be treated as a cost due to a duty absorption inquiry. Specifically, the CIT stated in *Agro Dutch Industries* that:

The {duty absorption} provision does not affect the calculation of the margin in the review, as it was not intended to provide for the treatment of antidumping duties as a cost; rather, a finding of duty absorption is only to be considered a ‘strong indicator’ by Commerce of whether current dumping margins are not indicative of the margins that would exist if the order were revoked.¹³³

Thus, with respect to the petitioners’ suggestion that we should account for absorbed duties by deducting such duties from U.S. price, we disagree. As noted above, the SAA states that “{t}he duty absorption inquiry would not affect the calculation of margins in administrative reviews.” As a result, if Commerce were to deduct absorbed duties from U.S. price in the instant review, this would contradict Congress’ intent that the duty absorption inquiry would not affect the margin calculation in administrative reviews.

¹³² See SAA, at 885-886 (emphasis added).

¹³³ See *Agro Dutch Industries, Ltd. v. U.S.*, 30 C.I.T. 320, 332 (C.I.T. 2006) (*Agro Dutch Industries*).

Moreover, we disagree with the petitioners that AD duties are U.S. import duties under section 772(c)(2)(A) of the Act and should, therefore, be deducted from U.S. price. Section 772(c)(2)(A) of the Act directs Commerce to reduce EP and CEP by “the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States.” Under its longstanding practice, Commerce does not consider AD duties to be “United States import duties” within the framework of section 772 (c)(2)(A) of the Act. As Commerce stated in a 2004 determination:

Congress has long recognized that at least some duties implementing trade remedies—including at least antidumping duties -- are special duties that should be distinguished from ordinary customs duties. Accordingly, Commerce consistently has treated AD duties as special duties not subject to the requirement to deduct ‘United States import duties’ (normal customs duties) from U.S. prices in calculating dumping margins. The U.S. Court of International Trade has upheld this position on five occasions. Moreover, Congress specifically endorsed this position in the Statement of Administrative Action (‘SAA’) accompanying the Uruguay Round Agreements Act when, in explaining the consideration of duty absorption in administrative reviews, it stated that ‘{t}his new provision of law is not intended to provide for the treatment of antidumping duties as a cost.’¹³⁴

In stating that “Commerce consistently has treated AD duties as special duties not subject to the requirement to deduct ‘United States import duties’ (normal customs duties) from U.S. prices,” Commerce noted:

In addition to being different from normal customs duties because they implement a trade remedy, AD duties also embody dumping margins. Thus, to deduct the dumping duty from the U.S. price in calculating the dumping margin essentially would be to deduct the dumping margin itself from the U.S. price in calculating the margin--a circular calculation.¹³⁵

U.S. Steel also argues that if Commerce finds that AD duties are not import duties within the meaning of section 772(c)(2)(A) of the Act, we should find that AD duties are “additional costs, charges, or expenses” incident to bringing the merchandise into the United States within the meaning of section 772(c)(2)(A) of the Act. However, we disagree with U.S. Steel that absorbed AD duties constitute “additional costs, charges, or expenses... incident to bringing the subject merchandise... to the place of delivery in the United States.” The CIT recently found, and the CAFC upheld, the concept that it would be improper to consider AD duties as “additional costs, charges, or expenses” that should be deducted from U.S. price. Specifically, the CAFC stated:

¹³⁴ See *Stainless Steel Wire Rod from the Republic of Korea*, 69 FR at 19159 (footnotes omitted).

¹³⁵ *Id.*, 69 FR at 19159, n.22 (going on to state that Commerce explained its reasons for not deducting antidumping duties from U.S. prices in *Certain Cold-Rolled Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review*, 63 FR 781, 786 (January 7, 1998)).

Since antidumping duties are not deducted from EP as ‘United States import duties,’ it is reasonable for Commerce to likewise refuse to deduct antidumping duties as ‘costs, charges, or expenses... incident to bringing the subject merchandise’ to the U.S. *See* § 1677a(c)(2)(A). It is strange to suggest otherwise—that antidumping *duties* are not U.S. import duties, but instead costs incident to importation that must therefore be deducted from EP. It is reasonable for Commerce to avoid such a construction of the statute.

What is more, Commerce declines to deduct antidumping margins when calculating the margins because that would be inappropriately circular and result in a double counting of the remedy....¹³⁶

Therefore, in calculating SeAH’s and NEXTEEL’s margins for these final results, we find that it would be improper to treat absorbed duties as a cost or deduct absorbed duties from U.S. price under section 772(c)(2)(A) of the Act.

Furthermore, we disagree with U.S. Steel’s contention that Commerce’s practice regarding absorbed AD duties is inconsistent with its reimbursement regulation. U.S. Steel contends that by not deducting absorbed AD duties from U.S. price, Commerce permits respondents to achieve the same economic result as reimbursement. However, duty reimbursement and duty absorption are governed by separate regulations and involve analysis of distinct regulatory factors.¹³⁷ The CAFC recently supported the notion that duty absorption is distinct from duty reimbursement, stating that:

The rationale behind the reimbursement regulation is reasonable. Where the antidumping duty is paid by the exporter, the importer acquires merchandise in the U.S. at less than a fair price, thus frustrating the purposes of the antidumping law. By assuming the cost of the antidumping duties—either through direct payment or reimbursement—the exporter effectively reduces the U.S. price. ...

... The {reimbursement} regulation creates an added disincentive for the exporter. If the exporter pays or reimburses for antidumping duties, Commerce will basically double count the antidumping margin. ... The rationale of the reimbursement regulation, to discourage exporters from reimbursing antidumping duties, is reasonable.

On the other hand, Commerce’s general approach of refusing to deduct antidumping duties addresses a mirror image situation. Where the importer has to pay antidumping duties itself, the standard disincentive operates to protect domestic producers because the U.S. price increases. Commerce refuses to double count the duty where it is already being paid by the importer.¹³⁸

¹³⁶ *See Apex Exports*, 777 F.3d at 1379.

¹³⁷ *See*, respectively, 19 CFR 351.402(f) (duty reimbursement) and 19 CFR 351.213(j) (duty absorption).

¹³⁸ *See Apex Exports*, 777 F.3d, at 1381.

Therefore, since duty absorption is distinct from reimbursement, we disagree with U.S. Steel's argument that Commerce's practice concerning absorbed AD duties is inconsistent with our practice under the reimbursement regulation.

Lastly, because Commerce does not determine company-specific margins for non-examined companies, we did not request information necessary to assess whether these companies absorbed antidumping duties. As a result, there is no basis for making a duty absorption determination with respect to the non-examined companies.¹³⁹

Comment 6: Duty Reimbursement and Application of Adverse Facts Available

Maverick and U.S. Steel's Comments:

- NEXTEEL's 2016 financial statements contain a line item that was mistranslated in a manner that failed to capture the specificity of the loans to NEXTEEL's use of the loan proceeds: reimbursement to its U.S. affiliate, NEXTEEL America, for AD cash deposits.
- These loans are denominated in U.S. dollars, and closely approximate the cash deposits paid during 2015 and 2016. NEXTEEL is in such poor financial condition that it would not have been able to pay the AD cash deposits without these loans, which NEXTEEL received from two Korean banks at the direction of the Korean government.
- Despite increasingly higher AD cash deposit requirements, NEXTEEL's OCTG imports into the United States have increased.¹⁴⁰
- Because NEXTEEL and NEXTEEL America are two separate corporate entities, Commerce's practice of not applying the reimbursement regulation where the "producer or exporter" and the "importer" are the same corporate entity does not apply.
- For the final results, Commerce should find that NEXTEEL unlawfully reimbursed its U.S. affiliate, NEXTEEL America, and/or treat NEXTEEL's absorption of AD duties as a cost.
- By engaging in a reimbursement scheme, NEXTEEL frustrates the intent of the antidumping law by allowing unfairly traded OCTG to enter the United States.
- In addition, due to SeAH's failure to respond to Commerce's duty absorption inquiry, Commerce should find as facts available that SeAH, like NEXTEEL, has been engaging in a duty reimbursement scheme and/or absorbing duties with loans provided by Korean banks.¹⁴¹

¹³⁹ See *Solar Cells from China Preliminary Results*, and accompanying Decision Memorandum at 5 ("Because {Commerce} does not individually review and determine company-specific margins for the separate rate respondents, we did not request information necessary to assess whether the separate-rate respondents absorbed antidumping duties. Therefore, there is no basis for making a duty absorption determination with respect to the separate-rate respondents."), unchanged in *Solar Cells from China Final Results*.

¹⁴⁰ See Petitioners' January 19, 2018 Letter, at 11.

¹⁴¹ See Petitioners' February 2, 2018 Letter, at 1-5.

NEXTEEL's Rebuttal Comments

- There is no reimbursement scheme, since NEXTEEL itself was both the exporter and importer of record during the POR, and an exporter cannot reimburse itself.¹⁴² Documentation on the record, including CBP 7501 forms, confirm this fact.¹⁴³
- There is nothing “nefarious” or unusual about an exporter acting as the importer of record and paying AD duties.¹⁴⁴
- NEXTEEL did not translate its financial statements itself and, thus, it did not act fraudulently. Rather, its independent, outside auditor prepared the translation, and an independent translator recently confirmed that the translation of the key financial phrase was accurate.
- None of the information submitted by the petitioners in support of their duty reimbursement allegation establishes that the Korean government directed Korean banks to provide loans to keep private companies such as NEXTEEL “afloat.”¹⁴⁵
- NEXTEEL acquired the loans to satisfy a statutory requirement that importers obtain a general entry Customs bond to ensure payment of all potential duties.¹⁴⁶
- There is no evidence that the banks were directed by the government to provide the loans to NEXTEEL.
- Finally, the statute does not direct Commerce to deduct AD duties from U.S. price or treat them as a cost.

SeAH's Rebuttal Comments

- Maverick's duty reimbursement allegation only pertained to NEXTEEL; “SeAH” was not mentioned anywhere in Maverick's allegation.¹⁴⁷ Thus, it was inappropriate for Maverick to mention SeAH in the Maverick February 2, 2018 Letter.
- Maverick provided no basis for concluding that SeAH engaged in a duty reimbursement scheme.

Commerce Position:

As an initial matter, with respect to Maverick's assertion that SeAH engaged in a duty reimbursement scheme, we disagree. We find that there is no evidence on the record of this review which establishes that SeAH undertook such a program to provide reimbursement for AD duties. Accordingly, we find no basis to determine that SeAH reimbursed AD duties within the meaning of 19 CFR 351.402(f).

¹⁴² See NEXTEEL February 2, 2018 Letter, at 2 (citing NEXTEEL September 12, 2017 SQR, at S-5).

¹⁴³ *Id.* (citing NEXTEEL February 10, 2017 QR, at Exhibits A-9-A and A-9-B, and NEXTEEL's March 6, 2017 section C questionnaire response, at Exhibit C-23).

¹⁴⁴ *Id.*, at 2.

¹⁴⁵ *Id.*, at 10.

¹⁴⁶ *Id.*, at 9 (citing 19 CFR 142.4 and U.S. Customs and Border Protection, CBP INFO Center Home, “When is a Customs bond required,” available at https://help.cbp.gov/app/answers/detail/a_id/734/~when-is-a-customs-bond-required).

¹⁴⁷ See SeAH March 5, 2018 Letter, at 2-3.

After analyzing the petitioners' duty reimbursement allegation, the record evidence, and the comments subsequently filed by interested parties, we have based NEXTEEL's dumping margin on total AFA for purposes of these results, in accordance with section 776 of the Act. As discussed below, we find that NEXTEEL did not cooperate to the best of its ability in responding to Commerce's requests for information concerning its financial statements. Specifically, the translated version of NEXTEEL's audited financial statements for fiscal year 2016 contains a mistranslated line item related to loans provided to NEXTEEL.¹⁴⁸ As explained more fully below, the mistranslated line item constitutes a material omission that misled Commerce regarding the true nature of the line item and calls into question the veracity of NEXTEEL's questionnaire responses, *in toto*.

NEXTEEL submitted its audited unconsolidated financial statements for fiscal year 2015 with its section A questionnaire response.¹⁴⁹ Subsequently, NEXTEEL submitted its audited unconsolidated financial statements for fiscal year 2016 in a supplemental questionnaire response.¹⁵⁰ For both the 2015 and 2016 financial statements, NEXTEEL provided the original, Korean language version, and a translated, English language version. In addition, for both the 2015 and 2016 financial statements, NEXTEEL did not provide a public version, but, rather, indicated that the financial statements were "not susceptible to public summarization." In the *Preliminary Results*, we calculated a margin for NEXTEEL based on the information provided by NEXTEEL and its affiliate, POSCO Daewoo, in their questionnaire and supplemental questionnaire responses.

On January 19, 2018, after the conclusion of the briefing period, Maverick and U.S. Steel collectively filed a duty reimbursement allegation with respect to NEXTEEL. In their allegation, the petitioners stated that, until recently, they had relied upon the English translation of NEXTEEL's financial statements.¹⁵¹ However, they stated that when they publicly obtained a Korean language version of NEXTEEL's financial statements and began translating them for other purposes, they identified the mistranslation of a certain line item therein.¹⁵² The mistranslation of that line item, which NEXTEEL designated as business proprietary information, forms the crux of the petitioners' duty reimbursement allegation, namely, that the loans recorded therein "were given to NEXTEEL at the direction of the Korean government to reimburse NEXTEEL America" for AD cash deposits.¹⁵³ Upon examining the information in the petitioners' duty reimbursement allegation, as well as the information which NEXTEEL provided in response to that allegation,¹⁵⁴ we find that the line item in question in NEXTEEL's 2016 financial statements was, indeed, mistranslated. Because NEXTEEL did not accurately translate this line item in its financial statements, and the mistranslation was not identified until

¹⁴⁸ See Petitioners' January 19, 2018 Letter, at 3-4.

¹⁴⁹ See NEXTEEL February 10, 2017 QR, at Exhibit A-10.

¹⁵⁰ See NEXTEEL's July 10, 2017 supplemental sections A and C questionnaire response (NEXTEEL July 10, 2017 SQR), at Appendix, Exhibit FS-1).

¹⁵¹ See Petitioners' January 19, 2018 Letter, at 4.

¹⁵² *Id.*

¹⁵³ *Id.*, at 3. Due to the business proprietary nature of the line item at issue, it is not identified in this Issues and Decision Memorandum. For more information regarding this line item, see Memorandum, "2015-2016 Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea: Application of AFA for NEXTEEL," dated April 11, 2018 (NEXTEEL AFA Memorandum).

¹⁵⁴ See NEXTEEL February 2, 2018 Letter.

the time of the petitioners' duty reimbursement allegation on January 19, 2018, Commerce was not able to examine fully the circumstances surrounding the loans included in the line item. In particular, because the mistranslation of the particular line item did not come to light until after the conclusion of the briefing period in this segment of the proceeding, Commerce was precluded from pursuing this matter further by issuing supplemental questionnaires to NEXTEEL. Further, we find that the nature of the loans recorded in the line item in question call into question the accuracy of information submitted by NEXTEEL during the instant review. Therefore, we conclude that necessary information is not available on the record of this review, and that NEXTEEL withheld information from Commerce and significantly impeded the proceeding.

A. The Application of Total Facts Available for NEXTEEL

Section 776(a)(1) of the Act states that, subject to section 782(d) of the Act, Commerce shall use facts otherwise available if necessary information is not available on the record of a proceeding. In addition, section 776(a)(2) of the Act provides that Commerce shall, subject to section 782(d) of the Act, use facts otherwise available if an interested party or any other person: (A) withholds information that has been requested by Commerce; (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified, as provided in section 782(i). As discussed further below, NEXTEEL failed to provide necessary information on the record, namely, an accurate translation of a certain line item in its 2016 financial statements. By failing to provide an accurate translation, NEXTEEL withheld information that would have enabled Commerce to examine fully the loans recorded in the line item in question and determine how to appropriately treat them for purposes of the margin calculations. Moreover, by failing to provide an accurate translation of the line item at issue, NEXTEEL significantly impeded the proceeding, because the nature of the loans remained unidentified throughout a substantial portion of the instant review and, therefore, could not be properly investigated by Commerce.

Section 782(d) of the Act provides that if Commerce determines that a response to a request for information does not comply with the request, Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, Commerce may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. In this case, NEXTEEL provided its original, Korean language financial statements to Commerce, along with English translations, for fiscal year 2016 as part of its first supplemental questionnaire response.¹⁵⁵ Commerce did not become aware of the mistranslation and its implications until well after the close of the briefing schedule, at which point it was too late to ask NEXTEEL to remedy the deficient translation. Further, subsequent to providing its fiscal year 2016 financial statements in its first supplemental questionnaire response, NEXTEEL submitted responses to additional supplemental

¹⁵⁵ See NEXTEEL July 10, 2017 SQR, at Appendix, Exhibit FS-1.

questionnaires.¹⁵⁶ NEXTEEL did not remedy by correcting the mistranslated line item in those later-filed supplemental questionnaire responses. Thus, this mistranslated information persisted, unbeknownst to Commerce and other interested parties. Because the mistranslation was not identified until well after the close of the briefing schedule, Commerce was not able to examine and further investigate information pertaining to the loans recorded therein and the possible implications of such for margin calculation purposes, the absence of which might allow NEXTEEL to thwart the purpose of the AD law. Likewise, other interested parties, including the petitioners, were not aware of the true nature of the line item at issue, until the petitioners independently obtained a publicly available Korean version of NEXTEEL's financial statements and discovered the mistranslation.¹⁵⁷ Therefore, we find it appropriate to disregard the entirety of NEXTEEL's reporting in the instant review as unreliable.

Section 782(c)(1) of the Act provides that, if an interested party, promptly after receiving a request from Commerce, notifies Commerce that it is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, Commerce shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party. As noted above, Commerce was prevented from requesting that NEXTEEL provide any additional information about the loans recorded in the mistranslated line item in NEXTEEL's 2016 financial statements, because Commerce was not aware of the mistranslation and the true nature of the line item at issue until very late in this segment of the proceeding. NEXTEEL did not notify Commerce of any difficulties in translating its financial statements, or that there were alternate translations for the line item in question.

Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Here, we find that NEXTEEL failed to provide information by the established deadline, namely, an accurate translation of a certain line item in its 2016 financial statements. Sections 351.301(c)(1)-(4) of Commerce's regulations establish deadlines for submission of specific types of factual information, and 19 CFR 351.301(c)(5) establishes that factual information not directly responsive to 19 CFR 351.301(c)(1)-(4) must be submitted 30 days prior to the scheduled date of the preliminary results. NEXTEEL did not provide an accurate translation by the regulatory

¹⁵⁶ See NEXTEEL July 12, 2017 SQR; NEXTEEL's July 17, 2017 supplemental section D questionnaire response; NEXTEEL's July 21, 2017 supplemental section D questionnaire response; NEXTEEL's September 12, 2017 supplemental sections A and C questionnaire response (NEXTEEL September 12, 2017 SQR) and NEXTEEL's September 14, 2017 supplemental section D questionnaire response.

¹⁵⁷ In this proceeding, NEXTEEL designated its financial statements as business proprietary information and indicated that these statements are not susceptible to public summarization. See NEXTEEL February 10, 2017 QR, at Exhibit A-10 (2015 financial statements) (public version) and NEXTEEL July 10, 2017 SQR, at Appendix, Exhibit FS-1 (2016 financial statements) (public version).

deadline. Without an accurate translation, Commerce did not have the ability to probe the loans recorded therein and properly determine how to treat the loans for margin calculation purposes.

In its comments filed in response to the petitioners' duty reimbursement allegation, NEXTEEL states that the "translation of a technical financial term in NEXTEEL's financial statements was reasonable" and "any imperfection was the result of a simple oversight."¹⁵⁸ However, in the affidavit provided by NEXTEEL's independent outside auditor, the auditor declared the following with respect to the translation of the line item in question:

In translating the term {in question}, I focused on the key financial word [], and I believe that [] is a reasonable and accurate translation of the term. Upon further review of the Korean financial statement, *the word [] was inadvertently not included in the English translation.*¹⁵⁹

NEXTEEL also provided an affidavit from an independent translator, whose declaration confirms that the translation of the line item in NEXTEEL's 2016 financial statements was incomplete.¹⁶⁰ In other words, both NEXTEEL's auditor and another translation company confirmed that the translation was (at a minimum) incomplete. Due to the omission of a certain word from that line item, the full and accurate meaning of that line item was not disclosed to Commerce and other interested parties, until the petitioners discovered this omission and brought it to Commerce's attention on January 19, 2018. We compared the incomplete translation with the full translation provided by the petitioners, and we find that NEXTEEL's translation omission materially affected the meaning of the item at issue and mislead us as to the true nature of the line item. This mistranslation, unknown to Commerce until well after the *Preliminary Results*, significantly impeded our ability to examine and further investigate the nature and details of the financial arrangement at issue and its potential effect on the dumping margin. Now, having been informed of the proper translation of the line item at issue, and its potential implications on our analysis, if we had an opportunity to examine and investigate it further, we find that we find that NEXTEEL significantly impeded this proceeding, that the information on the record is not complete and reliable, and, thus, calls into question the veracity of NEXTEEL's response and questionnaire responses.

The burden is not on Commerce to create an adequate record, but, rather, is on interested parties.¹⁶¹ When Commerce seeks information from interested parties or interested parties submit information for Commerce's consideration, interested parties have a responsibility to provide complete, accurate, and non-misleading translations of the documents they submit in the proceeding. A NEXTEEL official and NEXTEEL's legal counsel certified the accuracy of its responses, which would inherently encompass the accuracy of the translation of the 2016 financial statements, prior to placing them on the record of this review. However, the translation of the line item at issue was incomplete and differed in material respects from the full translation provided by the petitioners. Without complete information concerning the nature of the loans

¹⁵⁸ See NEXTEEL February 2, 2018 Letter, at 4 (emphasis added).

¹⁵⁹ *Id.*, at Exhibit 1.

¹⁶⁰ *Id.*, at Exhibit 2.

¹⁶¹ See, e.g., *Jinan Yipin Corp. v. United States*, 800 F. Supp. 2d 1226 (September 26, 2011); *NSK v. United States*, 28 CIT 1535 (August 20, 2004); and *Chia Far Indus. Factory Co. v. United States*, 28 CIT 1336 (August 2, 2004).

recorded in the line item at issue and the details of the related financial arrangements, we find that the information that NEXTEEL provided on the record of this review is incomplete, and, as such, we cannot rely on the information which NEXTEEL did provide to serve as a reliable basis for reaching a determination under section 782(e) of the Act.

In this case, based on NEXTEEL's failure to provide an accurate translation of an important line item in its 2016 financial statements, which is discussed extensively in the petitioners' reimbursement allegation, NEXTEEL withheld information that would have enabled Commerce to analyze whether the loans recorded in that line item were relevant to Commerce's dumping calculations. Furthermore, by failing to provide an accurate translation of that line item, NEXTEEL significantly impeded the proceeding. Because the nature of the loans was not identified until well after the conclusion of the briefing period, Commerce was not able to examine them and the circumstances surrounding them. As a result, applying AFA to NEXTEEL for these final results is appropriate, based on NEXTEEL's failure to fully disclose the nature of the loans recorded in that key line item.

Based on the foregoing, in the final results, we are relying on entirely upon the facts otherwise available to determine the estimated weighted-average dumping margin for NEXTEEL in this administrative review.

B. Use of Adverse Inference

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available.¹⁶² In doing so, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.¹⁶³ In addition, the SAA explains that Commerce 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."¹⁶⁴ Furthermore, affirmative evidence of bad faith the part of a respondent is not required before Commerce may make an adverse inference.¹⁶⁵ It is Commerce's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.¹⁶⁶

¹⁶² See also 19 CFR 351.308(a); *Stainless Steel Bar from India*, 70 FR at 54025-26; and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

¹⁶³ See section 776(b)(1)(B) of the Act.

¹⁶⁴ See SAA at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

¹⁶⁵ See, e.g., *Nippon Steel Corp.*, 337 F.3d 1373 at (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).

¹⁶⁶ 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

The Courts have upheld that the best-of-its-ability standard involves the question of whether the respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in a proceeding.¹⁶⁷ In this administrative review, we find that NEXTEEL did not act to the best of its ability to comply with Commerce’s requests for information because NEXTEEL failed to properly disclose information related to loans recorded in its 2016 financial statements. Specifically, the English-language version of NEXTEEL’s 2016 financial statements contain a mistranslated line item, which, the petitioners state, consists of “loans that were given to NEXTEEL at the direction of the Korean government to reimburse NEXTEEL America” for AD cash deposits.¹⁶⁸ To be clear, the issue here is not whether duty reimbursement actually occurred; rather, the issue is that the mistranslation of a key line item prevented Commerce from investigating the true nature of the loans at issue and their relevance to its dumping calculations. Because NEXTEEL failed to submit the English-language version of its 2016 financial statements with a complete, accurate translation, we find that NEXTEEL did not provide Commerce with full and complete answers to Commerce’s inquiries in this proceeding. Furthermore, NEXTEEL did not inform Commerce of any difficulties in translating its financial statements. “While best-of-its-ability standard requires that Commerce examine respondent’s abilities, efforts, and cooperation in responding to Commerce’s requests for information,”¹⁶⁹ we note that the Federal Circuit also stated that the standard “does not condone inattentiveness, carelessness, or inadequate record keeping.”¹⁷⁰ Here, the mistranslation may have resulted either from inattentiveness and carelessness, if not from a deliberate effort to mislead the agency. NEXTEEL had ample time to correct the mistranslation of the line item at issue in its 2016 financial statements, or notify Commerce of reporting difficulties. Accordingly, because we determine that NEXTEEL did not act to the best of its ability, we have applied adverse facts available, pursuant to section 776(b) of the Act, to NEXTEEL for these final results.

C. Selection and Corroboration of AFA Rate

Section 776(b) of the Act states that Commerce, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the less-than-fair-value (LTFV) investigation, a previous administrative review, or any other information placed on the record.¹⁷¹ In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.¹⁷² Under section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an antidumping duty order when applying an adverse inference, including the highest of such margins.¹⁷³ The TPEA also makes clear that when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to

FR 14476 (March 14, 2014).

¹⁶⁷ See *Nippon Steel Corp.*, 337 F.3d at 1382.

¹⁶⁸ See Petitioners’ January 19, 2018 Letter, at 3.

¹⁶⁹ See *Nippon Steel Corp.*, 337 F.3d at 1382.

¹⁷⁰ *Id.*

¹⁷¹ See also 19 CFR 351.308(c).

¹⁷² See SAA, at 870.

¹⁷³ See section 776(d)(1)-(2) of the Act and TPEA, section 502(3).

demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.¹⁷⁴

Further, section 776(c) of the Act requires that, to the extent practicable, Commerce corroborate secondary information from independent sources that are reasonably at its disposal, except that Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.¹⁷⁵

As AFA, and pursuant to section 776(d) of the Act, we are assigning to NEXTEEL a weighted-average dumping margin of 75.81 percent, the highest transaction-specific margin calculated for a sale made by SeAH pursuant to usual terms and conditions. Because we were unable to corroborate the highest petition margin of 158.53 percent¹⁷⁶ with individual transaction-specific margins from SeAH, we next applied a component approach and compared the NVs and net U.S. prices underlying the highest petition margin to the NVs and net U.S. prices calculated for SeAH. We found, however, that we were also unable to corroborate the highest petition margin of 158.53 percent with this component approach. Specifically, Commerce finds that the NVs and net U.S. prices calculated for the single mandatory respondent, SeAH, are not within the range of the NVs and net U.S. prices underlying the highest margin alleged in the petition. Consequently, Commerce determines to base the AFA rate for NEXTEEL on SeAH’s highest transaction-specific margin for a sale made pursuant to usual terms and conditions, 75.81 percent, for these final results.¹⁷⁷ Because this rate is not secondary information, but, rather, is based on information obtained in the course of this review, Commerce need not corroborate this rate pursuant to section 776(c) of the Act.

D. Duties as a Cost

Finally, we disagree with the argument raised in the petitioners’ duty reimbursement allegation that Commerce should treat NEXTEEL’s absorbed AD duties as a cost. For more information regarding the reasons for our conclusion, *see* Comment 5, above.

Comment 7: Calculation of Constructed Value Profit

NEXTEEL’s Comments:

- Contemporaneity is key in the volatile OCTG market when evaluating suitable CV profit sources. There have been dramatic changes in the OCTG market since the LTFV investigation which render contemporaneity especially important.¹⁷⁸
- Commerce should not use SeAH’s CV profit data for sales to Canada from *OCTG from Korea POR 1* because that market is subject to an AD case against OCTG from Korea.

¹⁷⁴ See section 776(d)(3) of the Act and TPEA, section 502(3).

¹⁷⁵ See section 776(c)(2) of the Act and TPEA, section 502(2).

¹⁷⁶ See *Certain Oil Country Tubular Goods from India, the Republic of Korea, the Republic of the Philippines, Saudi Arabia, Taiwan, Thailand, the Republic of Turkey, Ukraine, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 78 FR 45505, 45510 (July 29, 2013).

¹⁷⁷ See NEXTEEL AFA Memorandum.

¹⁷⁸ See NEXTEEL Case Brief, at 30.

SeAH's profit data for the Canadian market are distorted by the dumping case covering SeAH's exports to Canada. For the final results, Commerce should discard SeAH's data and, consistent with the statute and established practice, use NEXTEEL's own contemporaneous profit information for products in the same general category as OCTG.

- Commerce should use NEXTEEL's own profit information for line pipe for the final results.
- OCTG is of the same general category of merchandise as line pipe. In *OCTG from Ukraine*, Commerce determined that OCTG was of the general category of products as line pipe.¹⁷⁹
- The WTO has determined that line pipe and other pipes used in the oil and gas industry are of the same general category of products as OCTG.
- Alternatively, Commerce should use financial data from OCTG producers Tenaris and TMK.
- NEXTEEL asserts that upon reallocation of certain line items, Tenaris generated an operating profit in fiscal year 2016.

ILJIN's Comments:

- Commerce's use of CV profit data from *OCTG from Korea POR 1*, in lieu of the more current profitability data on the record of this review, is factually and legally unsupportable and must be corrected in the final results.¹⁸⁰
- NEXTEEL, as a mandatory respondent, is in a better position to make arguments regarding its own data and the propriety of using those data, or other profitability data, rather than the profitability data relied on by Commerce. Therefore, ILJIN defers to and adopts the arguments made by NEXTEEL on this issue.

SeAH's Comments:

- The CV profit rate used in the *Preliminary Results* is based on information that is not contemporaneous with the current review period.
- Commerce's practice is to use a CV profit rate based on information that is contemporaneous with the sales being reviewed.¹⁸¹
- The use of contemporaneous information is especially important in this case, particularly in light of the unrefuted evidence that worldwide demand and prices for OCTG were lower during the instant review than in previous years.¹⁸²
- Canada was not a viable market for SeAH's sales during the instant review.
- The information in TMK IPSCO's and Chung Hung Steel Corporation's financial statements is more contemporaneous with the instant review than the rate used in the *Preliminary Results*.

¹⁷⁹ *Id.*, at 38 (citing *Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 79 FR 41969 (July 18, 2014) (*OCTG from Ukraine*) and accompanying Issues and Decision Memorandum at Comment 2).

¹⁸⁰ See ILJIN Case Brief, at 4-5.

¹⁸¹ See SeAH Case Brief, at 23 (citing *Certain Lined Paper Products from India: Notice of Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 10876 (February 28, 2011), and accompanying Issues and Decision Memorandum at Comment 3, and *Certain Steel Nails from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 77 FR 17029 (March 23, 2012), and accompanying Issues and Decision Memorandum at Comment 6).

¹⁸² *Id.* (citing NEXTEEL Letter, "Oil Country Tubular Goods from the Republic of Korea: NEXTEEL CV Profit Rebuttal Comments," dated August 2, 2017, at 4-8, and Exhibits 1-6).

- Although Commerce rejected the use of Welspun’s financial statements in the *Preliminary Results*, the ITC previously stated that Welspun was a producer of OCTG. Thus, Commerce should consider using Welspun’s financial statements for the final results.
- Commerce’s remand determination concerning the original investigation in this case applied a facts available profit cap based on the average of the profits in the global market earned by Tenaris and TMK. While a “global” profit cap is not sufficient to meet the requirements of the statute, it plainly is more consistent with the statute than not applying any profit cap at all.

Maverick’s Rebuttal Comments:

- Commerce should reject SeAH’s arguments regarding CV profit and, for the final results, continue to base CV profit and selling expenses for NEXTEEL and SeAH on the CV profit and selling expense rate calculated for SeAH in *OCTG from Korea POR I*.
- SeAH’s arguments have been previously addressed and rejected by Commerce and the CIT.
- SeAH’s CV profit calculations based on TMK IPSCO’s and Chung Hung Steel Corporation’s income statements are, at most, approximations, and less specific than SeAH’s profit from *OCTG from Korea POR I*.
- There is no legitimate information on the record of this review which indicates that Welspun is an OCTG producer.
- There is no information on this record related to the profit rate in Korea for the same general category of merchandise, and, therefore, the profit cap cannot be applied. If Commerce uses a surrogate profit cap, it should use the profit from SeAH’s sales of OCTG in the comparison market that it deemed to be appropriate for determining SeAH’s dumping margin in *OCTG from Korea POR I*.¹⁸³
- Maverick and TenarisBayCity support U.S. Steel’s rebuttal to NEXTEEL’s affirmative arguments with respect to CV profit.

U.S. Steel’s Rebuttal Comments:

- Commerce should continue to base CV profit and selling expenses for both NEXTEEL and SeAH on the CV profit and selling expense rates calculated for SeAH’s sales of OCTG to Canada in *OCTG from Korea POR I*.
- SeAH’s CV profit and selling expense rate from *OCTG from Korea POR I* is public. It reflects the profit and selling expenses of a Korean OCTG producer and is based on sales of OCTG to a viable comparison market that were made in the ordinary course of trade. It is not only specific to OCTG, but specific to OCTG produced by a Korean producer in Korea.
- The record evidence shows that the market conditions that were present during the instant review did not represent a “drastic change” from those present in *OCTG from Korea POR I*. To the contrary, they represent a continuation of the same conditions that were present in *OCTG from Korea POR I*.

¹⁸³ See Maverick Rebuttal Brief, at 41.

- Commerce has used the data of respondents that were submitted in prior reviews to calculate CV profit and selling expenses in numerous other cases. The Federal Circuit recognized that this is an appropriate basis for calculating CV profit in *Atar S.R.L. v. United States*.¹⁸⁴
- Commerce already rejected NEXTEEL’s claims regarding the Canadian antidumping case against OCTG from Korea in *OCTG from Korea POR I*, finding these sales to be the best alternative for CV profit and selling expenses on the record.
- Commerce should reject NEXTEEL’s own profit information as a basis for CV profit. As Commerce found in the investigation of OCTG from Korea, standard pipe and line pipe are not in the same general category as OCTG, and this finding has been upheld on appeal at the CIT.¹⁸⁵ Therefore, there is no reason for Commerce to depart from its prior decisions that standard pipe and line pipe are not in the same general category of products as OCTG.
- The facts in *OCTG from Ukraine* are different from those in the instant review. The Department’s determination in *OCTG from Ukraine* “was limited to the record of that investigation, which showed that: (i) the products in question were produced as OCTG, entered the United States as OCTG, and still were OCTG, even if they had been identified as damaged or otherwise unusable as prime merchandise; (ii) the products were not sold as scrap or ‘as a product other than casing or tubing’; and (iii) some ‘reject’ sales prices were virtually the same as some ‘prime’ sales prices, which the Department found ‘further supports our conclusion that the reject sales are, in fact, sales of subject merchandise.’”¹⁸⁶
- Commerce should reject the financial statements of six companies submitted by NEXTEEL and SeAH for the basis of CV profit and selling expenses.
 - Tenaris’ 2016 financial statements are not an appropriate basis for CV profit because Commerce’s practice is to exclude from the profit calculation any information from companies that record losses or zero profit.¹⁸⁷ In this case, Tenaris’s 2016 financial statements do not show any profit without the inclusion of certain investment income that should be excluded from the calculation of CV profit.¹⁸⁸
 - Welspun’s 2015-2016 financial statements are not an appropriate basis for CV profit and selling expenses because Commerce recently declined to use Welspun as the source for the surrogate financial ratios in its remand redetermination in OCTG from Vietnam, based on its finding that there was no evidence that Welspun’s financial statements reflect the production of any OCTG.¹⁸⁹
 - Tubos Reunidos’ 2016 financial statements primarily reflect the results of operations on activities other than the production and sale of OCTG. Therefore, Tubos Reundios’ financial statements are not an appropriate basis for calculating CV profit and selling expenses.¹⁹⁰

¹⁸⁴ See U.S. Steel Rebuttal Brief, at 28-29 (citing *Atar S.R.L. v. United States*, 730 F. 3d 1320 (Fed. Cir. 2013)).

¹⁸⁵ *Id.*, at 30-31 (citing *Husteel II*, 180 F. Supp. 3d, at 1343).

¹⁸⁶ *Id.*, at 32-33 (citing *OCTG from Ukraine* and accompanying Issues and Decision Memorandum at Comment 2).

¹⁸⁷ *Id.*, at 34 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the Republic of Korea*, 68 FR 47540, 47542 (August 11, 2003)).

¹⁸⁸ *Id.*, at 35-37.

¹⁸⁹ *Id.*, at 37-38 (citing Final Results of Redetermination Pursuant to Court Remand in *SeAH Steel VINA Corp. v. United States*, Court. No. 14-00224 (April 28, 2017) at 21).

¹⁹⁰ *Id.*, at 38.

- Borusan's financial statements are not an appropriate basis for CV profit and selling expenses because Borusan's public consolidated financial statements reflect the results of operations for products other than OCTG.¹⁹¹
- TMK's financial data reflect the production and sale of significant quantities of non-OCTG pipe and other steel products (*i.e.*, standard and structural pipe, line pipe, mechanical tubing, anticorrosion coatings for pipes, tube and pipe serving the power generation industry, and semi-finished steel products such as billets. Therefore, TMK's financial statements are not an appropriate basis for CV profit and selling expenses.¹⁹²
- Chung Hung Steel Corporation produces and sells a large variety of steel products other than OCTG, including hot-rolled-steel, cold-rolled steel, galvanized steel, and other pipe products. Therefore, Chung Hung Steel Corporation's financial statements are not an appropriate basis for CV profit and selling expenses.¹⁹³

Commerce Position:

As an initial matter, because we are applying total AFA to NEXTEEL for these final results, our determination of which CV profit rate and selling expenses to use applies only to SeAH.

In these *Final Results*, we have continued to use the expense ratios calculated for SeAH in the *OCTG from Korea POR I* as the source of CV profit and selling expenses.¹⁹⁴ As explained below, we continue to find that the CV profit rate and selling expenses for SeAH's third country market sales of OCTG during *OCTG from Korea POR I* represent the best source for valuing SeAH's CV profit and selling expenses in the instant review, based on the criteria established under section 773(e)(2)(B)(iii) of the Act. In contrast to the alternative data sources submitted by NEXTEEL and SeAH, SeAH's CV profit and selling expense ratios from the immediately preceding review (*i.e.*, *OCTG from Korea POR I*) reflect the profit and selling expense experiences of a Korean OCTG producer, are based on OCTG sales to a viable comparison market, and are derived from sales made in the ordinary course of trade. Accordingly, we have continued to rely on SeAH's CV profit and selling expense ratios from *OCTG from Korea POR I* to derive CV profit and selling expenses in these final results for SeAH.

In the instant review, SeAH did not have a viable home or third-country market to serve as a basis for NV. Thus, for SeAH, we based NV on CV consistent with section 773(a)(4) of the Act.¹⁹⁵ Likewise, absent a viable home or third-country market, and absent any evidence of the actual amounts incurred or realized by SeAH for profits in connection with production and sale of a foreign like product, in the ordinary course of trade in Korea, 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.

¹⁹¹ *Id.*, at 38-39.

¹⁹² *Id.*, at 39-40.

¹⁹³ *Id.*, at 40.

¹⁹⁴ See *OCTG from Korea POR I*, and accompanying Issues and Decision Memorandum at Comment 1.

¹⁹⁵ *Id.*

As we also noted in *OCTG from Korea POR I*, 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:

(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”)}.¹⁹⁶

The statute does not establish a hierarchy for selecting among the alternatives for calculating CV profit and selling expenses.¹⁹⁷ 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.”¹⁹⁸ Thus, Commerce has discretion to select from any of the three alternative methods, depending on the information available on the record. In this case, as in *OCTG from Korea POR I*, Commerce is faced with choosing among several alternatives for CV profit based on available data that reflect at least one of the criteria noted above.¹⁹⁹ 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 in the instant review and weighed each of the statutory alternatives to determine which surrogate data source most closely fulfills the aim of the statute. We continue to find that Commerce cannot rely on alternative (i) because the other steel products produced by SeAH are not in the same general category of merchandise as OCTG.²⁰⁰ Further, Commerce cannot rely on alternative (ii) because there is no evidence that SeAH made sales of OCTG in the home market (i.e., Korea). Therefore, Commerce must 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.

In conducting this analysis, we note that 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

¹⁹⁶ *Id.*

¹⁹⁷ See 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.”)

¹⁹⁸ *Id.*, at 840.

¹⁹⁹ See *OCTG from Korea POR I* and accompanying Issues and Decision Memorandum, at Comment 1.

²⁰⁰ The CIT upheld this decision in the less-than-fair-value investigation of OCTG from Korea. See *Husteel II*.

under consideration. However, when selecting a profit rate from available record evidence, we may not be able to find a source that reflects both 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.

On the record of this proceeding, we are faced with various alternative sources for calculating CV profit and selling expenses under section 773(e)(2)(B)(iii): (1) profit associated with SeAH's Canadian market sales, costs, selling and general expenses from *OCTG from Korea POR I*; (2) NEXTEEL's financial data; (3) the audited 2016 financial statements of Tenaris; (4) the audited 2016 financial statements of TMK; (5) the audited 2016 financial statements of Chung Hung Steel Corporation; (6) the audited 2016 financial statements of Borusan Mannesmann; (7) the audited 2016 financial statements of Tubos Reunidos; and (8) the audited 2016 financial statements of Welspun.²⁰¹

In evaluating the different alternatives on the record, we continue to find that SeAH's combined calculated CV profit and selling expense rate from *OCTG from Korea POR I* constitutes the best information available on the record. While the financial data from SeAH are less contemporaneous to the POR than are the other alternative financial data sources, we continue to find that the specificity of the SeAH financial data outweighs concerns over contemporaneity. SeAH's combined calculated CV profit and selling expense rate is based on SeAH's proprietary profit number, but does not disclose the proprietary profit number publicly. As was also the case in *OCTG from Korea POR I*, 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.²⁰² The profit is specific to

²⁰¹ NEXTEEL submitted profit data pertaining to its own production of line pipe and standard pipe during the POR, as well as the financial statements of TMK, Tenaris, Tubos Reunidos, Borusan Mannesmann, and Welspun, on July 26, 2017. See NEXTEEL Letter, "Oil Country Tubular Goods from the Republic of Korea: NEXTEEL CV Profit Information and Comments," dated July 26, 2017 (NEXTEEL July 26, 2017 Letter). SeAH submitted the financial statements of Tenaris, TMK, Chung Hung Steel Corporation, and Borusan Mannesmann on July 26, 2017. See SeAH Letter, "Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea for the 2015-2016 Review Period—Response to Request for CV Profit and Selling Expense Comments and Information," dated July 26, 2017 (SeAH July 26, 2017 Letter). In addition, on July 26, 2017, U.S. Steel submitted information concerning the CV profit and selling expense rate calculated for SeAH in *OCTG from Korea POR I*. See U.S. Steel Letter, "Oil Country Tubular Goods from the Republic of Korea," dated July 26, 2017. Finally, on August 2, 2017, Maverick, NEXTEEL, and U.S. Steel submitted rebuttal comments and information. See, respectively, Maverick Letter, "Certain Oil Country Tubular Goods from the Republic of Korea: CV Profit Rebuttal Submission," dated August 2, 2017; NEXTEEL Letter, "Oil Country Tubular Goods from the Republic of Korea: NEXTEEL CV Profit Rebuttal Comments," dated August 2, 2017; and U.S. Steel Letter, "Certain Oil Country Tubular Goods from the Republic of Korea," dated August 2, 2017 (U.S. Steel August 2, 2017 Letter).

²⁰² *Id.*

OCTG. Moreover, it represents profit from OCTG produced by a Korean producer in Korea. Thus, 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).

As discussed in more detail below, Tenaris experienced an operational loss during the 2016 fiscal year, thereby rendering the sales underlying Tenaris' financial statements outside the ordinary course of trade. Further, we find the financial data of Welspun, Tubos Reunidos, Borusan, TMK, and Chung Hung Steel Corporation to be less specific to OCTG than the SeAH financial data. Therefore, we find that, consistent with the CAFC's opinion in *Atar S.R.L. v. United States*,²⁰³ notwithstanding the fact that SeAH's data are less contemporaneous than the alternative financial data sources, SeAH's data are the most specific to OCTG, and, therefore, pursuant to section 773(e)(2)(B) of the Act, represent the best source of financial ratios in this review.

Regarding Tenaris' 2016 audited financial statements, while SeAH and NEXTEEL note that the Tenaris financial data are contemporaneous with the POR, we continue to find that Tenaris' experience of an operational loss renders the Tenaris data an inappropriate source for CV profit and selling expenses. NEXTEEL's assertion that Commerce should include "equity in earnings (losses) of non-consolidated companies" and "income before equity in income earnings of non-consolidated companies and income tax" accounts improperly attempts to boost operating income through the inclusion of non-operational expenses. Commerce's established practice with regard to CV profit ratios is to exclude income from financial and investment activities because these items relate to non-operational investment operations rather than to the general operations of the company.²⁰⁴ As U.S. Steel noted, after adjustments are made to Tenaris' 2016 operating income for "equity in earnings (losses) of non-consolidated companies" and "income before equity in income earnings of non-consolidated companies and income tax, Tenaris experienced an operating loss."²⁰⁵ Based on Commerce's established practice, we agree with U.S. Steel that these two non-operational line items should be excluded from calculation of Tenaris' operating profit (loss). Removing these line items in the calculation of Tenaris' net income results in an operating loss for Tenaris in fiscal year 2016.²⁰⁶ Unlike the Tenaris financial data, SeAH's CV profit and selling expense ratios reflect an operating profit, and reflect

²⁰³ See *Atar S.R.L. v. United States*.

²⁰⁴ See, *e.g.*, *Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 76336 (December 16, 2008), and accompanying Issues and Decision Memorandum at Comment 7; see also *Certain Pneumatic Off-the Road Tires From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum at Comment 18D; *Notice of Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil*, 71 FR 7517 (February 13, 2006) and accompanying Issues and Decision Memorandum at Comment 4; and *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005) and accompanying Issues and Decision Memorandum at Comment 5.

²⁰⁵ See U.S. Steel Rebuttal Brief, at 34 (citing SeAH July 26, 2017 Letter at Attachment 1-A, p. 1).

²⁰⁶ See NEXTEEL July 26, 2017 Letter, at 3-C.

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 the financial data of NEXTEEL, Welspun, Tubos Reunidos, Borusan, and TMK IPSCO, and Chung Hung Steel Corporation, we find that each of these data sources is less specific to OCTG than are the SeAH financial data. In particular, with the possible exception of TMK, the financial statements of these companies predominantly reflect sales of non-OCTG pipe products. TMK's profit includes profit from sales of OCTG and other products in the same general category, while SeAH's profit data is specific to OCTG. NEXTEEL asserts that the standard pipe and line pipe it produces are "the same general category of product" as OCTG and, therefore, asserts that its own financial statements represent a viable source of CV profit and the profit cap source.²⁰⁷ As in prior segments of this proceeding, we continue to find NEXTEEL's argument unpersuasive. First, as we determined in the *OCTG from Korea Final Determination*²⁰⁸ and upheld by the CIT,²⁰⁹ and the CAFC,²¹⁰ these non-OCTG pipe products are not in the same general category of products as OCTG.²¹¹ Also, consistent with our findings in *OCTG from Korea POR I*, 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 and the CAFC sustained as reasonable, are exactly the opposite from NEXTEEL's contentions.²¹² Moreover, the NEXTEEL financial statements reflect profit earned on U.S. sales of OCTG (*i.e.*, alleged dumped sales under review).

Further, in arguing that standard pipe and line pipe are of the "same general category of products" as OCTG, NEXTEEL relies on a WTO Panel Report.²¹³ However, as U.S. Steel notes, the URAA and the accompanying SAA explicitly state that WTO panel reports "have no binding effect under the law of the United States and do not represent an expression on U.S. foreign or trade policy."²¹⁴ Our determination of the same general category of products is consistent with U.S. law.

²⁰⁷ See NEXTEEL Case Brief, at 36.

²⁰⁸ 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 Investigation*) and Final Redetermination Pursuant to Court Remand, upheld in *Husteel II*.

²⁰⁹ See *Husteel II*, 180 F. Supp. 3d at 1342.

²¹⁰ See *Husteel Co., Ltd. v. United States*, 710 Fed. Appx. 890 * (February 7, 2018) (Fed. Cir. Rule 36 affirmance).

²¹¹ We disagree with NEXTEEL that Commerce should revisit its general category determination. The determination is reasonable and supported by substantial evidence. As noted earlier, the CIT upheld Commerce's decision in *OCTG from Korea Final Determination* 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 Commerce to revisit its earlier determination other than NEXTEEL's reliance on a WTO decision which we discuss below.

²¹² See *OCTG from Korea POR I*, and accompanying Issues and Decision Memorandum at Comment 1; see also *Husteel II*, 180 F. Supp. 3d at 1342.

²¹³ See NEXTEEL Brief, at 37 (citing Panel Report, United States—Anti-Dumping Measures on Certain Oil Country Tubular Goods from the Republic of Korea, WT/DS488/R (November 14, 2017 at paragraph 7.74).

²¹⁴ See U.S. Steel Rebuttal Brief, at 31 (citing S. Report No 103-412 Section 102 (1994) and the SAA at 1032).

Moreover, we find NEXTEEL's reliance on *OCTG from Ukraine* to be unavailing.²¹⁵ NEXTEEL has argued that because Commerce determined to "reject" OCTG as being within the scope of the *OCTG from Ukraine* investigation, it should consider line pipe and standard pipe to be within the same general category of products as OCTG based upon the analysis of product characteristic analysis in *OCTG from Ukraine*, wherein Commerce included standard and line pipe sales in its OCTG margin calculation.²¹⁶ However, in this regard, we agree with U.S. Steel that the facts in *OCTG from Ukraine* significantly differ from those in the instant review. In *OCTG from Ukraine*, Commerce determined that the products at issue were entered as OCTG, but upon inspection in the United States were found to be defective and failed to meet the American Petroleum Institute specifications for OCTG, but should nevertheless still be included in a respondent's margin calculation.²¹⁷ However, the determination in *OCTG from Ukraine* was limited to the record of that investigation, the products in question were produced in Ukraine as OCTG, and entered the United States as OCTG, notwithstanding that they had been identified as either damaged or unusable as prime merchandise.²¹⁸ Moreover, in *OCTG from Ukraine*, Commerce further noted that some of the "reject" sales were sold at virtually the same price as some sales as "prime" sales, which further supported Commerce's conclusion that the "reject" sales were indeed sales of subject merchandise.²¹⁹ There is no similar evidence on the record of this case. Further, the CIT agreed with Commerce's decision to distinguish the facts in *OCTG from Ukraine* from those in the investigation of OCTG from Korea, where Commerce excluded non-OCTG pipe from the same general category of products as OCTG:

Respondents' reliance on certain rejected pipe's inclusion in the scope of the investigation of OCTG from Ukraine does not suggest a different result. That certain rejected pipe was included in the scope of that investigation does not render Commerce's determination {in the OCTG from Korea investigation} unreasonable. In that case, the rejected pipe was produced, entered, and sold, as OCTG. A later determination that pipe was unsuitable for its intended use does not render Commerce's determination in this case unreasonable.²²⁰

We also continue to find the alternative Welspun, Tubos Reunidos, Borusan, and TMK IPSCO, and Chung Hung Steel Corporation data sources to be less specific to OCTG than the SeAH data. In *OCTG from Vietnam*, Commerce declined to use the financial ratios of Welspun because there was no evidence suggesting that Welspun's financial ratios reflect the production of OCTG.²²¹ In this regard, we note that the profit and loss statements of Tubos Reunidos primarily reflect of Tubos Reunidos sales of products from the chemical and petrochemical industries rather than from sales of OCTG.²²² In a similar manner, Borusan's financial statements reflect the sales of

²¹⁵ See NEXTEEL Case Brief, at 38 (citing *OCTG from Ukraine* and accompanying Issues and Decision Memorandum at Comment 2).

²¹⁶ See NEXTEEL Case Brief, at 38.

²¹⁷ See *OCTG from Ukraine*, and accompanying Issues and Decision Memorandum at Comment 2.

²¹⁸ See *OCTG from Ukraine*, and accompanying Issues and Decision Memorandum at Comment at Comment 2.

²¹⁹ *Id.*

²²⁰ See *Husteel II*, 180 F. Supp. 3d, at 1343.

²²¹ See U.S. Steel Rebuttal Brief, at 37 (citing Final Results of Redetermination Pursuant to Court Remand in SeAH Steel VINA Corp. v. United States, Court No. 14-00224 (April 27, 2017) at 21 (*OCTG from Vietnam*)).

²²² See U.S. Steel Rebuttal Comments at Exhibit 1.

products (*i.e.*, line pipe and other pipe products) other than OCTG.²²³ In this regard, Commerce noted in *OCTG from Turkey* that it would be inappropriate to use Borusan's financial statements because "the statements primarily reflect the operations for products other than OCTG."²²⁴ Likewise, TMK's financial statements reflect significant sales of non-OCTG pipe and other non-steel products.²²⁵ Regarding SeAH's comments concerning Chung Hung Steel Corporation's financial statements, we also find these statements not to be specific to the OCTG industry. As U.S. Steel notes, only 2.9 percent of Chung Hung Steel Corporation's sales pertain to steel pipe and even smaller percentage than this amount relates to sales of OCTG.²²⁶ These non-OCTG products include standard and structural pipe, line pipe, mechanical tubing, anti-corrosion pipe coatings, pipes and tubes used in the power generation industry and steel billets.²²⁷ In contrast to the alternative sources of financial data, in the instant case, the SeAH data allow 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. We, therefore, find these SeAH data to be the most precise information for the product under consideration. Concerning NEXTEEL's argument that Commerce cannot use SeAH's information for CV profit and selling expenses because SeAH is subject to an antidumping proceeding for OCTG in Canada, we continue to maintain the position that we took in *OCTG from Korea POR I*.²²⁸ As we noted in *OCTG from Korea POR I*:

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 a cost test, and only those sales that were made 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.²²⁹

In this regard, we note that NEXTEEL has presented no arguments that suggest that the facts in the instant review differ from those at issue in the first review.

²²³ We additionally note that because the Borusan financial statements on the record of this review reflect the 2015 fiscal year, they overlap the instant POR by only four months. See U.S. Steel Rebuttal Brief, at 39.

²²⁴ See *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part*, 79 FR 41973 (July 18, 2014) (*OCTG from Turkey*) and accompanying Issues and Decision Memorandum at 26.

²²⁵ See U.S. Steel Rebuttal Comments, at Exhibit 2.

²²⁶ See U.S. Steel Rebuttal Brief, at 40 (citing SeAH July 26, 2017 Letter), at Exhibit 3-A, page 59, and Exhibit 3-C).

²²⁷ See SeAH July 26, 2017 Letter, at Exhibit 3-A, p. 59.

²²⁸ See *OCTG from Korea POR I*, and accompanying Issues and Decision Memorandum at Comment 1.

²²⁹ *Id.*

Lastly, we disagree with NEXTEEL's assertion that "drastic changes" have occurred in the OCTG market from the first review to the second review.²³⁰ As U.S. Steel has noted, OCTG producers faced a decline in oil and gas prices throughout 2015 and 2016;²³¹ the first eight months of 2015 overlapped with the first review. Similarly, as U.S. Steel also pointed out, both TMK and Welspun actually experienced an improvement in financial performance in fiscal year 2016 relative to fiscal year 2015.²³² Accordingly, we are unable to conclude that the alleged "drastic changes" existed between 2015 and 2016 and led to inevitable deterioration in financial performance of OCTG companies in 2016.

Based on our analysis, and consistent with the position taken in *OCTG from Korea POR 1*, we find that the profit earned by SeAH on its sales of OCTG to customers in Canada during the first administrative review reflects the profit of a Korean OCTG producer, made on comparison market sales of 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 *OCTG from Korea POR 1* 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. Moreover, the Tenaris financial statements were used for both CV profit and the "facts available" profit cap in the redetermination before the CIT.²³³ However, in the instant review and for the reasons noted above, the SeAH data used in *OCTG from Korea POR 1* is available. For the reasons noted above, we consider the SeAH financial data from *OCTG from Korea POR 1* to be the best information to use to calculate both CV profit and the profit cap because SeAH's CV profit and selling expenses reflect only sales of OCTG that are above cost.

Finally, because there is no Korean market general category of products profit information on the record of this proceeding, Commerce is unable to calculate a profit cap based on the actual amounts reported 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." There is no profit information for sales in Korea of OCTG and products in the same general category on the record. 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. SeAH's profit data from sale of OCTG in its third country market is the best data to be used as "facts available" profit cap, because it is specific to OCTG and represents the production experience of a Korean OCTG producer in Korea. As such, as facts available,²³⁴ Commerce reasons that SeAH's profit data are the best suitable data to use as the basis for the calculation of the profit cap.

²³⁰ See NEXTEEL Case Brief, at 30.

²³¹ See U.S. Steel Rebuttal Brief, at 26 (citing NEXTEEL July 26, 2017 Letter, at Exhibit 4-D (containing Tenaris Letter to Shareholders) and U.S. Steel August 2, 2017 Letter, at Exhibit 4 (containing article, "PWC 2016 Oil and Gas Trends") and Exhibit 1 (containing Tubos Reunidos' 2016 Annual Report which indicates that "In 2016, for the second year in succession, activity in the seamless steel pipe sector at the global level was affected by the collapse of the price of oil that began in September 2014 and bottomed out in January 2016.")).

²³² *Id.* at 27.

²³³ See *Husteel II*, 180 F. Supp. 3d at 1337.

²³⁴ See SAA, at 841.

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 SeAH's CV profit and selling expense ratios from *OCTG from Korea POR 1* to determine SeAH's CV profit and selling expenses in the instant review.

Comment 8: Differential Pricing

SeAH's Comments:

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

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

- Commerce may adopt a rule that establishes numerical cut-offs if it follows the notice-and-comment requirements of the Administrative Procedure Act (APA), but it has not done so in this case.
- If Commerce applies such numerical cut-offs on a case-by-case basis, it must explain why those thresholds are appropriate in the context of each case. Commerce has not pointed to evidence on the record showing that the differential pricing analysis is appropriate for this particular case.
- Commerce must provide evidence and analysis demonstrating why the cut-offs for the Cohen's *d* test and ratio test are suitable in this case, in keeping with the CIT's and CAFC's past rulings that Commerce must provide substantial evidence when applying the *de minimis* rule.²³⁵

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

- Although Commerce claims that the "T-Test for Means" is irrelevant to Commerce's differential pricing analysis, the "T-Test for Means" was very relevant to Professor Cohen's development and presentation of his *d* statistic and the various cut-offs he proposed for establishing whether *d* is small, medium or large.²³⁶

²³⁵ See SeAH Case Brief, at 26-28 (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, 903-904 (Fed. Cir. 1988) (*Washington Raspberry*)).

²³⁶ *Id.*, at 29-30 (citing *OCTG from Korea POR 1* and accompanying Issues and Decision Memorandum at Comment 2).

- Despite Commerce’s acknowledgment that the subject of Professor Cohen’s book is “statistical power analysis,” Commerce argues that it does not intend to be conducting a “power analysis” in its differential pricing analysis.”²³⁷
- Commerce’s claim that its differential pricing analysis can be distinguished from Professor Cohen’s “T-Test for Means” and “power analysis” is not convincing.²³⁸
- Commerce has applied a statistical tool in its differential pricing analysis in situations that are inconsistent with the limitations described by Professor Cohen.
- Commerce is relying on the cut-offs that Professor Cohen used for situations that are statistically different from price distributions in a competitive market.²³⁹
- Professor Cohen made it 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).”
- SeAH’s U.S. sales data do not meet those requirements, as the data for each CONNUM do not represent a normal population.²⁴⁰ Also, the subsets being compared in Commerce’s differential pricing analysis do not have substantially equal variances or a substantially equal number of data points.²⁴¹
- Neither mathematics nor substantial evidence supports Commerce’s use of Professor Cohen’s cut-offs simply because Commerce is analyzing an entire population of U.S. sales, rather than a sample.
- The mathematical principles of normal distributions, whether populations or samples, are necessary for Cohen’s cut-offs to be applied properly. When the conditions specified by Professor Cohen are not met, the *d* statistic is no longer a useful measure of effect sizes.
- Commerce’s reliance on Dr. Paul Ellis’ statement that “best way to measure an effect is to conduct a census of an entire population but this is seldom feasible in practice” is inapposite.²⁴² Nothing in that statement or in Dr. Ellis’ book implies that the Cohen’s *d* statistic is a meaningful measure of effect size for an entire population when that population is not approximately normal and when the groups being compared do not have roughly equal variances or a sufficient and roughly equal number of data points.

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

- Commerce never explained why 33 and 66 percent should be the thresholds for this test, or why a ratio between 33 and 66 percent or over 66 percent calls for consideration of a methodology other than the average-to-average methodology.

²³⁷ *Id.*, at 31 (citing *OCTG from Korea POR I* and accompanying Issues and Decision Memorandum at Comment 2).

²³⁸ *Id.*, at 31-32, n. 73 (citing *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 (AD)*) and accompanying Issues and Decision Memorandum at Comment 1 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) (*Stainless Steel Pipe from Korea*) and accompanying Issues and Decision Memorandum at Comment 4).

²³⁹ *Id.*, at 32-33.

²⁴⁰ *Id.*, at 33.

²⁴¹ *Id.*, at 33-34.

²⁴² *Id.*, at 35 (citing *OCTG from Korea POR I* and accompanying Issues and Decision Memorandum at Comment 2).

- Without justification, these thresholds are arbitrary and improper. Commerce has provided no mathematical justifications for the cut-offs.
- In previous determinations, Commerce used circular reasoning to explain that the thresholds are reasonable.²⁴³
- In *OCTG from Korea POR I*, Commerce implied that SeAH was at fault for not providing evidence as to the suitable thresholds for the ratio test, even though it is Commerce's obligation to make determinations based on record evidence.²⁴⁴

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 Commerce 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.
- Commerce only showed that the weighted-average dumping margin calculated using an alternate method differed meaningfully from that calculated using the standard method. However, the existence of different results does not satisfy the statutory requirements.
- The different results are mainly a function of zeroing or not zeroing.

E. Under the Relevant Provisions of the Statute, Commerce 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 Commerce to compare an average normal value to U.S. prices for individual transactions. The exception to this applies only when there is a pattern of prices that differ significantly, and Commerce 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 Commerce has shown, based on the record evidence, that the two criteria for application of the exceptional comparison methodology have been satisfied. Thus, Commerce is required to use the average-to-average method.
- The WTO Appellate Body has held that an authority may apply an average-to-transaction method only to the transactions which are part of the pattern of differing prices.²⁴⁵
- The WTO Appellate Body has held also that zeroing is not permitted even when the average-to-transaction method is warranted.²⁴⁶

²⁴³ *Id.*, at 37-38, n. 86 (citing, *inter alia*, *OCTG from Korea POR I* and accompanying Issues and Decision Memorandum at Comment 2).

²⁴⁴ *Id.*, at 39 (citing *OCTG from Korea POR I* and accompanying Issues and Decision Memorandum at Comment 2).)

²⁴⁵ *Id.*, at 42 (citing *United States - Measures Relating to Zeroing and Sunset Reviews*, Appellate Body Report, WT/DS322/AB/R (January 23, 2007), para. 135).

²⁴⁶ *Id.* (citing *United States – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea*, Appellate Body Report, WT/DS464/AB/R (September 7, 2016) (*US – Washing Machines (Korea)*), paras. 5.153-5.171).

- If Commerce uses the average-to-transaction method, its application should be limited to sales that fall within the pattern of prices that differ significantly, and Commerce should not zero the comparison results of any non-dumped sales.

Maverick's Rebuttal Comments:

Commerce Should Dismiss SeAH's Attacks on the Numerical Thresholds of Its Differential Pricing Analysis

- Commerce previously rejected all of SeAH's arguments, and should continue to disregard them.
- SeAH claims that Commerce did not follow the notice-and-comment requirements of the APA, but Commerce previously rejected this claim and found that the thresholds are reasonable and consistent with the statutory requirements.²⁴⁷
- SeAH offered no new meaningful arguments to support its claim.
- Commerce 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."²⁴⁸ Commerce should reject SeAH's claim that the thresholds should not apply in the absence of normal distributions.
- Commerce 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.²⁴⁹

Commerce's Differential Pricing Analysis for SeAH Properly Explains Why the Average-to-Average Method Cannot Take into Account Patterns of Differential Pricing

- Commerce 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*.²⁵⁰
- The CIT found Commerce's "meaningful difference" analysis using zeroed and non-zeroed methods lawful in *Apex I*.²⁵¹
- Commerce explained in the *Preliminary Results* that the average-to-average methodology cannot account for such differences, and Commerce has rejected SeAH's claims in other

²⁴⁷ See Maverick Rebuttal Brief, at 42-43 (citing, *inter alia*, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Changed Circumstances Review and Reinstatement of Shanghai General Bearing Co., Ltd. in the Antidumping Duty Order*, 82 FR 4853 (January 17, 2017) (*Tapered Roller Bearings from China*) and accompanying Issues and Decision Memorandum at Comment 5 and *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 47347 (July 21, 2016) (*Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Korea*) and accompanying Issues and Decision Memorandum at Comment 4.

²⁴⁸ *Id.*, at 44 (citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Korea* and accompanying Issues and Decision Memorandum at Comment 5).

²⁴⁹ *Id.*, at 44-45 (citing *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).

²⁵⁰ *Id.*, at 47 (citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Korea* and accompanying Issues and Decision Memorandum at Comment 5).

²⁵¹ *Id.*, at 47-48 (citing *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286, 1299 (Ct. Int'l Trade 2014) (*Apex I*)).

proceedings. Thus, Commerce should continue to apply the average-to-transaction methodology for the final results.

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

- In the *Preliminary Results*, Commerce 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.

A Determination by the World Trade Organization's Appellate Body Has No Effect on Commerce's Determination

- The WTO Appellate Body reports cited by SeAH have no effect on Commerce's determination, as WTO reports do not have instant operation in U.S. law.
- Specifically, the Uruguay Round Agreements Act (URAA) establishes that a WTO decision has no effect on U.S. law by itself.²⁵²
- Commerce recently explained that "... Congress did not intend for WTO reports to automatically supersede the exercise of the Department's discretion in applying the statute."²⁵³

Commerce Position:

As an initial matter, Commerce notes that there is nothing in section 777A(d) of the Act that mandates how Commerce measures whether there is a pattern of prices that differs significantly or explains why the average-to-average (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 statute²⁵⁴ here is a gap filling exercise properly conducted by Commerce.²⁵⁵ As explained in the *Preliminary Results*, as well as in various other proceedings,²⁵⁶ Commerce's differential pricing

²⁵² *Id.*, at 46 (citing 19 U.S.C. § 3538(b)(4)).

²⁵³ *Id.* (citing *Tapered Roller Bearings from China* 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))).

²⁵⁴ 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)).

²⁵⁵ 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 I*, 37 F. Supp. 3d at 1302 (applying *Chevron* deference in the context of Commerce's interpretation of section 777A(d)(1) of the Act).

²⁵⁶ See, e.g., *Welded Line Pipe from Korea (AD)* and accompanying Issues and Decision Memorandum at Comment 1; *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty*

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. We note that the CAFC has upheld key aspects of Commerce’s differential pricing analysis, including the application of the “meaningful difference” standard *d*, which compares an A-to-T determined rate using zeroing with a non-zeroed A-to-A rate; the reasonableness of Commerce’s comparison method in fulfilling the relevant statute’s aim; Commerce’s use of a “benchmark” to illustrate a meaningful difference; Commerce’s justification for applying the A-to-T methodology to all sales, instead of just those targeted; Commerce’s use of zeroing in applying the A-to-T methodology to all transactions; that the statute does not directly apply to reviews; Congress did not dictate how Commerce should determine if the A-to-A methodology accounts for targeted or masked dumping; the “meaningful difference” test is reasonable; Commerce may consider all sales in its “meaningful difference” analysis and consider all sales when calculating a final rate using the A-to-T methodology; and it is acceptable to apply zeroing when using the A-to-T methodology.²⁵⁷

Commerce disagrees with the entire basis of the arguments set forth by SeAH regarding the effect that the WTO panel and Appellate Body findings in *US – Washing Machines (Korea)* have on Commerce’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.²⁵⁸ In fact, Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.²⁵⁹ 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.”²⁶⁰ As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of Commerce’s discretion in applying the statute.²⁶¹

A. APA Rulemaking Is Not Required

Commerce 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.”²⁶² Further, Commerce 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.²⁶³ As the CAFC has recognized, Commerce is entitled to make changes and adopt a new approach in the context of

Administrative Review; 2012-2013, 80 FR 32937 (June 10, 2015) and accompanying Issues and Decision Memorandum at Comments 1 and 2; and *Stainless Steel Pipe from Korea* and accompanying Issues and Decision Memorandum at Comment 4.

²⁵⁷ See *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1322 (Fed. Cir. 2017) (*Apex I*); *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1337 (Fed. Cir. 2017) (*Apex II*).

²⁵⁸ 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).

²⁵⁹ See, *e.g.*, 19 U.S.C. § 3533, 3538 (sections 123 and 129 of the URAA).

²⁶⁰ See SAA at 659.

²⁶¹ See, *e.g.*, 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary).

²⁶² See 5 U.S.C. § 553(b)(3)(A).

²⁶³ See *Differential Pricing Analysis; Request for Comments*, 79 FR 26720, 26722 (May 9, 2014) (*Differential Pricing Comment Request*).

its proceedings, provided it explains the basis for the change, and the change is a reasonable interpretation of the statute.²⁶⁴ The CAFC has also held that Commerce’s meaningful difference analysis was reasonable.²⁶⁵ Moreover, the CIT in *Apex II* recently held that Commerce’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 or masked dumping that can occur when the Department determines weighted-average dumping margins using the {A-to-A} comparison method. 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.” 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.²⁶⁶

Moreover, as we noted previously, the CIT acknowledged in *Apex II* that as Commerce “gains greater experience with addressing potentially hidden or masked dumping that can occur when {Commerce} determines weighted-average dumping margins using the average-to-average comparison method, {Commerce} expects to continue to develop its approach with respect to the use of an alternative comparison method.”²⁶⁷ 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 prices to a particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise.”²⁶⁸ 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

²⁶⁴ 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).

²⁶⁵ See *Apex Frozen Foods Private Ltd v. United States*, 262 F.3d 1337, 1347-1351 (Fed. Cir. 2017).

²⁶⁶ See *Apex Frozen Foods Private Ltd. v. United States*, 144 F. Supp. 3d 1308, 1322 (Ct. Int’l Trade 2016) (*Apex II*).

²⁶⁷ See *Differential Pricing Comment Request*, 79 FR at 26722.

²⁶⁸ See Preliminary Decision Memorandum at 9.

groups and has many advantages over the use of tests of statistical significance alone.”²⁶⁹ “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*.”²⁷⁰ Coe’s Paper points out that the precise purpose for which Commerce relies on the Cohen’s *d* test to satisfy the statutory language, to measure whether a difference is significant.

Further, in describing “effect size” and the distinction between effect size and statistical significance, Commerce stated in *Shrimp from Vietnam*:²⁷¹

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.

Commerce further stated in *Shrimp from Vietnam*:²⁷²

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

²⁶⁹ 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 Commerce, “Information Relating to ‘Differential Pricing Analysis’” (May 9, 2016), Attachment II.

²⁷⁰ *Id.*

²⁷¹ 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.

²⁷² *Id.*, quoting VASEP Case Brief at 22.

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."

Lastly, in *Shrimp from Vietnam*, Commerce 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."²⁷³

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."²⁷⁴ This is the basis for Commerce's determination whether prices in a test group differ significantly from prices in a comparison group.

SeAH claims that Commerce'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,' and where the two samples do not have 'substantially unequal variances' or 'substantially unequal sample sizes (whether small or large).'²⁷⁵

²⁷³ See *Shrimp from Vietnam* at 17, quoting *Ellis*.

²⁷⁴ See *Coe's Paper*.

²⁷⁵ See SeAH Case Brief at 29, quoting Cohen, Jacob, *Statistical Power Analysis for the Behavioral Sciences, Second Edition* (1988) (*Cohen*) at 19-20.

Commerce 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,²⁷⁶ but that is not the basis for Commerce's analysis of SeAH's U.S. sale price data.

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...²⁷⁷

Again, Commerce 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 data or the "power" of Commerce'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. Commerce 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

²⁷⁶ 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.

²⁷⁷ See *Cohen* at 19 (emphasis in italics, SeAH's quotation underlined).

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.²⁷⁸

As Commerce 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.²⁷⁹

Commerce 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...”²⁸⁰ 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, Commerce disagrees with SeAH arguments that its application of the Cohen’s *d* test in this review is improper. As a general matter, Commerce finds that the U.S. sales data which SeAH has reported to Commerce constitutes a population. As such, sample size, sample distribution, and the statistical significance of the sample are not relevant to Commerce’s analysis. Furthermore, Commerce finds that Dr. Cohen’s thresholds are reasonable and the use

²⁷⁸ 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) and accompanying Issues and Decision Memorandum 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 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).

²⁷⁹ 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 9-10.

²⁸⁰ See Cohen at 27.

of the “large” threshold is reasonable and consistent with the requirements of section 777A(d)(1)(B) of the Act.

Finally, Commerce 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 modifying the group definitions used in this proceeding.”²⁸¹ 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 Commerce’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

Commerce disagrees with SeAH’s contention that Commerce 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.²⁸²

²⁸¹ See Preliminary Decision Memorandum at 10.

²⁸² See *OCTG from India*, and accompanying Issues and Decision Memorandum at Comment 1.

Although the selection of these thresholds is subjective, Commerce’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 Commerce in this review. Likewise, during 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 Commerce’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

Commerce disagrees, in part, with SeAH that “the mere existence of different results is plainly insufficient, by itself, to satisfy the statutory requirements”²⁸³ whether the A-to-A method can account for significant price differences which imbedded in SeAH’s pricing behavior in the U.S. market. Commerce 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.²⁸⁴

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.²⁸⁵ 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,²⁸⁶ such that the A-to-A method would be unable to account for such differences.²⁸⁷ 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

²⁸³ See SeAH Case Brief at 40.

²⁸⁴ See Memorandum, “Analysis of Data Submitted by SeAH Steel Corporation for the Final Results of the 2015-2016 Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea,” dated April 11, 2018 (SeAH Final Analysis Memorandum), at Attachment 2 (pages 96-98 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).

²⁸⁵ 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)).

²⁸⁶ See SAA, at 842.

²⁸⁷ 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.”).

order to understand the impact of the unmasked “targeted dumping,” Commerce 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.”

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.”²⁸⁸ 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. sales²⁸⁹ 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.²⁹⁰ 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;

²⁸⁸ See SAA at 842.

²⁸⁹ 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.

²⁹⁰ 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 285, above, which identifies the specific calculation results for SeAH in these final results.

- 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;²⁹¹
- 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 Commerce 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.

²⁹¹ 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.

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, Commerce 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,²⁹² 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 Commerce finds that the A-to-A method cannot take into account the pattern of prices that differ significantly for SeAH, *i.e.*, Commerce identified conditions where “targeted” or masked dumping “may be occurring” in satisfying the pattern requirement, and Commerce 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, Commerce continues to find that application of the A-to-T method, with zeroing, is an appropriate tool to address masked “targeted dumping,”²⁹³ 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 Commerce’s Analysis

²⁹² See SAA at 842-843.

²⁹³ See *Apex I*, 37 F. Supp. 3d at 1296.

Commerce 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*²⁹⁴ and as further discussed in these final results, Commerce’s differential pricing analysis for SeAH in this administrative review is both lawful, reasonable, and completely within Commerce discretion in executing the trade statute.

Commerce 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.²⁹⁵ In fact, Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.²⁹⁶ As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of Commerce’s discretion in applying the statute.²⁹⁷

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, Commerce 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 9: Rate for Non-Examined Respondents

Maverick’s Comments:

- Commerce’s calculation of the rate for non-examined respondents is flawed.
 - NEXTEEL’s publicly ranged U.S. sales value is grossly inaccurate, making it unusable. Moreover, NEXTEEL did not provide the public value for its affiliates, POSCO Daewoo Corporation and POSCO Daewoo America.²⁹⁸
 - A certain portion of SeAH’s public U.S. sales value should not be included in Commerce’s weight averaging, because the inclusion of this amount results in an apples-to-oranges comparison between NEXTEEL’s and SeAH’s data.²⁹⁹
- In effect, Commerce is improperly weighting the calculations to include the same expenses it must back out of the U.S. price to calculate an accurate margin.

²⁹⁴ See Preliminary Decision Memorandum at 9-11.

²⁹⁵ 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).

²⁹⁶ See, e.g., 19 U.S.C. § 3533, 3538 (sections 123 and 129 of the URAA).

²⁹⁷ See, e.g., 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary).

²⁹⁸ See Maverick’s Case Brief, at 5-6.

²⁹⁹ *Id.*, at 3-4 and 6-7.

- For the final results, to calculate a more accurate margin for the non-examined respondents, Commerce should weight average NEXTEEL's and SeAH's weighted-average dumping margins based on the respondents' total sales quantity and net U.S. sales value, and then take the simple average of the two weighted averages.³⁰⁰
- This methodology would eliminate inaccuracies resulting from the publicly ranged amounts, and it would also be impossible for one mandatory respondent to determine either the quantity or value of the other mandatory respondent.

Hyundai Steel's Rebuttal Comments:

- Consistent with its standard practice, Commerce calculated the margin for the non-examined companies in the *Preliminary Results* by weight-averaging NEXTEEL's and SeAH's weight-averaged dumping margins based on respondents' publicly ranged sales values.³⁰¹
- Maverick's proposed "double averaging" methodology overlooks Commerce's standard practice and should be rejected.
- Commerce has not raised any concerns with the publicly ranged data, and there is no indication that these data are flawed.
- Therefore, for the final results, Commerce should continue to use its standard methodology to calculate the rate for the non-examined respondents.
- Hyundai Steel disagrees with the petitioners' claim that Commerce should account for absorbed AD duties in the mandatory respondents' margin calculations. If Commerce were to make such an adjustment, there would be no basis for Commerce to calculate the non-examined rate for Hyundai Steel based on NEXTEEL's and SeAH's resulting margins, because the allegations of absorbed duties are specific to the mandatory respondents.

Husteel's Rebuttal Comments

- Commerce should reject Maverick's proposed methodology for calculating the rate for the non-examined companies in the final results.
- Commerce's practice in administrative reviews is to weight average the mandatory respondents' rates based on the publicly ranged quantity and value submitted by the respondents.³⁰² This methodology was used in the *Preliminary Results*.
- The quantity and value used to weight-average the margins do not consist of the total value of U.S. sales net of all expenses and costs, and Commerce's practice has never been to "back out" any expenses or costs reflected in the reported quantity and value.
- Alternatively, if Commerce does not follow its standard practice, it should calculate the rate for the non-examined companies using the simple average of the mandatory respondents' rates.

³⁰⁰ *Id.*, at 7.

³⁰¹ See Hyundai Steel's Rebuttal Brief, at 2.

³⁰² See Husteel's Rebuttal Brief, at 7.

ILJIN's Rebuttal Comments:

- As a result of Commerce's PMS finding, the non-examined rate applied to ILJIN in the *Preliminary Results* reflects an upward adjustment in HRC costs. Since ILJIN is a seamless OCTG producer, it does not use HRC; therefore, ILJIN objects to the margin which Commerce assigned to it.
- While the margin assigned to ILJIN was artificially inflated due to the PMS adjustment for HRC, the weighting of margins through the use of NEXTEEL's and SeAH's ranged sales data is appropriate, consistent with the statute, and consistent with Commerce precedent.
- Maverick's suggestion of double weighting is simply an attempt to get Commerce to twice burden the non-selected respondents with the higher margin assigned to NEXTEEL.
- Maverick has not pointed to any case where this has been done, whereas myriad cases have used the methodology which Commerce used in the *Preliminary Results*.³⁰³
- Commerce must reject Maverick's argument that Commerce deviate from its current methodology.

Commerce Position:

We disagree with Maverick that we should abandon our standard methodology for calculating the rate for non-examined respondents.

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce 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}."

Maverick made arguments pertaining to the method by which Commerce averaged the margins of the two mandatory respondents in the *Preliminary Results*. However, for the final results, for SeAH, we calculated a weighted-average dumping margin that is not zero, *de minimis*, or determined entirely on the basis of facts available, and we determined NEXTEEL's margin entirely on the basis of facts available. Because SeAH's weighted-average dumping margin is the only margin that is not zero, *de minimis*, or determined entirely on the basis of facts available, in accordance with our standard practice, Commerce assigns to the companies not individually examined the 6.75 percent weighted-average dumping margin calculated for SeAH for these final results. Accordingly, Maverick's arguments regarding averaging NEXTEEL's and SeAH's rates are moot.

³⁰³ See ILJIN's Rebuttal Brief, at 10.

Hyundai Steel and ILJIN made certain rebuttal arguments in the alternative, if Commerce did not follow its normal practice of calculating the margin for non-individually examined companies. As we have followed our standard methodology for the final results, ILJIN’s argument that its margin should not reflect the PMS adjustment made for HRC, and Hyundai Steel’s argument that any adjustments for absorbed AD duties should not be reflected in its margin, are also moot.

Comment 10: Interested Party Standing

SeAH’s Comments:

- The law firm Wiley Rein LLP (Wiley Rein) states that it represents Maverick, but Wiley Rein’s client is actually Tenaris, a foreign corporation that produces pipe products in various countries.
- The person who certified the accuracy of Wiley Rein’s submissions, Luis Rodriguez, identified himself as a Tenaris employee whose job description signifies that he only performs tasks for Tenaris.³⁰⁴
- Another publicly identified Tenaris employee, Roberto de Hoyos, met with Commerce officials and claimed to be a Maverick employee.³⁰⁵
- While Wiley Rein has asserted previously that Maverick is a wholly owned subsidiary of Tenaris, parent corporations are legally distinct from their wholly owned subsidiaries.
- The antidumping statute and regulations do not permit Commerce to recognize Tenaris as an “interested party” in this proceeding. The statute defines the term “interested party” as “a manufacturer, producer, or wholesaler in the United States of a domestic like product,” not foreign-based corporations owning such entities.³⁰⁶ Also, the criteria for collapsing Tenaris and Maverick have not been met.³⁰⁷
- Based on the foregoing, Commerce must treat Maverick and Tenaris as distinct entities, and only allow Maverick to take part in this proceeding.
- Because of Tenaris’ involvement in this proceeding, Wiley Rein should not have been permitted to have access to SeAH’s proprietary information or to participate in the briefing process.³⁰⁸ Further, any factual submissions from Wiley Rein that were certified by a Tenaris official must be removed from the record.

³⁰⁴ See SeAH Case Brief, at 2 (citing SeAH Letter, “Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea for the 2015-16 Review Period — Submission of Factual Information in Response to the Department’s September 13 *Ex Parte* Meeting Memorandum and Request for Inquiry into the Identity of Wiley Rein’s Client in this Proceeding,” dated September 15, 2017 (SeAH September 15, 2017 Letter), at Attachments 3 and 4).

³⁰⁵ *Id.*, at 3 (citing SeAH September 15, 2017 Letter, at Attachment 1).

³⁰⁶ *Id.*, at 4 (citing section 771(9)(C) of the Act).

³⁰⁷ *Id.* (citing 19 CFR 351.401(f)).

³⁰⁸ *Id.*, at 5 (citing section 777(c)(1)(A) of the Act and 19 CFR 351.309(c)).

Maverick's Rebuttal Comments:

- Commerce rejected SeAH's arguments regarding Maverick's interested party standing in *OCTG from Korea POR I*,³⁰⁹ and should do the same in the instant review.
- Maverick and Tenaris Bay City, Inc. (TenarisBayCity) are wholly owned subsidiaries of Tenaris.
- Because Tenaris is Maverick's corporate parent, Tenaris employees hold titles and responsibilities under both entities.
- SeAH's suggestion that Maverick is not part of the U.S. industry because its parent is based outside the United States ignores that Maverick was a petitioner in the original investigation and disregards the plain language of the statute.³¹⁰
- SeAH falsely speculates that Tenaris is participating in this proceeding through Maverick to advance the interests of its non-U.S. subsidiaries.
- Tenaris' financial statements show that it has made substantial investments in the United States in its U.S. operations, including its recent investment in its Bay City, Texas facility.³¹¹
- Maverick's counsel has proper access to SeAH's proprietary documents under the administrative protective order. Further, regardless of any title held by a Maverick company representative, Maverick's counsel has not, and cannot, improperly release proprietary data to its clients.³¹²
- Commerce should reject SeAH's request to remove from the record any factual submissions from Wiley Rein that were certified by a Tenaris official.

Commerce Position:

We disagree with SeAH. As we determined in *OCTG from Korea POR I*, we continue to find that Maverick, which was one of the petitioners in the original investigation, 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."³¹³ Further, as was the case in *OCTG from Korea POR I*, Tenaris' financial statements for 2016 confirm that Maverick continued to be a wholly owned subsidiary of Tenaris during the POR. In addition, Tenaris' 2016 financial statements establish that Tenaris maintained manufacturing facilities in the United States.³¹⁴

Regarding the two individuals that SeAH references in its case brief, we note that one of them, Luis Rodriguez, expressly stated in the company certifications contained in various Maverick submissions during the POR that he is the "U.S. Planning Director of Maverick Tube

³⁰⁹ See Maverick Rebuttal Brief, at 56-58 (citing *OCTG from Korea POR I* and accompanying Issues and Decision Memorandum at Comment 17).

³¹⁰ *Id.*, at 58-59 (citing section 771(9)(C) of the Act).

³¹¹ *Id.*, at 59 (citing NEXTEEL Letter, "Oil Country Tubular Goods from the Republic of Korea: NEXTEEL CV Profit Information and Comments," dated July 26, 2017 (NEXTEEL July 26, 2017 Letter), at Exhibit 3-B, p. 47).

³¹² *Id.* (citing 19 CFR 351.306(a), (d)).

³¹³ See *OCTG from Korea POR I* and accompanying Issues and Decision Memorandum at Comment 17.

³¹⁴ See NEXTEEL July 26, 2017 Letter, at Exhibit 3-C (Tenaris 2016 Financial Statements), pages 48 and 53.

Corporation.”³¹⁵ Further, Mr. Rodriguez declared in one submission that he is “currently employed as the U.S. Planning Director for Maverick {} and Tenaris {}” and that he has “worked for Maverick and its parent company, Tenaris, since 2000.”³¹⁶ 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.”³¹⁷ Thus, in spite of SeAH’s citation to Mr. Rodriguez’s Linked-In profile, which indicates that he is employed by Tenaris as the “Planning Director USA at Tenaris,”³¹⁸ given the evidence on the record of this proceeding, Commerce has no reason to believe that Mr. Rodriguez is not also employed by its wholly owned subsidiary, Maverick.

As for the other individual to which SeAH refers in its case brief, Roberto de Hoyos, Mr. de Hoyos’ involvement in the instant review was limited to participation in one meeting with Commerce officials.³¹⁹ Mr. de Hoyos’ Linked-In profile identifies him as a director of Tenaris.³²⁰ However, Mr. de Hoyos’ presence at a single meeting before Commerce does not demonstrate that the law firm Wiley Rein did not represent Maverick in the instant review. The record evidence demonstrates that the law firm entered appearance and made submissions before Commerce on behalf of Maverick.³²¹

During the POR, Maverick operated a manufacturing facility in the United States.³²² Thus, as noted above, we find that 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.” Tenaris’ 2016 financial statements also indicate that Maverick is a 100 percent-owned subsidiary of Tenaris.³²³ Moreover, during the POR, Tenaris continued to make a significant investment in its U.S. manufacturing facility in Bay City, Texas (*i.e.*, TenarisBayCity), and maintained a 100 percent interest in that facility.³²⁴ Therefore, SeAH’s reliance on executive business titles in its attempt to distinguish the operations of Maverick from those of Tenaris and demonstrate that Maverick is not an interested party does not overcome the extensive record evidence that demonstrates that Maverick is an interested party. Even when we examine the executive’s titles alone, the record evidence shows that Mr.

³¹⁵ See, e.g., Maverick Letter, “Oil Country Tubular Goods from the Republic of Korea: Request for Duty Absorption Review,” dated December 9, 2016, at Company Certification. By Commerce’s count, Mr. Rodriguez certified nine of Maverick’s submissions before Commerce during the POR, stating in eight of those submissions that he is the “U.S. Planning Director of Maverick Tube Corporation” and stating in one that he is the “U.S. Planning Director of Maverick Tube Corporation and TenarisBayCity.”

³¹⁶ See Maverick Letter, “Certain Oil Country Tubular Goods from the Republic of Korea: CV Profit Rebuttal Submission,” dated August 2, 2017, at Exhibit 1.

³¹⁷ *Id.*

³¹⁸ See SeAH September 15, 2017 Letter, at Attachment 3.

³¹⁹ See Memorandum, “Antidumping Duty Administrative Review of Certain Oil Country Tubular Goods from the Republic of Korea: *Ex-Parte* Meeting with Petitioners,” dated September 13, 2017.

³²⁰ See SeAH September 15, 2017 Letter, at Attachment 1.

³²¹ See Maverick Letter, “Oil Country Tubular Goods from South Korea: Entry of Appearance and APO Application,” dated November 11, 2016; see also, e.g., Maverick May 4, 2017 Letter, at 1 and Maverick August 7, 2017 Letter, at 1.

³²² See NEXTEEL July 26, 2017 Letter, at Exhibit 3-C, page 53.

³²³ *Id.*

³²⁴ *Id.*, at Exhibit 3-C, pages 48 and 53.

Rodriguez affirmed that he serves as the U.S. Planning Director for both Maverick Tube Corporation and Tenaris.

Based on the foregoing reasons, we disagree with SeAH that counsel for Maverick, which appeared before Commerce 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 11: Reporting of Grade Codes

SeAH's Comments:

- Commerce improperly recoded SeAH's three proprietary grades as "080" (the code for grade N-80 OCTG), instead of accepting SeAH's reported code, "075."³²⁵
- Contrary to Commerce's finding in the *Preliminary Results*, the differences between SeAH's proprietary grades and grade N-80 OCTG cannot be captured by another product characteristic.
- To qualify as grade N-80, the OCTG must undergo full-body normalization (a form of heat treatment) or a combination of normalizing and tempering.³²⁶ SeAH's proprietary grades do not undergo normalizing or a combination of normalizing and tempering; rather, they are only seam annealed. Thus, SeAH cannot certify or mark its proprietary grades as N-80 OCTG.
- The API 5CT specifications describe other grades such as J-55 and K-55 that can be seam-annealed and do not have to be normalized. However, it would not be correct to use the codes for J-55 and K-55 OCTG ("060" and "070," respectively) for SeAH's proprietary grades, because their mechanical properties are superior to those of grades J-55 and K-55.³²⁷
- SeAH coded its proprietary grades as "075" because these grades were most comparable to grade N-80. Its proprietary grades meet the tensile strength and hardness requirements of the N-80 specification, but they are manufactured using seam-annealing rather than full-body normalizing.³²⁸
- Based on the foregoing, for the final results, Commerce should use SeAH's reported code of "075" for its proprietary grades.

Maverick's Rebuttal Comments:

- SeAH acknowledges that its proprietary grades meet the same tensile-strength and hardness requirements as normalized N-80 OCTG.

³²⁵ See SeAH Case Brief, at 6-7 (citing SeAH Preliminary Analysis Memorandum, at 2-3).

³²⁶ *Id.*, at 7-8 (citing SeAH's February 10, 2017 section A questionnaire response (SeAH February 10, 2017 QR), at Appendix A-10, pp. 14-15 and 96).

³²⁷ *Id.*, at 8 (citing SeAH February 10, 2017 QR, at Appendix A-10, p. 98 and SeAH's July 17, 2017 supplemental sections A and C questionnaire response (SeAH July 17, 2017 SQR), at 51).

³²⁸ *Id.*, at 6 and 9 (citing SeAH's March 6, 2017 section C questionnaire response (SeAH March 6, 2017 CQR), at 13, n.10).

- SeAH's argument is essentially that its proprietary grades should be coded as a separate grade because they cannot be certified "N-80" under the API standards and the lack of certification is commercially significant. However, SeAH has not provided evidence that any commercial significance exists between N-80 OCTG and its proprietary grades.
- SeAH admits that N-80 and its proprietary grades are identical in terms of physical characteristics, except that N-80 is stenciled. According to SeAH, the only difference between the two products is that N-80 is normalized and its proprietary grades are not.
- Thus, Commerce should continue to classify SeAH's proprietary grades as code "080."

Commerce 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.

Commerce'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.³²⁹

SeAH reported in its questionnaire responses that it sold proprietary grades of OCTG in the United States, for which it reported the separate reporting code "075."³³⁰ 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 Commerce 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."³³¹ Commerce stated in the *Preliminary Results* that it recoded as grade "080" those grade codes and CONNUMs reported in SeAH's sales, cost, and further manufacturing databases as grade "075," finding that any differences between these grades were already captured in other product characteristics.³³²

SeAH argues that its proprietary grades "meet the same tensile-strength and hardness requirements as normalized pipe N-80 grade."³³³ Thus, even though SeAH's proprietary grades are not heat treated in the manner required by the N-80 norms, SeAH acknowledges that key mechanical properties, tensile strength and hardness, are equivalent for its proprietary grades and grade N-80. Further, while SeAH asserts that it cannot mark its proprietary grades as N-80 grade OCTG, such markings constitute a difference that has no effect on the mechanical properties of the OCTG. Therefore, we disagree with SeAH's assertion that the proprietary grades of OCTG it reported under code "075" were improperly categorized by Commerce under code "080"

³²⁹ See Commerce Letter to SeAH containing the Antidumping Questionnaire, dated January 13, 2017, at C-9.

³³⁰ See SeAH March 6, 2017 CQR, at 13, n.10 and SeAH July 17, 2017 SQR, at 51-52 and Appendix SC-5.

³³¹ See SeAH March 6, 2017 CQR, at 13, n.10.

³³² See SeAH Preliminary Analysis Memorandum, at 2-3.

³³³ See SeAH Case Brief, at 9.

because they do not undergo the heat treatment required for grade N-80 and because of the different physical markings.

Heat treatment is not a “physical characteristic” of a product but rather a “production process” feature. Aside from heat treatment, SeAH did to identify any meaningful distinguishing characteristics of its “proprietary grades” from N80 grade OCTG. To the contrary, 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 Commerce 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.”³³⁴ Moreover, the only difference between these grades and N-80 grade was already captured in other product characteristics. Specifically, grade is the third-highest product characteristic in Commerce’s model matching hierarchy, while heat treatment is the ninth highest.³³⁵ SeAH claimed that its proprietary steel grades meet critical performance properties of grade N80 under API 5CT (*i.e.*, tensile properties and hardness), but are not heat treated.³³⁶ We find that it is more appropriate to distinguish SeAH’s proprietary product from grade N80 under API 5CT at the model matching level of heat treatment rather than at the model matching level of grade. This is reasonable because, while the proprietary steel grades and grade N80 under API 5CT differ with respect to heat treatment, they are the same with regard to critical performance properties. We continue to find that the differences between these grades are captured within the other reported product characteristics that make up each CONNUM. Accordingly, we find that the best way to distinguish the products in question from the grade N80 products via the heat treatment field.

For the reasons described above, and consistent with the analysis conducted in the *Preliminary Results* and our determination in *OCTG from Korea POR 1*,³³⁷ we continue to find that it is appropriate to treat the grades reported by SeAH under code “075” as “080” for the final results.

Comment 12: Freight Revenue Cap

SeAH’s Comments:

- It is not lawful for Commerce to cap freight revenue by the actual amount of the associated freight expenses, as it did in the *Preliminary Results*.³³⁸
- In past cases, Commerce explained this methodology was appropriate because freight is a service and not a part of the sale of the merchandise.³³⁹ However, SeAH and its U.S. affiliates do not offer freight services. The additional freight charge is merely a disaggregation of the delivered price into one amount for the goods and another for freight.

³³⁴ See SeAH March 6, 2017 CQR, at 13, n.10.

³³⁵ See Commerce Letter to SeAH containing the Antidumping Questionnaire, dated January 13, 2017, at C-8 – C-12.

³³⁶ See SeAH March 6, 2017 CQR, at 13, n.10.

³³⁷ See *OCTG from Korea POR 1* and accompanying Issues and Decision Memorandum at Comment 19.

³³⁸ See SeAH Case Brief, at 10 (citing SeAH Preliminary Analysis Memorandum, at 6).

³³⁹ *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).

- 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.
- In *Dongguan Sunrise Furniture*, the CIT held that Commerce could interpret the statute as excluding separately charged freight revenue from the starting price for U.S. sales.³⁴⁰
- In the *Preliminary Results*, Commerce concluded that: (1) freight services are included in the price, even when invoiced separately, and that the costs for those services should be deducted from the starting U.S. price; and (2) a portion of the separately invoiced freight revenue (up to the amount of the freight costs) is part of the starting price, but any portion of the freight revenue above the actual freight costs is not. There is no basis under the statute for such inconsistent treatment.
- 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. To be consistent, Commerce must either include both profits and losses on separately invoiced freight revenue in its calculations, or exclude both.

Maverick's Rebuttal Comments:

- Commerce should continue to apply the freight revenue cap for the final results.
- In *Welded Steel Pipe from Vietnam*, Commerce 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).”³⁴¹
- Although SeAH attempts to distinguish from Commerce’s past decisions by arguing that it does not offer a service when it charges its customers for freight because neither SeAH nor its U.S. affiliates offers freight services, making arrangements for shipments and deliveries is indisputably a service.
- Regarding SeAH’s argument that it is not logical to include losses from freight services in the calculations, there are no losses on freight. Rather, pursuant to the statute, freight expenses are deducted from the price charged to the customer to obtain the price of the subject merchandise.³⁴²
- Commerce’s current methodology does not permit profit margins on unrelated items to affect the margins.
- The CIT has upheld Commerce’s rationale.³⁴³

³⁴⁰ *Id.*, at 11 (citing *Dongguan Sunrise Furniture v. United States*, 865 F. Supp. 2d 1216, 1249-50 (CIT 2012) (*Dongguan Sunrise Furniture*)).

³⁴¹ See Maverick Rebuttal Brief, at 52-53 (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).

³⁴² *Id.*, at 54 (citing section 772(c)(2)(A) of the Act).

³⁴³ *Id.*, at 54-55 (citing *Dongguan Sunrise Furniture*, 865 F. Supp. 2d at 1249-50).

Commerce Position:

We agree with Maverick and have continued to apply the freight revenue cap for SeAH's sales in these final results.

In *Welded Steel Pipe from Vietnam*, Commerce stated that “{i}t is {Commerce}'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).”³⁴⁴ The CIT upheld Commerce's practice on the capping of freight revenue in *Dongguan Sunrise Furniture*, 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).³⁴⁵

In this review, SeAH argues that Commerce's application of the freight revenue cap in the *Preliminary Results* was inappropriate because the additional charge for freight is a disaggregation of the delivered price into one amount for the goods and another for freight, not a charge for a service rendered by SeAH. However, we continue to find here, as in *Welded Steel Pipe from Vietnam*, that is inappropriate to increase the gross unit selling price for subject merchandise as a result of any profit earned by SeAH on the sale of freight. It is Commerce'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).³⁴⁶ This methodology prevents an exporter from improperly inflating its export price or CEP of a good by charging a customer more for freight than the exporter's actual freight expenses.

Although SeAH argues that different dumping margins may result depending on the manner in which an exporter presents its prices, we find that SeAH's argument does not take into account the fact that Commerce's freight revenue cap is applied when the customer agrees to pay for delivery and the exporter charges that customer more than the costs incurred, but is not applied when that exporter pays for delivery.

Finally, we disagree with SeAH's assertion that Commerce must either include both profits and losses on separately invoiced freight revenue in its calculations, or exclude both. Section 772(c)(2)(A) of the Act states that “the price used to establish export price and constructed

³⁴⁴ See *Welded Steel Pipe from Vietnam*, and accompanying Issues and Decision Memorandum at Comment 7.

³⁴⁵ See *Dongguan Sunrise Furniture*, 865 F. Supp. 2d at 1249-50.

³⁴⁶ 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.

export price shall be... reduced by... the amount, if any, included in such price, attributable to any additional costs, charges, or expenses... which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States.” Thus, the statute requires only that freight expenses be deducted from the price charged to the customer to establish the price of the subject merchandise. As the CIT held in *Dongguan Sunrise Furniture*, the “plain language of {section 772(c)(2) of the Act} deals exclusively with downward adjustments to U.S. price.”³⁴⁷

As stated earlier, section 772 (c)(2)(A) of the Act states that “the price used to establish export price and constructed export price shall be... reduced by... the amount, if any, included in such price, attributable to any additional costs, charges, or expenses... which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States.” Second, section 772(c)(2)(A) requires Commerce to make certain adjustments to the starting U.S. price to bring it to the same level as normal value, so that a proper comparison can be made with normal value. The CIT explained that “adjustments are necessary because the reported prices ‘represent prices in different markets affected by a variety of differences in the chain of commerce’ and must be adjusted ‘to reconstruct the price at a specific ‘common’ point... so that value can be fairly compared on an equivalent basis.’” *Dongguan*, 865 F. Supp. 2d at 1249.

This allows Commerce to achieve an “apples-to-apples” comparison between the constructed export price (or export price) and normal value. Commerce does not apply the freight revenue cap when the exporter pays for delivery; rather it deducts from the starting price the freight expenses that the exporter incurred in delivering goods to bring the price to the *ex factory* level (*i.e.*, price of goods alone without any additional charges). Ultimately, the freight costs would not be included in the constructed export price. When a customer pays for delivery and the exporter charges more for freight services than the cost it incurred in delivering goods, the freight expense is likewise excluded from the constructed export price of the subject merchandise. In both scenarios, Commerce would bring the price to the *ex factory* level (*i.e.*, the price of goods alone) and would not artificially inflate the price of subject merchandise (a good) by the profit from selling freight (a service). *Dongguan*, 865 F. Supp. 2d at 1249 (“Thus, it was reasonable for Commerce not to consider freight revenue as part of the price of the subject merchandise.”).

Accordingly, we continue to find for these final results that it is appropriate to apply the freight revenue cap to SeAH’s sales in the instant review.

Comment 13: Treatment of General and Administrative Expenses Incurred by SeAH’s U.S. Affiliate in Further Manufacturing Costs

SeAH’s Comments:

- During the POR, SeAH’s U.S. affiliate, Pusan Pipe America (PPA), engaged in both sales and production activities and, thus, PPA’s administrative activities related to the overall

³⁴⁷ See *Dongguan Sunrise Furniture*, 865 F. Supp. 2d at 1249-50.

activities of the company.

- When a company is involved only in sales activities, Commerce’s practice is to consider the company’s G&A as selling expenses. However, when a U.S. company engages in both sales and manufacturing activities, Commerce disregards the G&A expenses from the calculation of U.S. selling expenses, but applies the U.S. company’s G&A expense ratio to further manufacturing costs.³⁴⁸
- In the *Preliminary Results*, in addition to applying PPA’s G&A expense ratio to its further manufacturing costs, Commerce applied PPA’s G&A expense ratio to the cost of the imported pipe, regardless of whether the imported pipe was further manufactured or not. Thus, Commerce considered the G&A expenses applied to the cost of the imported pipe to be an indirect selling expense that could be deducted from CEP under section 772(d)(1)(D) of the Act.
- Section 772(d) of the Act limits the deduction of expenses incurred by a U.S. affiliate from CEP to direct and indirect selling expenses and further manufacturing costs.
- In keeping with Commerce’s longstanding practice, the portion of PPA’s G&A expenses that are attributable to further manufacturing activities may be deducted under section 772(d)(2) of the Act. However, the remaining G&A expenses do not fall under any of the allowable adjustments to CEP and, therefore, must be disregarded for the final results.

Maverick’s Rebuttal Comments:

- For the final results, Commerce should continue to allocate PPA’s G&A expenses to resold products by applying PPA’s G&A expense ratio to the COP of all imported CONNUMs, whether they are further manufactured or not.
- Doing so would be in conformance with Commerce’s practice, as explained in *Cold-Rolled from Brazil*.³⁴⁹

Commerce Position:

We agree with Maverick that PPA’s G&A expenses should be allocated to resold products (*i.e.*, the imported pipe, whether further manufactured or not) in the U.S. market. When calculating CEP, section 772(d)(2) of the Act directs Commerce to deduct “the cost of any further manufacture or assembly.” Further, “in calculating U.S. prices using the CEP price methodology, Commerce is to deduct any expenses generally incurred by or for the account of... the affiliated seller in the United States, in selling subject merchandise.”³⁵⁰

³⁴⁸ See SeAH Case Brief, at 14-16 (citing Policy Paper #H, “Definition of ‘Selling Expenses’ in the Context of the Exporter’s Sales Price Provisions,” Potts/Eiss (undated) and section 772(d)(2) of the Act; *Calcium Aluminate Cement, Cement Clinker, and Flux from France*, 59 FR 14136, 14146-47 (March 25, 1994) (*Cement from France*); and *First Administrative Review of Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 57995 (November 10, 2009) (*Activated Carbon from China*), and accompanying Issues and Decision Memorandum at Comment 5(b)).

³⁴⁹ See Maverick Rebuttal Brief, at 55-56 (citing *Certain Cold-Rolled Steel Flat Products from Brazil: Final Determination of Sales at Less Than Fair Value*, 81 FR 49946 (July 29, 2016) (*Cold-Rolled Steel from Brazil*) and accompanying Issues and Decision Memorandum, at Comment 7).

³⁵⁰ See *United States Steel Corp. v. United States*, 712 F. Supp. 2d 1330, 1336 (Ct Int’l Trade 2010); see also section 772(d)(1) of the Act.

As SeAH acknowledges, PPA's employees are responsible for overseeing and coordinating both sales and further manufacturing activities related to all subject products. Thus, PPA's G&A activities support the general activities of the company as a whole, including: (1) the sale and further manufacture of further manufactured products; and (2) the sale of non-further manufactured products. Accordingly, for further manufactured products, we applied PPA's G&A ratio to the total cost of further manufacture for these products. In addition, we applied PPA's G&A ratio to the cost of the imported pipe, regardless of whether the pipe was further manufactured in the United States. In applying PPA's G&A ratio to the cost of the imported pipe, we have attributed a portion of PPA's G&A activities, which includes selling functions, to the resold products.

Commerce's methodology is consistent with prior decisions in which we found that it was appropriate to allocate G&A expenses to all company activities where the company engaged in both further manufacturing and reselling activities.³⁵¹ We find that SeAH's citation to Policy Paper #H to be inapposite. The question of the proper allocation of selling expenses between direct and indirect expenses (which is the topic of Policy paper #H) is separate and distinguishable from how to properly allocate G&A expenses to imported pipe and to further manufacturing conducted by PPA in the United States. Likewise, we find that the cases cited by SeAH, *i.e.*, *Cement from France* and *Activated Carbon from China*, do not address the issue presented here, because the issues discussed in those cases did not relate to the calculation and application of G&A expenses for resold U.S. products. Therefore, as in the *Preliminary Results*, and consistent with the position taken both in *OCTG from Korea POR I* and *Welded Line Pipe from Korea (AD)*,³⁵² we have continued to allocate PPA's G&A expenses to resold products (*i.e.*, the imported pipe, whether further manufactured or not) 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 14: Calculation of General and Administrative Expenses Incurred by SeAH's U.S. Affiliate

Maverick's Comments:

- PPA offset its G&A expenses with claim income that SeAH already used to offset PPA's warranty expenses.³⁵³
- To correct this double-counting, SeAH should reverse the offset and apply the revised G&A expenses in the margin program for the final results.

³⁵¹ See *Welded Line Pipe from Korea (AD)*, and accompanying Issues and Decision Memorandum at Comment 20; see also *Cold-Rolled Steel from Brazil*, and accompanying Issues and Decision Memorandum at Comment 7.

³⁵² See *OCTG from Korea POR I*, and accompanying Issues and Decision Memorandum, at Comment 14, and *Welded Line Pipe from Korea (AD)*, and accompanying Issues and Decision Memorandum at Comment 20.

³⁵³ See *Maverick Case Brief*, at 29-30 (citing SeAH July 17, 2017 SQR at Appendix SC-21 and SeAH August 25, 2017 SQR, at 69-70 and Appendix SE-9).

SeAH's Rebuttal Comments:

- Neither SeAH nor PPA incurred warranty expenses on OCTG sales during the POR.³⁵⁴ Thus, claim income could not have been used to offset warranty expenses.
- The worksheet showing PPA's three-year historical warranty expenses, which is for all products, indicates the total claim income which PPA received in 2016 was greater than the total claim expense.
- SeAH agrees that the amount of claim income corresponding to claim expenses should not be reflected in PPA's G&A expense calculation. However, because Commerce does not consider claim income that exceeds warranty expenses to be a direct or indirect selling expense, that excess income should be treated as part of G&A.

Commerce Position:

We agree with Maverick, in part. Neither SeAH nor PPA incurred warranty expenses on U.S. sales of OCTG during the POR.³⁵⁵ However, had SeAH or PPA incurred warranty expenses during the POR on sales of OCTG, those expenses would have related to sales activities. Likewise, any associated claim income could have been considered as an offset to those warranty expenses. Because warranty expenses, and the associated claim income, pertain to sales activities, they are not related to the general operations of a company. Hence, warranty expenses, and the associated claim income, are properly not reflected in G&A expenses. Thus, we agree with Maverick that the claim income at issue should not be treated as an offset to PPA's G&A expenses. It is Commerce's practice to include offsets to G&A, but only as long as they relate to the general operations of the company as a whole.³⁵⁶ Therefore, we have recalculated PPA's G&A expenses by reversing the offset for the claim income at issue and applying the revised G&A ratio in the margin program for the final results. We disagree, however, with Maverick's argument that the offset for claim income in PPA's G&A expenses amounted to double counting in this instance. Since SeAH and PPA did not incur any warranty expenses on U.S. sales of OCTG during the POR, SeAH reported no warranty expenses in its U.S. sales database, and, as a result, the claim income at issue could not have served as an offset to any reported expenses.

Comment 15: Treatment of Interest Expenses for SeAH's U.S. Affiliate in Further Manufacturing Costs

Maverick's Comments:

- As explained in Comment 12, above, Commerce applied PPA's G&A expense ratio to the cost of the imported pipe.
- Commerce should follow the same methodology for PPA's interest expenses because the same logic applies to those expenses.

³⁵⁴ See SeAH Rebuttal Brief, at 6 (citing SeAH March 6, 2017 CQR, at 52).

³⁵⁵ See SeAH March 6, 2017 CQR, at 52.

³⁵⁶ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Taiwan*, 67 FR 62104 (October 3, 2002), and accompanying Issues and Decision Memorandum at Comment 6.

- Thus, in calculating further manufacturing costs for the final results, Commerce should apply SeAH's interest expense ratio to the cost of the imported pipe, regardless of whether it was further manufactured.

SeAH's Rebuttal Comments:

- It would be incorrect for Commerce to apply SeAH's interest expense ratio to the cost of imported pipe for several reasons.
- First, SeAH's interest expenses include interest incurred outside the United States by SeAH and its non-U.S. subsidiaries. The statute only authorizes the deduction of expenses incurred in the United States from CEP.³⁵⁷
- Second, this would amount to double-counting, because SeAH's consolidated interest expenses are already applied to the COP of the pipe exported from Korea to the United States, and COP is used as the basis for CV.
- Lastly, it would lead to a mathematically imbalanced equation, just like Commerce acknowledged in *Cold-Rolled Steel from Brazil*.³⁵⁸

Commerce Position:

We agree with SeAH that it would be inappropriate to apply SeAH's interest expense ratio to the cost of imported pipe in calculating further manufacturing costs. SeAH calculated its reported interest expense ratio based on the audited, consolidated financial statements for SeAH Steel Corporation and its subsidiaries.³⁵⁹ SeAH's consolidated financial statements include the activities of SeAH itself, PPA, and multiple other SeAH subsidiaries.³⁶⁰ Thus, the interest expenses related to the imported pipe have already been accounted for in SeAH's cost database, because the consolidated interest expense ratio is applied to the per-unit production costs for the pipe that is later imported. Therefore, for the final results, we have not applied SeAH's interest expense ratio to the cost of imported pipe in calculating further manufacturing costs. This methodology is consistent with that used in *Cold-Rolled Steel from Brazil*.³⁶¹

Comment 16: NEXTEEL's Warranty Expense Calculation

U.S. Steel's Comments:

- In the *Preliminary Results*, Commerce used NEXTEEL's reported transaction-specific warranty expenses in the margin calculation.
- NEXTEEL provided a schedule of its direct and indirect warranty expenses incurred on subject merchandise for the three most recently completed fiscal years (*i.e.*, 2014, 2015, and

³⁵⁷ See SeAH Rebuttal Brief, at 8 (citing section 772(d)(1) of the Act and *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27351 (May 19, 1997)).

³⁵⁸ *Id.*, at 9-10 (citing *Cold-Rolled Steel from Brazil*, and accompanying Issues and Decision Memorandum at Comment 9).

³⁵⁹ See SeAH August 25, 2017 SQR, at 51 and Appendix SD-18.

³⁶⁰ See SeAH July 17, 2017 SQR, at Appendix SA-8-B.

³⁶¹ See *Cold-Rolled Steel from Brazil*, and accompanying Issues and Decision Memorandum at Comment 9.

2016), which incorporates the warranty expenses that NEXTEEL incurred through its settlement with its affiliate POSCO Daewoo.³⁶²

- Commerce has consistently found that it is appropriate to use a three-year average of historical warranty expenses where a respondent's actual, POR transaction-specific warranty expenses are not typical of the expenses normally incurred by the respondent.³⁶³
- In the investigation of this proceeding, Commerce used NEXTEEL's historical warranty expenses after finding that it would be distortive to use NEXTEEL's transaction-specific warranty expenses.³⁶⁴
- A comparison of the NEXTEEL's transaction-specific warranty expenses to its historical warranty expenses shows that it would be distortive to use NEXTEEL's transaction-specific warranty expenses in the instant review. Consistent with Commerce's prior practice concerning NEXTEEL in this proceeding, for the final results, Commerce should calculate NEXTEEL's warranty expenses based on the average of its three-year historical warranty expenses and assign this amount to all U.S. sales reported by NEXTEEL.

NEXTEEL's Rebuttal Comments:

- Commerce correctly relied on NEXTEEL's transaction-specific warranty expenses, as they reflect NEXTEEL's actual expenses incurred in selling the subject merchandise.
- A certain amount of the warranty expenses included in NEXTEEL's three-year average calculation relate to payments to POSCO Daewoo. Because Commerce treated NEXTEEL and POSCO Daewoo as affiliates, these amounts are effectively transfers to POSCO Daewoo to cover its costs of warranty expenses in selling to its downstream customers. Thus, these amounts are irrelevant to Commerce's calculations.³⁶⁵
- NEXTEEL segregated the warranty expenses associated with payments to POSCO Daewoo from its payments to other customers; the latter show that NEXTEEL's reported transaction-specific expenses are consistent with its historical experience.³⁶⁶

Commerce Position:

Because we are applying AFA to NEXTEEL for these final results, this comment is moot, and it is unnecessary to address these arguments.

³⁶² See U.S. Steel Case Brief, at 19 (citing NEXTEEL September 12, 2017 SQR, at Exhibit S-1).

³⁶³ *Id.*, at 19-20 (citing *Stainless Steel Plate in Coils from the Republic of Korea*, 66 FR 64017 (December 11, 2001) and accompanying Issues and Decision Memorandum at Comment 7; *Chlorinated Isocyanurates from Spain*, 74 FR 50774 (October 1, 2009) and accompanying Issues and Decision Memorandum at Comment 4).

³⁶⁴ *Id.*, at 20 (citing *OCTG from Korea Investigation*, and accompanying Issues and Decision Memorandum at Comment 22).

³⁶⁵ See NEXTEEL Rebuttal Brief, at 18 (citing POSCO Daewoo's September 11, 2017 SQR, at S-5 to S-14).

³⁶⁶ *Id.*, at 19 (citing NEXTEEL September 12, 2017 SQR, at Exhibit S-1).

Comment 17: POSCO Daewoo's Warranty Expense Calculation

U.S. Steel's Comments:

- In the *Preliminary Results*, Commerce based POSCO Daewoo's warranty expenses on its single reported warranty claim for the POR.
- Commerce should calculate POSCO Daewoo's warranty expenses based on the company's historical warranty expenses instead of its transition-specific warranty expenses for the final results, consistent with Commerce's established practice.³⁶⁷
- However, in relying upon POSCO Daewoo's historical warranty expenses, Commerce should exclude 2016 from the calculation, because it appears that the timing issue as to when claims are requested and when they are settled had an impact on POSCO Daewoo's reported warranty expenses for 2016.³⁶⁸ Thus, Commerce should base POSCO Daewoo's warranty expenses on the company's average warranty expenses in 2014 and 2015.
- Furthermore, Commerce should deny the offsets claimed by POSCO Daewoo to its warranty expenses, which consisted of (1) reimbursements received from insurance claims where the claims related to damage incurred in shipment, and (2) sales revenue from scrap sales.³⁶⁹

NEXTEEL's Rebuttal Comments:

- Commerce properly relied on POSCO Daewoo's transaction-specific warranty expenses, as they reflect its actual expenses incurred in selling the subject merchandise. Thus, NEXTEEL disagrees that any modifications are warranted for the final results.
- However, if Commerce relies on POSCO Daewoo's three-year historical average warranty expenses, it should not adopt U.S. Steel's proposal to exclude 2016 warranty expenses.³⁷⁰
- Also, if Commerce relies on POSCO Daewoo's three-year historical average warranty expenses, Commerce should allow the offsets for insurance reimbursements and revenue from scrap sales because they are directly tied to and reduce the warranty expense at issue.³⁷¹
- Finally, if Commerce uses NEXTEEL's and/or POSCO Daewoo's three-year warranty expenses, Commerce should ensure that it is not double counting any warranty expenses.³⁷²

Commerce Position:

Because we are applying AFA to NEXTEEL for these final results, this comment is moot, and it is unnecessary to address these arguments.

³⁶⁷ *Id.*, at 22-24 (citing POSCO Daewoo's September 11, 2017 supplemental sections A and C questionnaire response (POSCO Daewoo September 11, 2017 SQR), at Exhibit SC-5).

³⁶⁸ *Id.*, at 24-25 (citing POSCO Daewoo September 11, 2017 SQR, at S-7).

³⁶⁹ *Id.*, at 26-28.

³⁷⁰ See NEXTEEL Rebuttal Brief, at 20-21.

³⁷¹ *Id.*, at 21-22.

³⁷² *Id.*, at 22-23.

Comment 18: POSCO Daewoo's Further Manufacturing Costs

U.S. Steel's Comments:

- There are two U.S. sales in POSCO Daewoo's U.S. sales database that are identified as having been further manufactured for which POSCO Daewoo did not report any further manufacturing costs.
- Commerce should apply partial adverse facts available for these two sales, consistent with Commerce's approach in past cases where the respondent failed to provide acceptable information regarding its sales of further manufactured merchandise.³⁷³
- As partial adverse facts available, Commerce should assign the highest reported further manufacturing cost.³⁷⁴

NEXTEEL's Rebuttal Comments:

- These sales should not be included in the margin calculation for the instant POR because Commerce already included these sales in its margin calculations in the first administrative review, and Commerce's practice is to include sales in the margin calculations only once. These products did not enter the United States during the instant POR; thus, the underlying entries will not be subject to the assessment rate calculated in the instant review.
- However, if Commerce retains these sales in its analysis, there is no basis for applying adverse inferences to any aspect of the data, including the further manufacturing costs.

Commerce Position:

Because we are applying AFA to NEXTEEL for these final results, this comment is moot, and it is unnecessary to address these arguments.

Comment 19: Suspended Production Losses

U.S. Steel's Comments:

- For the final results, Commerce should adjust NEXTEEL's reported G&A expense ratio to include its suspended production losses during the POR.
- NEXTEEL's suspended production losses do not relate to the manufacture of any products, and, thus, they pertain to NEXTEEL's general operations and are correctly classified as G&A expenses.
- Commerce included NEXTEEL's suspended production losses in its G&A ratio in *OCTG from Korea POR I*.³⁷⁵

³⁷³ See U.S. Steel's Case Brief, at 33.

³⁷⁴ *Id.*, at 33-34.

³⁷⁵ See U.S. Steel's Case Brief at 29-30 (citing *OCTG from Korea POR I*, and accompanying Issues and Decision Memorandum at Comment 34).

NEXTEEL's Rebuttal Comments:

- No adjustment to NEXTEEL's reported cost data to account for losses associated with suspended operations is necessary.
- NEXTEEL did not include the suspended losses in its reported costs because they were not recognized as a cost of manufacturing, but, rather, as a cost of goods sold, in accordance with K-IFRS.³⁷⁶
- Suspended losses are not related to the overall management of NEXTEEL's operations, but, rather, consisted of maintenance expenses that NEXTEEL incurred on a production line that was suspended temporarily.

Commerce Position:

Because we are applying AFA to NEXTEEL for these final results, this comment is moot, and it is unnecessary to address these arguments.

Comment 20: Cost Adjustment for Downgraded, Non-OCTG Pipe

U.S. Steel's Comments:

- In the *Preliminary Results*, Commerce did not adjust NEXTEEL's costs to account for non-prime OCTG, which is a by-product generated during the OCTG production process.
- NEXTEEL's non-prime OCTG is not sold as OCTG or as pipe that can be used for the same purposes as OCTG, *i.e.*, for drilling applications in oil and gas exploration and production.
- Under its established practice, Commerce should allocate the net costs of producing non-prime OCTG to the costs of producing the OCTG to ensure that NEXTEEL's reported data reasonably reflect the costs associated with the production and sale of OCTG.³⁷⁷
- For the final results, Commerce should allocate the costs reported for non-prime OCTG to prime OCTG, consistent with *OCTG from Korea Investigation* and *OCTG from Korea POR I*.³⁷⁸

³⁷⁶ See NEXTEEL's Rebuttal Brief, at 25.

³⁷⁷ See U.S. Steel's Case Brief, at 30-31 (citing 773(f)(1) of the Act).

³⁷⁸ *Id.*, at 31-32 (citing *Certain Oil Country Tubular Goods From the Republic of Korea: Negative Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination*, 79 FR 10480 (February 25, 2014), and accompanying Decision Memorandum at 21, unchanged in final determination, *OCTG from Korea Investigation* and *Certain Oil Country Tubular Goods From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*; 2014-2015, 81 FR 24800 (October 14, 2016), and accompanying Decision Memorandum at 17, unchanged in *OCTG from Korea POR I*).

NEXTEEL's Rebuttal Comments:

- Commerce should not calculate an adjustment to account for costs incurred on non-prime OCTG. Non-prime OCTG is subject merchandise, as Commerce found in *OCTG from Ukraine*.³⁷⁹
- Alternatively, even if Commerce calculates an adjustment using the average cost of manufacture (COM) versus the selling price, the appropriate quantification of an adjustment that measures the difference between revenue on non-prime products and the cost of non-prime products is one derived from the average COM of non-prime products, not the average COM of all products. This is because Commerce's intention is to allocate the manufacturing costs less the sales revenue of non-prime pipe to OCTG pipe.³⁸⁰

Commerce Position:

Because we are applying AFA to NEXTEEL for these final results, this comment is moot, and it is unnecessary to address these arguments.

Comment 21: Programming Errors

U.S. Steel's Comments:

- In the *Preliminary Results*, Commerce made certain ministerial errors in the margin program when merging POSCO Daewoo's U.S. sales data with NEXTEEL's U.S. sales data. Commerce should correct these errors for the final results.
- First, when merging the two sales databases, the values in the fields common to both databases were only overwritten for the first sequence number and not for subsequent sequence numbers. To correct this error, Commerce should rename the fields in POSCO Daewoo's U.S. database that are common to the fields in NEXTEEL's U.S. database prior to merging the two databases.³⁸¹
- Second, Commerce should amend the margin program to ensure that all direct and indirect selling expenses incurred by NEXTEEL and POSCO Daewoo are deducted from U.S. price.³⁸²
- Third, certain sales in NEXTEEL's U.S. database for the instant POR have the same sequence numbers as certain sales in the separate NEXTEEL database containing data for first administrative review sales related to re-sales by POSCO Daewoo. Commerce should correct the duplicative sequence numbers by renumbering the sequence numbers at issue in NEXTEEL's U.S. database for the instant POR.³⁸³

³⁷⁹ See NEXTEEL's Rebuttal Brief, at 24 (citing *OCTG from Ukraine*, and accompanying Issues and Decision Memorandum at Comment 2).

³⁸⁰ *Id.*, at 25.

³⁸¹ See U.S. Steel's Case Brief, at 34-37.

³⁸² *Id.*, at 37-38.

³⁸³ *Id.*, at 38-39.

- Lastly, Commerce should insert programming language to ensure that POSCO Daewoo's reported sales quantity, not NEXTEEL's, is used in the margin program in instances where NEXTEEL's and POSCO Daewoo's U.S. databases link.³⁸⁴

NEXTEEL's Rebuttal Comments:

- Commerce should not include sales from the first administrative review in its analysis. However, if Commerce determines to retain these sales in the margin calculation, certain modifications to U.S. Steel's proposed SAS language are necessary.³⁸⁵
- In addition, regarding U.S. Steel's proposal that expense variables for both NEXTEEL and POSCO Daewoo be included, Commerce should not simply sum the reported warranty expense amounts, as doing so would double count the warranty expenses in instances where NEXTEEL's warranty amounts are payments to POSCO Daewoo.³⁸⁶

Commerce Position:

Because we are applying AFA to NEXTEEL for these final results, this comment is moot, and it is unnecessary to address these arguments.

VIII. RECOMMENDATION

We recommend following the above methodology for these final results.



Agree

Disagree

4/11/2018

X 

Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

April 11, 2018

Date

³⁸⁴ *Id.*, at 39-40.

³⁸⁵ *See* NEXTEEL's Rebuttal Brief, at 31-32.

³⁸⁶ *Id.*, at 32.