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May 17, 2019

**MEMORANDUM TO:** Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Results of the  
2016-2017 Administrative Review of the Antidumping Duty Order  
on Certain Oil Country Tubular Goods from the Republic of Korea

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## **I. SUMMARY**

The Department of Commerce (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, 2016 through August 31, 2017.

Based upon our analysis of the comments received, we made certain changes from the *Preliminary Results*.<sup>1</sup> We revised the margin calculation for the two mandatory respondents, SeAH Steel Corporation (SeAH), and NEXTEEL Co., Ltd. (NEXTEEL) and continue to find that SeAH and NEXTEEL sold the subject merchandise in the United States at prices below normal value (NV). In addition, we continue to find that 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 recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

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<sup>1</sup> See *Certain Oil Country Tubular Goods from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 51442 (October 11, 2018) (*Preliminary Results*) and accompanying Decision Memorandum (Preliminary Decision Memorandum).



Below is the list of issues for which we received comments from interested parties in this administrative review:

### **General Issues**

Comment 1: Particular Market Situation

Comment 1-A: Lawfulness of Commerce's Interpretation of the Particular Market Situation Provision

Comment 1-B: Evidence of a Particular Market Situation

Comment 1-C: Particular Market Situation Adjustment

Comment 1-D: Major Input Analysis

Comment 1-E: Application of PMS Adjustment to Non-Selected Companies

Comment 2: Calculation of Constructed Value Profit

Comment 3: Differential Pricing

### **SeAH-Specific Issues**

Comment 4: Freight Revenue Cap

Comment 5: Interest Income Offset

Comment 6: Calculation of General and Administrative Expenses Incurred by SeAH's U.S. Affiliate

Comment 7: Treatment of Cost Variances for a Single Production Order Produced During POR and Non-POR Periods

Comment 8: Inventory Valuation Loss

Comment 9: Penalties Expense

### **NEXTEEL-Specific Issues**

Comment 10: NEXTEEL-POSCO Affiliation

Comment 11: Resales of Subject Merchandise

Comment 12: Non-Prime Products

Comment 13: Warranty Expense Calculation

Comment 14: Reported Grade

Comment 15: Suspended Production Losses

Comment 16: Coil Scrap Offset

Comment 17: Pipe Scrap Offset

## **II. BACKGROUND**

On October 11, 2018, Commerce published the *Preliminary Results* of this administrative review.<sup>2</sup> In accordance with 19 CFR 351.309(c), we invited interested parties to comment on the

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<sup>2</sup> See *Preliminary Results*.

*Preliminary Results.*<sup>3</sup> On February 12, 2019, the following parties submitted case briefs: (1) petitioner Maverick Tube Corporation and TenarisBayCity (collectively, Maverick);<sup>4</sup> (2) petitioner United States Steel Corporation (U.S. Steel);<sup>5</sup> (3) SeAH;<sup>6</sup> (4) NEXTEEL;<sup>7</sup> (5) AJU Besteel Co., Ltd. (AJU Besteel);<sup>8</sup> (6) ILJIN Steel Corporation (ILJIN);<sup>9</sup> (7) Husteel Co., Ltd. (Husteel);<sup>10</sup> and (8) Hyundai Steel Company (Hyundai Steel).<sup>11</sup> On February 19, 2019, the following parties submitted rebuttal briefs: (1) Maverick;<sup>12</sup> (2) U.S. Steel;<sup>13</sup> (3) SeAH;<sup>14</sup> and (4) NEXTEEL.<sup>15</sup>

On November 13, 2018, Maverick and U.S. Steel filed a request for a hearing.<sup>16</sup> On October 24, 2018, NEXTEEL filed a request for a hearing.<sup>17</sup> On November 9, 2018, SeAH filed a request for a hearing<sup>18</sup> and subsequently withdrew its request for a hearing on February 21, 2019.<sup>19</sup> On February 26, 2019, Commerce held a public hearing.<sup>20</sup>

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

<sup>4</sup> See Letter from Maverick, “Certain Oil Country Tubular Goods from the Republic of Korea: Case Brief of Maverick Tube Corporation and Tenaris Bay City, Inc.,” dated February 12, 2019 (Maverick Case Brief).

<sup>5</sup> See Letter from U.S. Steel, “Oil Country Tubular Goods from the Republic of Korea: Case Brief of United States Steel Corporation,” dated February 12, 2019 (U.S. Steel Case Brief).

<sup>6</sup> See Letter from SeAH, “Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea – Case Brief of SeAH Steel Corporation,” dated February 12, 2019 (SeAH Case Brief).

<sup>7</sup> See Letter from NEXTEEL, “Oil Country Tubular Goods from the Republic of Korea: NEXTEEL’s Case Brief,” dated February 12, 2019 (NEXTEEL Case Brief).

<sup>8</sup> See Letter from AJU Besteel, “Certain Oil Country Tubular Goods from the Republic of Korea – Case Brief,” dated February 12, 2019 (AJU Besteel Case Brief).

<sup>9</sup> See Letter from ILJIN, “Oil Country Tubular Goods from the Republic of Korea: Case Brief,” dated February 12, 2019 (ILJIN Case Brief).

<sup>10</sup> See Letter from Husteel, “Oil Country Tubular Goods from the Republic of Korea, 9/1/2016-8/31/2016 Administrative Review, Case No. A-580-870: Case Brief,” dated February 12, 2019 (Husteel Case Brief).

<sup>11</sup> See Letter from Hyundai Steel, “Oil Country Tubular Goods from the Republic of Korea: Hyundai Steel’s Case Brief,” dated February 12, 2019 (Hyundai Steel Case Brief).

<sup>12</sup> See Letter from Maverick, “Certain Oil Country Tubular Goods from the Republic of Korea: Rebuttal Brief of Maverick Tube Corporation and Tenaris Bay City, Inc.,” dated February 19, 2019 (Maverick Rebuttal Brief).

<sup>13</sup> See Letter from U.S. Steel, “Oil Country Tubular Goods from the Republic of Korea: Rebuttal Brief of United States Steel Corporation,” dated February 19, 2019 (U.S. Steel Rebuttal Brief).

<sup>14</sup> See Letter from SeAH, “Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea – Rebuttal Brief of SeAH Steel Corporation,” dated February 19, 2019 (SeAH Rebuttal Brief).

<sup>15</sup> See Letter from NEXTEEL, “Oil Country Tubular Goods from the Republic of Korea: NEXTEEL’s Rebuttal Brief,” dated February 19, 2019 (NEXTEEL Rebuttal Brief).

<sup>16</sup> See Letter from Maverick and U.S. Steel, “Oil Country Tubular Goods from the Republic of Korea: Request for a Hearing,” dated November 13, 2018.

<sup>17</sup> See Letter from NEXTEEL, “Oil Country Tubular Goods from the Republic of Korea: NEXTEEL’s Request for a Hearing,” dated October 24, 2018.

<sup>18</sup> See Letter from SeAH, “Oil Country Tubular Goods from the Republic of Korea: Hearing Request,” dated October 24, 2018.

<sup>19</sup> See Letter from SeAH, “Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from the Republic of Korea: Withdrawal of Hearing Request,” dated February 21, 2019.

<sup>20</sup> See Letter from Commerce on February 14, 2019, regarding hearing schedule; *see also* Hearing Transcript, dated March 5, 2019.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.<sup>21</sup> On March 11, 2019, we extended the deadline for the final results.<sup>22</sup> The revised deadline for the final results is now May 17, 2019.

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.

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<sup>21</sup> See Memorandum to the Record from 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, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding affected by the partial federal government closure have been extended by 40 days.

<sup>22</sup> See Memorandum, "Certain Oil Country Tubular Goods from the Republic of Korea: Extension of Time Limit for Final Results of the 2016/17 Antidumping Duty Administrative Review," dated March 11, 2019.

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

#### IV. MARGIN CALCULATIONS

For the final results of review, Commerce based the margin calculations for each mandatory respondent on constructed export price (CEP), Export Price (EP), and constructed value (CV), where appropriate, for NEXTEEL and SeAH. We used the same methodology as stated in the *Preliminary Results*, with the exception of the following changes:

##### NEXTEEL

1. We modified the particular market situation (PMS) adjustment rate, pursuant to the Court of International Trade (CIT) remand,<sup>23</sup> dated November 13, 2018. Additionally, we applied the revised PMS adjustment rate to the hot-rolled coil (HRC) costs, which was affirmed by the court in *POSCO v. United States*, Consol. Court No. 16-00227, Slip Op. 19-52 (CIT May 1, 2019), and discontinued using the major input adjustment made in the preliminary results, since we no longer find POSCO affiliated with NEXTEEL.<sup>24</sup>
2. We modified the three-year average per-unit warranty expenses reported in the warranty expense (WARRU) field in the margin calculation program.<sup>25</sup>
3. We removed the double-counting of warranty expenses by removing the second warranty expense (WARRU2) field in the margin calculation program.<sup>26</sup>
4. We modified the rate calculated for indirect selling expenses (ISEs) incurred in the country of manufacture (DINDIRSU) field in the margin calculation program.<sup>27</sup>
5. We removed certain resales of sales that were reported in the first review period.<sup>28</sup>
6. We revised the reported scrap offset to reflect the value of the combined side and pipe scrap sold during the review period.<sup>29</sup>
7. We revised the scrap offset included in the cost of goods sold denominators used in the calculations of NEXTEEL's general and administrative (G&A) and financial expense ratios to reflect the value of the combined side and pipe scrap sold during the fiscal year.<sup>30</sup>

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<sup>23</sup> See *POSCO v. United States*, Consol. Court No. 16-00227, Slip Op. 18-117 (CIT Sept. 11, 2018).

<sup>24</sup> See Comment 1 *infra*.

<sup>25</sup> See Memorandum, "Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea: Final Calculation Memorandum – NEXTEEL Co., Ltd.," dated May 17, 2019 (NEXTEEL Final Sales Calculation Memorandum), at 2; *see also* Memorandum, "Antidumping Duty Administrative Review on Oil Country Tubular Goods from the Republic of Korea: NEXTEEL Co., Ltd. Verification Report," dated December 20, 2018 (NEXTEEL Sales Verification Report), at 2.

<sup>26</sup> See Comment 13, below; *see also* NEXTEEL Final Sales Calculation Memorandum, at 3.

<sup>27</sup> See NEXTEEL Final Sales Calculation Memorandum, at 3; *see also* NEXTEEL Sales Verification Report, at 2.

<sup>28</sup> See Comment 11, below; *see also* NEXTEEL Sales Verification Report, at 7; NEXTEEL Final Sales Calculation Memorandum, at 3.

<sup>29</sup> See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Results – NEXTEEL Co., Ltd.," dated May 17, 2019 (NEXTEEL Cost Calculation Memorandum), at 2.

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

## SeAH

1. We modified the PMS adjustment rate, pursuant to the court remand,<sup>31</sup> dated November 13, 2018.<sup>32</sup>
2. We revised the POR quarter-four costs for a certain control number.<sup>33</sup>
3. We revised SeAH's reported consolidated financial expense ratio to limit the interest income offset to income generated on assets that were short-term in nature.<sup>34</sup>

## **V. 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 NEXTEEL. Accordingly, Commerce has assigned to the companies not individually examined (*see* the Appendix for a full list of these companies) a margin of 24.49 percent, which is the weighted average of NEXTEEL's and SeAH's calculated weighted-average dumping margins for these final results.

## **VI. DISCUSSION OF THE ISSUES**

### **Comment 1: Particular Market Situation**

*Background:* In the *Preliminary Results*, we determined that a PMS existed in Korea which distorted the cost of production (COP) of OCTG, based on the cumulative effect of: (1) Korean subsidies on the 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,

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<sup>31</sup> See *POSCO v. United States*, Consol. Court No. 16-00227, Slip Op. 18-117 (CIT Sept. 11, 2018).

<sup>32</sup> See Comment 1, below.

<sup>33</sup> See "Cost of Production and Constructed Value Calculation Adjustments for the Final Results – SeAH Steel Corporation," dated May 17, 2019 (SeAH Cost Calculation Memorandum), at 1.

<sup>34</sup> *Id.* at 2.

net of export subsidies, from the countervailing duty (CVD) investigation in *HRS from Korea Final Determination*.<sup>35</sup>

**Comment 1-A: Lawfulness of Commerce’s Interpretation of the Particular Market Situation Provision**

*NEXTEEL’s Comments:*

- The PMS provision of the Trade Preferences Extension Act (TPEA) cannot be used to address alleged upstream subsidies.<sup>36</sup>
- In the *Preliminary Results*, Commerce found that a PMS existed with regard to NEXTEEL’s COP. This was due to upstream subsidies provided by the Korean government to POSCO, a Korean producer of HRC.<sup>37</sup>
- Commerce’s findings are contrary to law because Commerce is precluded from construing general statutory provisions governing PMS to override the more specific statutory provisions governing upstream subsidies.<sup>38</sup>
- Commerce’s application of antidumping duties to remedy subsidies allows for double remedies.<sup>39</sup>
- Specific statutory provisions governing upstream subsidies preclude Commerce from addressing allegations of such subsidies under PMS provisions.<sup>40</sup>
  - Countervailing duty laws provide a definition of the term “upstream subsidy.”<sup>41</sup> These laws also govern the minimum standards for an allegation of an upstream subsidy, as well as how Commerce should remedy such a subsidy.<sup>42</sup>
  - The allegations put forward by the Domestic Interested Parties<sup>43</sup> are of an upstream subsidy of HRC, and Commerce’s remedies are attempting to address this upstream subsidy.<sup>44</sup> The grounds Commerce invoked for finding a PMS, as well as the basis for quantifying the cost distortion, are tied expressly to subsidies on the upstream product of HRC from POSCO.<sup>45</sup>
  - The appropriate avenue for addressing the Domestic Interested Parties’ allegations is through the countervailing duty laws, which would preclude Commerce from adjusting upstream subsidies in an antidumping duty proceeding with the application of a PMS.

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<sup>35</sup> See *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016), as amended in *Certain Hot-Rolled Steel Flat Products from Brazil and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders*, 81 FR 67960 (October 3, 2016) (collectively, *HRS from Korea Final Determination*).

<sup>36</sup> See NEXTEEL Case Brief at 24.

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

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

<sup>39</sup> *Id.* at 25.

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

<sup>41</sup> *Id.* (citing 19 U.S.C. § 1677-1).

<sup>42</sup> *Id.* (citing 19 U.S.C. § 1677-1(b)).

<sup>43</sup> Maverick Tube Corporation, TenarisBayCity, United States Steel Corporation, TMK IPSCO, Vallourec Star, L.P., and Welded Tube USA (collectively, Domestic Interested Parties).

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

<sup>45</sup> *Id.* at 26.

- Commerce must use the more specific statute, in this case, countervailing duty laws, to address an allegation even if another statute is “broad enough to include {the question at issue}.”<sup>46</sup>
- The PMS provisions are broad and are not tailored to addressing government subsidies such as the ones received by POSCO, but the countervailing duty provision “deliberately target{s} the issue of upstream subsidy allegations.”<sup>47</sup>
- Commerce does not have the legal authority to address upstream subsidies under the PMS provisions. The Domestic Interested Parties should file an allegation of such subsidies and injuries with Commerce.<sup>48</sup>

*Husteel’s Comments:*

- Commerce’s determination that a PMS exists in Korea is not in accordance with the law.<sup>49</sup>
- Under Section 776(e) of the Act, Commerce must demonstrate that there exists sufficient evidence that respondent’s costs do not accurately reflect the COP in the ordinary course of trade to make an affirmative PMS determination. Section 773(b) and (e) of the Act require Commerce to use a company’s own books and records to determine costs.<sup>50</sup>
- Section 776(a)(1)(C)(iii) of the Act requires that PMS be reserved for use in unusual situations only.<sup>51</sup> Commerce has shown the need for a high evidentiary threshold to invoke the PMS provision of the law in numerous proceedings, including *Cold-Rolled and CORE from Korea*, *Frozen Warmwater Shrimp from Thailand*, and *Biodiesel from Argentina*.<sup>52</sup>

*U.S. Steel’s Rebuttal Comments:*

- Commerce’s affirmative PMS finding is supported by the TPEA and the Act, both of which address potential distortions in the home market to ensure a fair comparison to U.S. price.<sup>53</sup> Thus, Commerce’s analysis of price- and cost-based PMS is consistent with

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<sup>46</sup> *Id.* (citing *Bloate v. United States*, 559 U.S. 196 (2010)).

<sup>47</sup> *Id.* at 26-27.

<sup>48</sup> *Id.* at 27.

<sup>49</sup> See *Husteel Case Brief*, at 3.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 3-4 (citing Uruguay Round Agreements Act Statement of Administrative Action, attached to H.R. Rep. No. 103-316 Vol. I at 873 (1994), at 822, reprinted in 1994 U.S.C.C.A.N. 4040, 4162 (SAA)).

<sup>52</sup> *Id.* at 4-9 (citing *Cold-Rolled and CORE from Korea*, at 18411 (wherein Commerce stated the need for substantial and specific evidence of government interference in domestic steel pricing within Korea for PMS to exist); *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 76 FR 40881 (July 12, 2011) (*Frozen Warmwater Shrimp from Thailand*), and accompanying Issues and Decision Memorandum, at Comment 3 (wherein Commerce rejected the petitioner’s allegation of price distortion in the home market due to a lack of evidence specific to respondent’s input prices); *Biodiesel from Argentina: Final Affirmative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 83 FR 8837 (March 1, 2018) (*Biodiesel from Argentina*) and accompanying Issues and Decision Memorandum, at Comment 2 (wherein Commerce reached an affirmative PMS determination based on quantitative evidence on the record of that investigation of government influence on pricing and production within the Argentine market)).

<sup>53</sup> See *U.S. Steel Rebuttal Brief* at 7 (citing Trade Preferences Tariff Act of 2015, Pub. L. No. 114-27, 129 Stat. 362, 385 and 19 U.S.C. 1677b(e)(1), (1) and 1677b(a)(1)(B)(ii)(III) (TPEA)).



these laws, supporting its finding that HRC input costs were not incurred in the ordinary course of trade.<sup>54</sup>

- Respondents mistakenly rely upon a rigid interpretation of the law, implying that Commerce’s PMS determinations are routine in nature.
- Unlike the price-based PMS, the cost-based PMS permits Commerce the flexibility to resort to “another calculation methodology under the subtitle or *any other calculation methodology*” (emphasis added).<sup>55</sup> Thus, Commerce properly implemented this aspect of the PMS provision with respect to a respondent’s input costs to make a PMS determination.
- Respondents’ suggestion that Commerce limit its analysis of subsidization and market distortion to the CVD law is contrary to the flexibility of the cost-based PMS adjustment intended by Congress.<sup>56</sup> Respondents cite to no statutory provision in support of their claim that Commerce has routinely declined to make adjustments to respondent’s costs to account for subsidization, as no such statutory provision exists.
- The two court cases raised by Husteel in its case brief were misplaced, in nature. The first court case, *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*,<sup>57</sup> was specific to a bankruptcy case that advanced the need to “target specific problems with specific solutions.” The other court case, *Bloate*,<sup>58</sup> was also materially unrelated to the PMS situation at issue. To the extent that the PMS cost-based adjustment even applies within the context of this court case, Congress provided the flexibility to Commerce through a specific mechanism to target a specific problem of cost-based PMS in AD proceedings.<sup>59</sup>
- NEXTEEL’s contention that Commerce’s PMS finding in the *Preliminary Results* is somehow akin to an upstream subsidy is incorrect, as Commerce never claimed to conduct such an analysis, which is irrelevant to the PMS issue.<sup>60</sup>
- Commerce does not need to undertake an upstream subsidy analysis in the final results in order to factor input subsidization into its PMS finding and adjust respondents’ costs. NEXTEEL has not identified statutory or regulatory bases for its argument regarding the need for such analyses.<sup>61</sup>

**Commerce Position:** For the final results of review, we continue to find that a PMS exists in Korea that distorts the COP of OCTG and, thus, have made an adjustment to the costs of HRC inputs. Section 504 of the TPEA added the concept of PMS in the definition of the term “ordinary course of trade,” for purposes of constructed value under section 773(e), and through these provisions for purposes of the COP under section 773(b)(3). Section 773(e) of the TPEA states that “[i]f 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 the

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<sup>54</sup> *Id.* at 7-8.

<sup>55</sup> *Id.* at 9 (citing 19 U.S.C. 1677b(e)(3)).

<sup>56</sup> *Id.* at 10-11.

<sup>57</sup> *Id.* at 11-13 (citing *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (*RadLAX*)).

<sup>58</sup> *Id.* at 11-13 (citing *Bloate v. United States*, 559 U.S. 196 (2010) (*Bloate*)).

<sup>59</sup> *Id.* at 11-12.

<sup>60</sup> *Id.* at 14.

<sup>61</sup> *Id.* at 30.

subtitle or any other calculation methodology.” Thus, under section 504 of the TPEA, Congress has given Commerce the authority to determine whether a PMS exists within the foreign market from which the subject merchandise is sourced and to determine whether the cost of materials, fabrication, or processing of such merchandise fail to accurately reflect the COP in the ordinary course of trade.<sup>62</sup>

In the instant review, the Domestic Interested Parties allege that a PMS exists in Korea which distorts OCTG costs of production based on the following four factors as discussed below: (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 1* and *OCTG from Korea POR 2*, Maverick alleged that a PMS existed in Korea based on the same four factors and, upon analyzing the four allegations as a whole, Commerce found that a PMS existed in Korea during the first two administrative reviews of this order.<sup>63</sup> The CIT concluded that our approach of considering the totality of circumstances in the market (including these four factors) is reasonable.<sup>64</sup>

For the current review, as in the first two administrative reviews, Commerce considered, as a whole, the four PMS allegations based on their cumulative effect on the Korean OCTG market through the COP 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 PMS, as explained in further detail in Comment 1-B, below.

With respect to NEXTEEL’s argument that the use of subsidies provided to hot-rolled steel (HRS) producers as a basis for finding a PMS is inconsistent with the Act’s separate remedy for alleged upstream subsidies, we disagree. Commerce considers neither the benefit nor the specificity of a government subsidy program in the context of an antidumping proceeding. Accordingly, we do not find any actions in this administrative review that are inconsistent with section 771A of the Act.<sup>65</sup>

Furthermore, the legislative history of TPEA indicates that Congress intended to provide Commerce with the ability to address price and cost distortions resulting from subsidization through the PMS provision. The TPEA states “that Commerce can disregard prices or costs of

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<sup>62</sup> See Section 773(e) of the Act.

<sup>63</sup> 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 1*) and accompanying Issues and Decision Memorandum, at Comment 3; see also *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 17146 (April 18, 2018) (*OCTG from Korea POR 2*) and accompanying Issues and Decision Memorandum, at Comment 1.

<sup>64</sup> See *NEXTEEL Co. v. United States*, 355 F. Supp. 3d 1336, 1349 (January 2, 2019) (*NEXTEEL*) (discussing legislative history and finding that Commerce’s approach was reasonable).

<sup>65</sup> See *Large Diameter Welded Pipe from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 84 FR 6369 (February 27, 2019) and accompanying Issues and Decision Memorandum, at Comment 14.

inputs that foreign producers purchase if the Commerce has reason to believe or suspect that the inputs in question have been subsidized or dumped.”<sup>66</sup> Further, during the Senate debate on this bipartisan legislation, Senator Brown called the proposed legislation “one of the most important bills to come in front of the Senate” which would “guarantee that Americans can find a more level playing field as we compete in the world economy....”<sup>67</sup> He also identified the Korean OCTG and steel industries as an example of industries that do not play by the rules, specifically referencing unfair subsidization of the Korean OCTG industry by the Korean government:

These {U.S. OCTG} producers increasingly lose business to foreign competitors that are not playing by the rules. Imports for OCTG, Oil Country Tubular Goods, have doubled since 2008. By some measures imports account for somewhat more than 50 percent of the pipes being used by companies drilling for oil and gas in the United States.

Korea has one of the world’s largest steel industries, but get this, not one of these pipes that Korea now dumps in the United States – *illegally subsidized* - is ever used in Korea for drilling because Korea has no domestic oil or gas production. In other words, *Korea has created this industry only for exports and has been successful because they are not playing fair*. So their producers are exporting large volumes to the United States, the most open and attractive market in the world, at below-market prices. This is clear evidence that our workers and manufacturers are being cheated and it should be unacceptable to the Members of this body. It hurts our workers, our communities, and our country. It is time to stop it.<sup>68</sup>

We also do not share NEXTEEL’s view that provisions concerning upstream subsidies under CVD law are more specific than PMS provisions under antidumping law, and, thus, must control. The legislative history discussed above indicates that in amending the antidumping duty statute, Congress, which was well aware of the CVD laws it previously enacted, was specifically concerned with price and cost distortions in antidumping calculations that resulted from unfair trade practices, including subsidization, and provided Commerce with tools to address such distortions in antidumping proceedings. NEXTEEL’s misinterpretation of the Act seeks to create a conflict between different statutory provisions where none exists. In contrast, our statutory interpretation construes the statutory provisions harmoniously and does not result in a statutory conflict. Provisions regarding upstream subsidies are specific to CVD determinations and apply in CVD proceedings, while provisions regarding PMS are specific to antidumping determinations and apply in antidumping proceedings. This administrative review is an antidumping proceeding, to which section 773 of the Act applies directly. Section 771A of the Act does not govern antidumping proceedings.

Further, NEXTEEL’s argument regarding application of double remedies in this case is speculative and unfounded, because there is no parallel CVD order on OCTG from Korea.

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<sup>66</sup> See Section 504(b) of the TPEA.

<sup>67</sup> See Congressional Record-Senate, S2899, S2900 (May 14, 2015).

<sup>68</sup> *Id.* (emphasis added).

Moreover, Husteel's argument that Commerce must use a respondent's own books and records to determine costs under section 776(e) of the Act is misplaced. We have used the respondents' own books and records to determine costs, and, where appropriate, made an adjustment to address distortions resulting from PMS under section 773 of the Act, which expressly provides Commerce with authority to make such adjustments. Regarding Husteel's argument that the application of the PMS provision has a high evidentiary threshold and is reserved for unusual situations, section 504 of the TPEA expanded Commerce's authority to apply the concept of PMS to costs of production and, in this case, as explained in Comment 1-B, Commerce considered the evidence of PMS and properly found that the evidence supported a finding of a PMS in Korea.

### **Comment 1-B: Evidence of a Particular Market Situation**

#### *NEXTEEL's Comments:*

- Commerce's finding in the *Preliminary Results* that a PMS existed must be reversed.<sup>69</sup>
- Since the issuance of the *Preliminary Results*, the CIT has concluded that Commerce's finding of the existence of a PMS in the first administrative review was unsupported by substantial evidence.<sup>70</sup> The CIT highlighted that Commerce itself determined the lack of support to find that a PMS exists based on the four criteria it relied upon in that review:
  - (1) policies or mandates by the Government of Korea (GOK) with regard to HRC that distort NEXTEEL's OCTG costs of production;
  - (2) price distortions in the Korean market due to Korean imports of HRC from China;
  - (3) alleged strategic alliances between Korean HRC suppliers and OCTG producers;
  - (4) alleged government involvement in the Korean electricity market.<sup>71</sup>
- The Domestic Interested Parties have made the same allegations and submitted much of the same evidence in the instant administrative review as in the first administrative review.<sup>72</sup> The Domestic Interested Parties have not presented any new facts since the first administrative review that would justify a PMS finding in this review, so Commerce must conclude that PMS does not exist.<sup>73</sup>
- A finding of a PMS should be reserved for rare and unique circumstances where substantial evidence existed with respect to distortions in a respondent's costs of production, as stated in the *Preamble*, which states: "PMS fall[s] into the category of issues that Commerce need not, and should not, routinely consider."<sup>74</sup>
- Commerce has previously evaluated the concept of a PMS in the sales pricing context in other proceedings. In those cases, Commerce recognized the need to rely strongly upon respondents' actual data and the finding of substantial evidence to support existence of a

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<sup>69</sup> See NEXTEEL Case Brief, at 4-5 (citing the *Preliminary Results* and accompanying Decision Memorandum at 19-23).

<sup>70</sup> *Id.* at 5 (citing *NEXTEEL*).

<sup>71</sup> See NEXTEEL Case Brief, at 5 and 9-11.

<sup>72</sup> *Id.* at 11-12 (citing the Domestic Interested Parties' letter, "Certain Oil Country Tubular Goods from the Republic of Korea: Other Factual Information Submission for Valuing the Particular Market Situation in Korea and Respondents' CV Profit," May 16, 2018 (the Domestic Interested Parties' PMS Allegation)).

<sup>73</sup> *Id.*

<sup>74</sup> See NEXTEEL Case Brief, at 5-6 (citing *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*)).

PMS. In each of those cases though, the analysis conducted by Commerce resulted in a negative PMS finding, which should be the case with respect to NEXTEEL's purchases of hot-rolled steel in the instant administrative review.<sup>75</sup>

- The record of this review does not support an affirmative PMS finding with respect to the Korean HRC market. The record does not indicate that the Korean market for HRC is distorted and does not justify a finding that the input transactions are outside the ordinary course of trade.<sup>76</sup>
  - The Korean market does not involve government interference in the market or specific pricing concerns. Rather, the Korean HRC market functions on the basis of global supply and demand trends, consistent with what is expected of an open marketplace.<sup>77</sup>
  - Steel Benchmark data placed on the record of this review show that material prices move in tandem with global trends, negating existence of any “particular” situation within the Korean market.<sup>78</sup> Examination of the Steel Benchmark data, as well as United Nations International Trade Statistics Database (COMTRADE) data that the Domestic Interested Parties placed on the record, demonstrate that in some instances, input costs, such as HRC, aligned with or were even higher than global benchmark prices, which are impacted by supply and demand forces within the market.<sup>79</sup>
  - NEXTEEL's record information demonstrates that its prices are reflective of market reality and not outside the ordinary course of trade, including Steel Benchmark data,<sup>80</sup> and COMTRADE data.<sup>81</sup> Commerce failed to consider these data for the *Preliminary Results*, relying on only conclusory qualitative assertions regarding the Korean market; instead, Commerce should rely on actual data that demonstrate a PMS does not exist for NEXTEEL's HRC purchases because they are reflective of world market prices.<sup>82</sup>
  - Had Commerce relied on factual cost data specific to NEXTEEL, rather than on conclusory, qualitative assertions regarding the Korean HRC market, Commerce would have found that no PMS exists with respect to NEXTEEL. Commerce should take this information into account for the final results of review.<sup>83</sup>

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<sup>75</sup> See NEXTEEL Case Brief, at 8-9 (citing, e.g., *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review*, 62 FR 18404 (April 15, 1997) (*Cold-Rolled and CORE from Korea*), and accompanying Issues and Decision Memorandum, at Comment 1; *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 76 FR 40881 (July 12, 2011) and accompanying Issues and Decisions Memorandum, at Comment 3).

<sup>76</sup> *Id.* at 11.

<sup>77</sup> *Id.* at 13-14.

<sup>78</sup> *Id.* at 14.

<sup>79</sup> *Id.* at 14-17.

<sup>80</sup> *Id.* at 14 (citing NEXTEEL Letter, “Oil Country Tubular Goods from the Republic of Korea: NEXTEEL's Particular Market Situation Comments and Rebuttal Factual Information,” August 20, 2018 (NEXTEEL PMS Allegation Rebuttal), at Exhibit 4).

<sup>81</sup> *Id.* at 14-16 (citing NEXTEEL PMS Allegation Rebuttal, at Exhibits 7, 9; the Domestic Interested Parties' PMS Allegation).

<sup>82</sup> *Id.* at 17-18.

<sup>83</sup> *Id.*

- If Commerce continues to find that it is necessary to make an adjustment to NEXTEEL's costs under the PMS provision, Commerce should ensure that any such adjustment considers quantitative data that is properly valued and reflective of functioning markets.<sup>84</sup>
- Commerce's preliminary decision to adopt the Domestic Interested Parties' claim with respect to China HRC is inconsistent with record information concerning NEXTEEL's commercial position.<sup>85</sup> NEXTEEL obtained a negligible amount of HRC from Chinese producers during the POR and, thus, there is no basis to adjust NEXTEEL's input costs.<sup>86</sup>
  - 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.<sup>87</sup>
  - Neither the Domestic Interested Parties 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 products in Korea. Only about 20 percent of hot-rolled steel imports into Korea come from China.<sup>88</sup>
  - The Domestic Interested Parties point to no evidence that Chinese overcapacity is directed to the Korean market.<sup>89</sup>
- The strategic alliance element relied upon by Commerce is unsupported by the record. Commerce did not articulate how the alleged strategic alliance impacted the market for HRC and contributed to a meaningful PMS, let alone quantify its findings.<sup>90</sup>
  - Commerce merely reiterated its findings from a prior segment of this proceeding, which has no impact on the current review period. In the *Preliminary Results*, Commerce stated that the "record does not contain specific evidence showing that strategic alliances directly created a distortion in HRC pricing in the current POR...."<sup>91</sup>
  - Commerce's *Preliminary Results* PMS finding with respect to the alleged "strategic alliance" between NEXTEEL and POSCO have been fully discredited by the CIT.<sup>92</sup> The CIT affirmed Commerce's decision to reject the "strategic alliance" argument, noting that it was "highly speculative."<sup>93</sup>
  - To the extent that Commerce continues to find NEXTEEL and POSCO affiliated, any strategic alliance is already accounted for in Commerce's major input analysis, which cannot at the same time support a PMS finding.<sup>94</sup> For the final results, Commerce must fully address all aspects of the alleged strategic alliance between NEXTEEL and POSCO, including the relevancy in the instant review period.<sup>95</sup>

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<sup>84</sup> *Id.* at 18.

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

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 18-19.

<sup>88</sup> *Id.* at 19 (citing NEXTEEL Letter, "Oil Country Tubular Goods from the Republic of Korea: Factual Information Relating to the Particular Market Situation," dated August 20, 2018, at Exhibit 1).

<sup>89</sup> *Id.* at 19.

<sup>90</sup> *Id.* at 20.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 21 (citing *Husteel v. United States*, 98 F. Supp.3d 1315, 1359 (CIT 2015) (*Husteel*)).

<sup>93</sup> *Id.* at 21.

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

<sup>95</sup> *Id.* at 20-21.

- There is no basis to consider the Korean electricity prices as a PMS factor based on recent decisions by Commerce and the CIT that Korean electricity prices were within the ordinary course of trade.<sup>96</sup>
  - Contemporaneous record evidence demonstrates that NEXTEEL's electricity rates reflect market principles.<sup>97</sup>
  - Commerce found no countervailable subsidies with respect to electricity provided to Korean steel producers during the less-than-fair-value (LTFV) investigation.<sup>98</sup> Commerce has reached similar findings in other case proceedings, which have been upheld by the CIT.<sup>99</sup>
  - For the final results of review, Commerce should abandon an adjustment for electricity, particularly given the miniscule portion of OCTG COP that electricity represents.<sup>100</sup>
- Should Commerce determine that a PMS exists within the Korean market for OCTG costs of production, it must base its finding on a quantitative analysis using HRC benchmark data that NEXTEEL placed on the record in this review.<sup>101</sup>
  - Commerce has a long-standing practice of conducting a data-driven, quantitative analysis to determine whether a PMS exists. In *Rebar from Taiwan*, Commerce examined the respondents' input purchases for benchmarking costs of production.<sup>102</sup>
  - Subsequent to Commerce's affirmative PMS determination in the OCTG AR1 final results, Commerce conducted a detailed analysis of the Government of Argentina's export tax regime to reach a PMS determination in *Biodiesel from Argentina*.<sup>103</sup> Here, Commerce overlooked the extensive analysis conducted in *Biodiesel from Argentina* and other cases and resorted to an adverse facts available (AFA) CVD rate from a different proceeding to make its PMS adjustment.<sup>104</sup>
  - Commerce disregarded proposed benchmark data that NEXTEEL placed on the record, relying only on its findings in previous segments of this proceeding to conclude that a PMS exists within Korea, rendering an affirmative PMS finding arbitrary and contrary to law.<sup>105</sup>

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<sup>96</sup> *Id.* at 22.

<sup>97</sup> *Id.* at 22 (citing NEXTEEL PMS Allegation Rebuttal, at 10).

<sup>98</sup> *Id.* at 23.

<sup>99</sup> *Id.* at 23 (citing, e.g., *POSCO v. United States*, 296 F. Supp. 3d 1320 (CIT 2018) (*POSCO- HRS*) and *POSCO v. United States*, 353 F. Supp. 3d 1357 (CIT 2018) (*POSCO-CTL Plate*)).

<sup>100</sup> *Id.* at 24.

<sup>101</sup> See NEXTEEL Case Brief, at 34-35.

<sup>102</sup> *Id.* at 35 (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 7-10).

<sup>103</sup> *Id.* at 36 (citing *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).

<sup>104</sup> *Id.* at 37-38.

<sup>105</sup> *Id.* at 36.

*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 irrelevant to SeAH.<sup>106</sup>
- Regarding strategic alliances, Commerce has consistently found that SeAH and POSCO are not affiliated.<sup>107</sup> As for electricity, Commerce found that the prices SeAH paid for electricity did not confer any subsidy benefit.<sup>108</sup>
- 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 *HRS from Korea Final Determination* was based completely on AFA.<sup>109</sup>
  - There is no evidence of any findings of dumping against Chinese coil producers by the Korean government.<sup>110</sup>
  - 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.<sup>111</sup>
  - SeAH compares average purchase prices of HRC purchased from Chinese and Japanese suppliers (but not from POSCO) used to make OCTG during the POR. The comparison shows that the average prices for such purchases were nearly the same.<sup>112</sup>
- Record evidence disproves the argument that SeAH's HRC costs do not reflect the COP in the ordinary course of trade. Rather, the record confirms that the prices SeAH paid POSCO and its Chinese suppliers for HRC were consistent with market prices, as shown by the prices SeAH paid its Japanese supplier.<sup>113</sup>
- The CIT held that in the first administrative review, there was no evidence of the existence of a PMS in Korea based on the four factors relied upon by Commerce.<sup>114</sup> Because the circumstances in this administrative review are largely unchanged from those in the first administrative review, there is no basis for a PMS finding in this review.<sup>115</sup>

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<sup>106</sup> See SeAH Case Brief, at 2.

<sup>107</sup> *Id.* at 2 (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 Preliminary Decision Memorandum, at 7-8; *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) (*Line Pipe from Korea LTFV Preliminary Determination*) and accompanying Preliminary Decision Memorandum, at 18).

<sup>108</sup> *Id.* (citing *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015) (*Line Pipe from Korea CVD Final Determination*)) and accompanying Issues and Decision Memorandum, at Comment 1).

<sup>109</sup> *Id.* at 3.

<sup>110</sup> *Id.*

<sup>111</sup> See SeAH Case Brief, at 3-4 (citing SeAH's June 8, 2018 Supplemental Response (SeAH June 8, 2018), at Appendix SC-4-E).

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 4.

<sup>114</sup> See SeAH Case Brief, at 5 (citing *NEXTEEL*, at 18).

<sup>115</sup> *Id.*



- Based on the foregoing, there is no basis on which to make a PMS adjustment for SeAH.<sup>116</sup>

*ILJIN's Comments:*

- Commerce rendered an affirmative PMS decision in the *Preliminary Results* on the strength of its affirmative PMS finding in earlier reviews. Thus, there is no independent evidence in this review to support an affirmative PMS finding for the final results.<sup>117</sup>
- In *OCTG from Korea POR 1*, Commerce found that four factors collectively resulted in a PMS in Korea; Commerce rested upon this analysis in *OCTG from Korea POR 2*<sup>118</sup> and in the instant review period during the pendency of litigation.<sup>119</sup> Because the CIT found that Commerce's PMS determination was unsupported by substantial evidence, Commerce must reverse its preliminary decision in this review, which relied upon the circumstances supporting this finding in previous segments of this proceeding.<sup>120</sup>
- Should Commerce disregard the CIT's decision, Commerce has no record evidence to support a finding that there is a PMS distortion in the Korean HRC market for this review period.<sup>121</sup>
- Commerce failed to engage respondents on information submitted by respondents in this review that demonstrated no PMS distortion within the Korean HRS market, including the fact that Korean HRC prices are consistent with world market prices.<sup>122</sup>

*Hyundai Steel's Comments:*

- The record does not support an affirmative PMS finding with respect to the Korean HRC market.<sup>123</sup>
  - There is nothing on the current record to justify a finding that the input transactions are not within the ordinary course of trade or to support an overall affirmative PMS finding.<sup>124</sup>
  - While Commerce's evolving practice concerning PMS demonstrates its reliance on evidence to support an affirmative finding, the record of this review is devoid of any quantitative or empirical analysis by Commerce to reach an affirmative PMS determination.<sup>125</sup>
- The record does not support an affirmative PMS finding for HRC imports from China.
  - The respondents' costs were not distorted by China-sourced HRC, and their purchases of HRC were made within the ordinary course of trade at prices consistent with the world and regional market prices.<sup>126</sup>

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<sup>116</sup> *Id.* at 5.

<sup>117</sup> See ILJIN Case Brief, at 3.

<sup>118</sup> *Id.* at 5 (citing *OCTG from Korea POR 2* and accompanying Issues and Decision Memorandum).

<sup>119</sup> *Id.* at 3-5 (citing *NEXTEEL*).

<sup>120</sup> *Id.* at 5.

<sup>121</sup> *Id.* at 7-8.

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

<sup>123</sup> See Hyundai Steel Case Brief, at 4.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 5.

- Commerce has not pointed to record evidence to lend support to its preliminary finding that the Korean market is being flooded by Chinese HRC, given the small volume of HRC imports compared with Korean production of HRC.<sup>127</sup>
- Commerce’s PMS finding cannot be based on generalizations about market distortion and therefore, Commerce must not apply any PMS adjustment for the final results to imports of HRC from China.<sup>128</sup>
- The alleged “strategic alliance” between the respondents and POSCO has been discredited by the CIT.
  - Commerce failed to articulate in the *Preliminary Results* how the alleged “strategic alliances” between HRS and OCTG producers in Korea have affected the market for HRC and thus, contributed to a finding of PMS during the POR.<sup>129</sup>
  - Both Commerce and the CIT, in the appeal of *Husteel*, rejected the very argument that the Domestic Interested Parties and Commerce itself initially put forth regarding an alleged “silent agreement” between POSCO and Korean OCTG and line pipe producers based on a lack of evidence. The CIT fully discredited this argument, referencing it as “highly speculative and unpersuasive.”<sup>130</sup>
- Reliance on the electricity element to support a PMS finding has no merit, as Commerce has not found any countervailable subsidies associated with electricity provided to Korean steel producers, which has consistently been upheld by the CIT.<sup>131</sup>

*Husteel’s Comments:*

- Commerce’s preliminary finding that PMS exists is based entirely on evidence submitted in the 2014-2015 and 2015-2016 final results of review, which Commerce clearly articulated in the *Preliminary Results*.<sup>132</sup>
- The CIT found that all four elements relied on by Commerce for its PMS determination in the 2014-2015 administrative review were unreasonable and unsupported by record evidence.<sup>133</sup>
- For its PMS determination in this review, Commerce is relying upon evidence from the 2014-2015 administrative review which the CIT has ruled as being unsupported and, thus, overturned. Therefore, it is no longer relevant to the current review period. Accordingly, Commerce should reverse its *Preliminary Results* decision that a PMS exists in this review.<sup>134</sup>

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<sup>127</sup> *Id.*

<sup>128</sup> *Id.* (citing *Preliminary Results* and accompanying Preliminary Decision Memorandum, at 20).

<sup>129</sup> See Hyundai Steel Case Brief, at 5.

<sup>130</sup> *Id.* at 6 (citing *Husteel*, at 1359).

<sup>131</sup> *Id.* at 7 (citing *POSCO-HRS*; *POSCO-CTL Plate*; *Nucor Corp. v. United States*, 42 CIT, 286 F. Supp. 3d, 1364 (2018) (corrosion resistant steel) (*Nucor*)).

<sup>132</sup> See *Husteel* Case Brief, at 10 (citing *Preliminary Results* and accompanying Issues and Decision Memorandum, at 19).

<sup>133</sup> *Id.* at 11-14 (citing *NEXTEEL*, at 18).

<sup>134</sup> *Id.* at 14.

*AJU Besteel's Comments:*

- There is no basis to adjust the mandatory respondents' costs in this review to compensate for an alleged PMS.<sup>135</sup>
- In the *Preliminary Results*, Commerce determined that a PMS existed based on the collective impact of four factors alleged by the Domestic Interested Parties. Commerce made no new factual findings, but rather concluded that a PMS existed based on previous reviews of this case and other cases involving HRC imports.<sup>136</sup>
- Commerce did not assess whether HRC for the production of OCTG purchased during the current POR was purchased in the ordinary course of trade; therefore, Commerce's finding of a PMS is contrary to law and unsubstantiated by record evidence. This finding should be reversed for the final results.<sup>137</sup>
- No basis exists to adjust costs based on the four factors cited in the *Preliminary Results* for the mandatory respondents; furthermore, there is no basis to apply this finding indirectly to non-examined companies like AJU Besteel.<sup>138</sup>
- There is no evidence that the Korean market has been distorted by HRC imports or that the mandatory respondents' costs of manufacturing OCTG were skewed by purchase prices of HRC from China that were inconsistent with worldwide or regional prices.<sup>139</sup>
- The record does not support the existence of any alleged "strategic alliances" between Korean HRC suppliers and OCTG producers, and, even if it did, Commerce has not demonstrated that these alliances distorted the Korean HRC market.<sup>140</sup> Record evidence shows unexceptional commercial relationships between the mandatory respondents and input suppliers which do not support the finding of a PMS.<sup>141</sup>
  - Commerce has not independently found the existence of strategic alliances in this administrative review, and it is unreasonable to impute the existence of strategic alliances based on previous findings.<sup>142</sup>
  - The CIT has previously rejected the finding of strategic alliances in an appeal of OCTG from Korea.<sup>143</sup>
- The record does not support any claim that Korean domestic electricity costs were aberrant or not market-based during the POR.<sup>144</sup>
  - Commerce cites to electricity costs in the Korean market as a basis for its PMS finding, yet it has consistently determined that electricity in Korea is not provided for less than adequate remuneration. Therefore, it is unreasonable for Commerce to cite unsubsidized and market-based electricity as a distorting factor.<sup>145</sup>
- It is not enough for Commerce to find that a PMS exists; Commerce must also determine that "the cost of materials and fabrication or other processing of any kind does not

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<sup>135</sup> See AJU Besteel Case Brief, at 1-3.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* at 4.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.* at 6.

<sup>143</sup> *Id.* 5-6 (citing *Husteel v. United States*, 98 F. Supp. 3d 1315, 1359 (CIT 2015)).

<sup>144</sup> *Id.*

<sup>145</sup> *Id.* at 6-7.

accurately reflect the COP in the ordinary course of trade” as a result of the PMS before constructed value adjustments are made.<sup>146</sup> No basis exists in the antidumping statute to apply CVD subsidies from a separate proceeding as an upward adjustment in the calculation of the mandatory respondents’ costs in this proceeding.<sup>147</sup>

- The four PMS factors neither individually, nor collectively, demonstrate that the prices paid by the mandatory respondents or AJU Besteel for HRC materials did not “accurately reflect the cost of production in the ordinary course of trade.”<sup>148</sup>
- Because at least three of the factors relied on by Commerce for an affirmative PMS finding are not applicable to AJU Besteel, Commerce’s reasoning of a “collective impact” of the four factors (*i.e.*, strategic alliances with Korean HRS producers, subsidized electricity prices, and purchases of HRC from Chinese suppliers at unfairly low prices) cannot serve as a basis for a PMS adjustment in the case of AJU Besteel.<sup>149</sup>
- The CIT found that Commerce’s application of PMS in the first administrative review of OCTG from Korea was unreasonable.<sup>150</sup> In that litigation, the CIT found that the individual allegations of PMS were insufficiently supported. Thus, Commerce should dismiss these allegations in the final results.

*U.S. Steel’s Rebuttal Comments:*

- Commerce’s determination that a PMS exists within the Korean market is in accordance with the law and was based on substantial evidence.<sup>151</sup> Commerce’s adjustments were reasonable and were tailored to record information using a CVD margin still in effect.<sup>152</sup>
- Commerce conducted a proper two-step analysis of the PMS by first administering a qualitative analysis, followed by a quantitative analysis of the four PMS factors to determine if it were reasonable to adjust respondents’ reported costs to reflect the distortion caused by each PMS factor.<sup>153</sup>
  - The statute does not require that Commerce conduct a quantitative analysis to determine if a PMS exists; however, Commerce did conduct such an analysis, which further supported its finding that a PMS existed.<sup>154</sup>
  - As noted in *Biodiesel from Argentina*, the underlying statute does not require that Commerce conclude that the PMS factor(s) generated the price distortion being evaluated.<sup>155</sup>

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<sup>146</sup> *Id.* at 10 (citing 19 U.S.C. § 1677b(b)(3)).

<sup>147</sup> *Id.* at 7-8.

<sup>148</sup> *Id.* at 10.

<sup>149</sup> *Id.* at 10-11.

<sup>150</sup> *Id.* at 12 (citing *NEXTEEL*).

<sup>151</sup> See U.S. Steel Rebuttal Brief, at 4 (citing *Preliminary Results* and accompanying Issues and Decision Memorandum, at 16-23).

<sup>152</sup> *Id.*

<sup>153</sup> *Id.* at 15.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 16 (citing *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).

- Commerce did not rely solely on any single PMS factor in making its PMS determination. Rather, compounding factors such as Korean subsidization, Chinese hot-rolled steel overcapacity, and strategic alliances collectively brought about the market distortion, and Commerce's findings were supported by record evidence.<sup>156</sup>
  - The respondents misunderstood Commerce's analysis by applying an erroneous standard of review from price-based PMS practice. The respondents incorrectly isolated each of the four PMS factors without taking into account the cumulative nature of Commerce's assessment in finding a PMS.<sup>157</sup>
- Commerce correctly found that subsidization by Korean authorities, coupled with downward pressure from Chinese subsidization of the steel used as inputs for OCTG production, distorted the Korean HRC market.<sup>158</sup>
  - NEXTEEL's argument that Commerce should have used a benchmark to conduct a quantitative analysis in its PMS finding is unfounded because Commerce conducted a qualitative analysis to make its PMS determination and did not need to conduct such a quantitative analysis. Further, NEXTEEL submitted inconsistent data which would not have been usable in applying a benchmark.<sup>159</sup>
  - The Korean market can proportionally fluctuate with global prices and still be considered to be a distorted market.<sup>160</sup>
  - Commerce is correct in continuing to reject SeAH's comparative Japanese prices because other producers generally need to adjust their prices to be competitive in any market, including a distorted one, because both companies are still competing in the same market.<sup>161</sup>
- The respondents' arguments concerning the level of Chinese imports are unsupported by record evidence and do not provide reason for Commerce to dismiss its conclusion that Chinese overcapacity is distorting the Korean HRC market.<sup>162</sup>
  - Without Chinese overcapacity in the global market, Korean domestic production of HRC would likely be higher and cause an increase in steel prices. If HRC imports from China were comparatively small relative to respondents' domestic purchases or imports from other countries, that would only imply that other exporting countries had lowered their prices to be competitive with Chinese prices.<sup>163</sup>
  - Chinese overcapacity is substantial enough that it isn't necessary for it to be intentionally directed toward the Korean market to have a distortive impact, but Korea did have the largest single-country amount of Chinese flat steel product imports.<sup>164</sup>

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<sup>156</sup> See U.S. Steel Rebuttal Brief, at 18.

<sup>157</sup> *Id.* at 16.

<sup>158</sup> *Id.* at 19.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* at 20.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.* at 21.

<sup>163</sup> *Id.* at 22.

<sup>164</sup> See *id.*; see also the Domestic Interested Parties' PMS Allegation, at Exhibit 25 and Exhibit 36.

- Chinese overcapacity does indeed affect other markets aside from Korea, but it is not required that a PMS factor be unique to a particular market in question for it to be a contributing factor to the PMS.<sup>165</sup>
- The same factor does not affect various markets in the same ways and affected markets do not react in the same ways. Since the Korean government does not attempt to remedy the dumping of Chinese HRC into its own market, the Korean HRC market is still “particularly” exposed to Chinese HRC overcapacity and its ensuing effects.<sup>166</sup>
- Commerce does not need to prove causation regarding how a strategic alliance can affect the market in question when analyzing a PMS.<sup>167</sup>
  - Evidence of a strategic alliance is more pervasive now than when the CIT ruled that petitioners’ argument of a “silent agreement” was not persuasive and unsupported by evidence.<sup>168</sup>
  - The *Husteel* decision is not applicable to this case because it anteceded the cost-based PMS provision. The strategic alliance allegation in this current proceeding is also not meant to be the sole piece of evidence supporting the PMS allegation but, rather, one aspect of a wider set of evidentiary items.<sup>169</sup>
- The statistics NEXTEEL submitted in its case brief regarding the Korean electricity market are extraneous and suggest that Commerce’s previous findings of the Korea Electric Power Corporation (KEPCO)’s distortive consequences were broader than reality.<sup>170</sup>
  - Korean electricity prices should be compared on a tax-inclusive basis because that is the price actually paid by NEXTEEL. Further, the statute on constructed value specifies that the cost of materials should be calculated excluding taxes imposed by the exporting country which are then remitted or refunded upon exportation.<sup>171</sup>
  - Comparing Korean electricity prices to those in other countries is not informative since the PMS analysis concerns only the Korean market, an electricity market with severe government distortion and inter-financing by non-industrial patrons.<sup>172</sup>
  - It is inaccurate to compare the Korean government’s profitability rate on its electric distribution monopoly with private corporations functioning in Korea and the global market.<sup>173</sup>
  - Commerce’s earlier determinations of prior allegations against KEPCO do not prevent it from finding that the Korean electricity market was distorted throughout the POR for this administrative review.<sup>174</sup>

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<sup>165</sup> See U.S. Steel Rebuttal Brief, at 23.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.* at 24.

<sup>168</sup> *Id.* at 24-25; see also *Husteel v. United States*, 98 F. Supp. 3d 1315, 1359 (CIT 2015) (*Husteel*).

<sup>169</sup> See U.S. Steel Rebuttal Brief, at 25.

<sup>170</sup> *Id.* at 26; see also NEXTEEL Case Brief, at 22-23.

<sup>171</sup> See U.S. Steel Rebuttal Brief, at 27; see also 19 U.S.C. 1677b(e).

<sup>172</sup> *Id.* at 27.

<sup>173</sup> *Id.*

<sup>174</sup> *Id.* at 28.

- In their case briefs, the respondents mistakenly rely upon the opinion and order by the CIT<sup>175</sup> in the first administrative review of this proceeding as reason to dissuade Commerce from making an affirmative PMS finding in the final results.<sup>176</sup>
  - The AR1 Remand Order was based on a different administrative record. While not cited to in the *Preliminary Results*, the Domestic Interested Parties placed new evidence on the instant review record evidencing domestic subsidization in the Korean market.<sup>177</sup>
  - Because the AR1 Remand Order has not yet led to a final adjustment, Commerce may still appeal the Court's assessment of Commerce's PMS finding, which is, therefore, not binding in this administrative review.<sup>178</sup>

**Commerce Position:** As stated above, in the instant review, the Domestic Interested Parties alleged that a PMS 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. For the current review, as in the first two administrative reviews, Commerce considered, as a whole, the four PMS allegations based on their cumulative effect on the Korean OCTG market through the COP for OCTG and its inputs. Based on the totality of the conditions in the Korean market, we continue to find that the allegations represent facets of a single PMS. We hereby address arguments raised on each of these elements.

Record evidence shows subsidization of HRC by the Korean government, as well as purchases of HRC from POSCO by the mandatory respondents.<sup>179</sup> 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.<sup>180</sup> 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.<sup>181</sup> 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.<sup>182</sup> This, along with the domestic steel

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<sup>175</sup> *Id.* at 4 (citing *NEXTEEL*).

<sup>176</sup> *Id.*

<sup>177</sup> *Id.* at 5.

<sup>178</sup> *Id.* at 5-6.

<sup>179</sup> See, e.g., the Domestic Interested Parties' PMS Allegation, at Exhibits 1, 2, 14 (citing, e.g., *HRS from Korea Final Determination* and accompanying Issues and Decision Memorandum).

<sup>180</sup> *Id.* at Exhibit 15 (containing Memorandum re: "Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Amended Final Determination Calculation Memorandum for POSCO," dated August 23, 2016 (HR Korea Amended Calculation Memo for POSCO)).

<sup>181</sup> *Id.* at 18-19 and Exhibit 2 (citing *OCTG Korea POR I* Issues and Decision Memorandum, at 42).

<sup>182</sup> *Id.* at Exhibit 1 (citing OCTG Korea Final Results Issues and Decision Memorandum, at 14; Heesu Lee, *Posco Posts Smallest Ever Profit Amid Chinese Steel Deluge*, Bloomberg (Jan. 28, 2016), contained in Exhibit 25 (U.S. Steel's Aug. 7, 2017 Submission), at Exhibit 4; Announcement for and Excerpts from Relevant Ministries of the Government of Korea, Proposal for Strengthening the Competitiveness of the Steel Industry (Sept. 30, 2016), contained in Exhibit 24 (Maverick's Aug. 7, 2017 Submission) at Exhibit 5; *China's Steel Exports Reaching 100 Mt*:

production being heavily subsidized by the Korean government, distorts the Korean market prices of HRC, the main input in Korean OCTG production.

Record information demonstrates that, as a result of Korean companies importing large volumes of HRC from China,<sup>183</sup> the Korean steel market has been adversely impacted by the cheaper Chinese steel products, placing downward pressure on Korean domestic steel prices.<sup>184</sup> Regarding this individual element of our PMS analysis, we find that respondents' arguments are unsubstantiated. For instance, with respect to the respondents' argument that the record does not demonstrate that Chinese imports "flood" the Korean market with hot-rolled sheet products, the respondents have not substantiated their claim with any data analysis rebutting the information placed on the record by the Domestic Interested Parties. In fact, the record evidence undermines the respondents' contentions. For instance, information reported by Asian Steel Watch demonstrates that South Korea is not only among the top ten steel export destinations for China, but that it is China's largest export destination, accounting for 14 percent (about 13 metric tons (MT)) of China's total exports in 2014.<sup>185</sup> Furthermore, ITC data covering the period August 2012-2017 demonstrates that in each calendar year, China served as the largest exporter of hot-rolled steel into Korea.<sup>186</sup> COMTRADE data for calendar year 2017 also demonstrates that China is the top exporter to Korea of HRC in terms of both quantity and value.<sup>187</sup> POSCO's own Chief Executive Officer, Kwon Oh Joon, acknowledged the economic strain from the excess inflow of steel products into South Korea, stating in a briefing that POSCO is "...struggling mostly because China is flooding the market with extremely cheap products with the support from the government." Mr. Joon also pointed out in that briefing that "...it's impossible for {POSCO} to produce at the same level and be competitive."<sup>188</sup> As indicated above, none of the respondents have specifically rebutted this information.

With respect to the Domestic Interested Parties' allegation 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 and that these

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*What it Means to Asia and Beyond*, Asian Steel Watch (Jan. 2016), contained in Exhibit 25 (U.S. Steel's Aug. 7, 2017 Submission), at Exhibit 2).

<sup>183</sup> See, e.g., the Domestic Interested Parties' PMS Allegation, at Exhibit 38 (containing Global Trade Atlas (GTA) data of South Korea Import Statistics of hot-rolled products in which China is among Korea's top suppliers).

<sup>184</sup> See, e.g., the Domestic Interested Parties' PMS Allegation, at Exhibit 43 (Korea Herald, "POSCO, Hyundai Steel merger to benefit industry: report," by Ahn Sung-mi (September 9, 2016)); Exhibit 44 (Pulse; Maeil Business News Korea, "Hyundai Steel, Dongkuk Steel become latest beneficiaries of fast-track restructuring program," by Ko Jaeman and Moon Ji-Woong (November 23, 2016)); Exhibit 45 (Business Korea, "Korean Steel Industry Advised to Reduce Number of Steel Plate Plants by Half," by Jung Min-hee (September 19, 2016)); Exhibit 47 (Korea Times, "Voices growing for merger of POSCO, Hyundai Steel, by South East Asia Iron and Steel Institute (September 22, 2016); Letter from the Domestic Interested Parties, "Oil Country Tubular Goods from the Republic of Korea: Factual Information Relating to the Particular Market Situation in Korea," dated August 20, 2018 (the Domestic Interested Parties' Supplemental PMS Allegation), at Exhibit 1 (The Investor, Korea Herald, "Hyundai Steel strongly denies merger with POSCO," by Ahn Sung-mi (November 1, 2016)).

<sup>185</sup> See the Domestic Interested Parties' PMS Allegation, at Exhibit 2, (containing article, "China's Steel Exports Reaching 100 Mt: What It Means to Asia and Beyond," Asian Steel Watch (January 2016)).

<sup>186</sup> See the Domestic Interested Parties' PMS Allegation, at Exhibit 38.

<sup>187</sup> *Id.* at Exhibit 41.

<sup>188</sup> See the Domestic Interested Parties' PMS Allegation, at Exhibit 4 (Bloomberg News Article by Heesu Lee, "POSCO Posts Smallest Ever Profit Amid Chinese Steel Deluge," dated January 28, 2016).



strategic alliances may have affected prices in the period covered by the original LTFV investigation.<sup>189</sup> Further, information on the record of this review points to price-fixing schemes engaged in by various Korean steel suppliers and pipe producers, including SeAH.<sup>190</sup> 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 and price fixing schemes 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, we find that the price of electricity is set by the GOK and that electricity in Korea functions as a tool of the government's industrial policy.<sup>191</sup> The GOK has tight control over the electricity market, including supply and pricing.<sup>192</sup> Furthermore, the largest electricity supplier, KEPCO, is a government-controlled entity.<sup>193</sup> As a government-controlled entity, KEPCO is responsible for the transmission, distribution, and sale of electricity to customers.<sup>194</sup> Consistent with the SAA, a PMS may exist where there is government control over prices to such an extent that home-market prices cannot be considered to be competitively set.<sup>195</sup> Because of the distortion in this Korean utility, and the fact that such distortion places downward pressure on the pricing of electricity, we find this element constitutes part of the PMS.

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<sup>189</sup> See, e.g., the Domestic Interested Parties' PMS Allegation, at Exhibit 30 (containing Notice from Korea Fair Trade Commission (KFTC), "KFTC punishes six steel pipe manufacturers for rigging bids offered by Korea Gas Corporation," dated December 21, 2017); Exhibit 31 (Korea Times Article, "Steelmakers fined W92 bil. for bid rigging," by Park Jae-hyuk, dated December 20, 2017); Exhibit 32: (KFTC's Decision No. 2017-081 regarding the price-fixing scheme carried by certain Korea pipe producers, including SeAH); Exhibit 33 (KFTC's Decision No. 98-134, regarding a finding that certain pipe manufacturers, including SeAH, improperly colluded on steel pipe prices in 1997 and 1998); Exhibit 34 KFTC's Decision No. 98-134, regarding a finding that certain pipe manufacturers, including SeAH, improperly colluded on steel pipe prices in 1996).

<sup>190</sup> *Id.*

<sup>191</sup> *Id.* at Exhibit 21 (citing Letter, "Certain Oil Country Tubular Goods from the Republic of Korea: Particular Market Situation Allegation on Electricity," dated February 3, 2016 (Maverick's Electricity Allegation), at 3, referencing Korea Electric Power Corporation Form 20-F (April 30, 2016) (KEPCO 20-F) ("Because the Government heavily regulates the rates we charge for the electricity we sell..., our ability to pass on such cost increases to our customers is limited...")).

<sup>192</sup> See Maverick's Electricity Allegation, at 13-14, at Exhibits 2 and 8 (for instance, Maverick states on page 14, at footnote 25, that, "[i]n 2013, KEPCO's generation subsidiaries imported 79.4 million tons of coal (See Form 20-F at p. 46, attached as Exhibit 2) and 84 percent of Korea's total 2013 imports of 94.8 million tons (South Korea Import Statistics, attached as Exhibit 8). KEPCO purchases all natural gas from the Korea Gas Corporation, a state-owned enterprise in which KEPCO owns a 24.5 percent equity interest, pursuant to supply contracts that are subject to GOK approval. Form 20-F p. 47, attached as Exhibit 2. For a discussion of GOK involvement in KEPCO's electricity prices, see Form 20-F at p. 49-51, attached as Exhibit 2."

<sup>193</sup> See Maverick's Electricity Allegation, at 13-14.

<sup>194</sup> *Id.* at Exhibit 4 (e.g., GOK's Initial Questionnaire Response, at I-39 and Exhibit E-4); Exhibit 9 (GOK's Electricity Supplemental Questionnaire Response, at 11); Exhibit 1 (U.S. Energy Information Administration, South Korea (April 1, 2014)).

<sup>195</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, Vol 1 (1994), at 822.

These intertwined market conditions signify that the production costs of OCTG, especially the acquisition prices of HRC in Korea, are distorted and, thus, demonstrates that the costs of HRC to Korean OCTG producers are not in the ordinary course of trade. Accordingly, 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 PMS exists during the POR in the instant administrative review.

In their case briefs, NEXTEEL and ILJIN argue that the record in the current review is virtually identical to that in the previous segments of this proceeding and, as such, there is no new information on this record that would otherwise support an affirmative PMS finding.<sup>196</sup> We disagree with NEXTEEL and ILJIN that the record in this review is virtually the same as that in prior segments of the proceeding. Although there is a certain overlap in evidence in both administrative reviews, this record contains different data submitted by the respondents, along with additional information submitted by the Domestic Interested Parties regarding the Korean market.<sup>197</sup> Furthermore, we evaluate the record of each administrative segment of a proceeding, such as an administrative review, on its own,<sup>198</sup> which is what we did in this case. Our decisions are based on the evidentiary record developed in each individual segment of a proceeding. In this segment, we've based our PMS adjustment on the quantitative and qualitative information submitted onto the record of this review that supports our affirmative finding of PMS, including the documents that were not on the record of the first administrative review.

The Domestic Interested Parties' PMS allegation in this review contains additional qualitative and quantitative information in support of finding that a PMS exists in Korea.<sup>199</sup> New information on the record of this review includes both quantitative and qualitative data relevant to the PMS analysis. For instance, this record includes quantitative data such as world market prices for hot-rolled products sourced from COMTRADE,<sup>200</sup> data on Korean purchases of HRC sourced from COMTRADE,<sup>201</sup> and South Korean import statistics of hot-rolled products sourced from the GTA).<sup>202</sup> The COMTRADE data demonstrate that over a six-year period, from 2012 through 2017, imports of hot-rolled products, including HRC, have increased overall from 55 percent in 2012 to nearly 65 percent in 2017, with Chinese imports accounting for the largest volume of imports of hot-rolled products into South Korea. These data also demonstrate that imports from Japan rank as second highest among imports from all other countries, accounting for approximately 30 percent of hot-rolled steel imports into South Korea. These data lend further credence to the contention that there continues to be a deluge of steel products, including HRC, into South Korea, particularly from China. This review record also contains a host of

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<sup>196</sup> See NEXTEEL Case Brief, at 9; see also ILJIN Case Brief, at 2.

<sup>197</sup> See, e.g., the Domestic Interested Parties' PMS Allegation and the Domestic Interested Parties' Supplemental PMS Allegation.

<sup>198</sup> See *Inland Steel Industries, Inc. v. United States*, 967 F. Supp. 1338, 1361 (CIT 1997), affirmed 188 F.3d 1349 (Fed. Cir. 1999) (*Inland Steel*).

<sup>199</sup> See the Domestic Interested Parties' PMS Allegation and the Domestic Interested Parties' Supplemental PMS Allegation, which contain more than 25 additional documents supporting their PMS allegation.

<sup>200</sup> See the Domestic Interested Parties' PMS Allegation, at Exhibit 40.

<sup>201</sup> *Id.* at Exhibit 41.

<sup>202</sup> *Id.* at Exhibit 38.

qualitative data that are distinct from the data submitted in prior segments of this review, including information from the Fair Trade Commission regarding information on a price-fixing scheme carried out by six Korean pipe producers, including SeAH,<sup>203</sup> as well as relevant articles that pertain to the Korean steel industry.<sup>204</sup> In addition to the quantitative and qualitative analyses placed on the record from the investigation on large diameter welded pipe from Korea, there are more than 25 new documents placed on the record of this review that lend support to our affirmative PMS finding for the final results of review.<sup>205</sup>

We disagree with SeAH's and NEXTEEL's arguments that the four alleged factors were not present in Korea during this period of review. We find that the record evidence demonstrates that the four alleged factors are present in the current administrative review, and that the facts of this record support the continued finding that a PMS existed during this POR. Regarding the various parties' arguments concerning the remand decision by the CIT in *NEXTEEL*, we note that this decision is not yet final and conclusive. Moreover, the CIT in *NEXTEEL* affirmed our general approach to finding a PMS as reasonable. To the extent that the CIT made evidentiary findings with respect to the first administrative review, as we explained earlier, the record in this administrative review on the issue of PMS is more developed and robust and contains numerous documents that were not on the record of the first administrative review.

The Domestic Interested Parties and NEXTEEL submitted quantitative information onto the record of this review.<sup>206</sup> However, the submitted data, while informative and helpful in a limited capacity, do not enable a thorough or comprehensible analysis. For instance, the Domestic Interested Parties submitted COMTRADE data on Korean HRC purchases by weight and value from various countries for specific tariff numbers, some of which are not relevant to the major input, and others of which may "potentially be used" in the production of OCTG, which only introduced uncertainty as regarding the validity of the submitted data.<sup>207</sup> These data do, however, demonstrate the fact that Korean imports of HRC inputs from China represent the highest volume and value of imports relative to other countries in nearly every tariff category listed, which comports with the Deluge of Imports Article submitted by U.S. Steel. NEXTEEL resubmitted the Domestic Interested Parties' COMTRADE data with additional information that included calculated average unit prices for Korean imports of hot-rolled steel.<sup>208</sup> NEXTEEL argues that its costs are in line with average unit prices of steel imports from various countries. However, the average calculated price holds little meaning for this analysis. As explained below, a comparison of NEXTEEL's costs with average unit import prices in Korea does not address the purpose of a PMS analysis, which concerns distortions in the market as a whole.

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<sup>203</sup> *Id.* at Exhibit 32 (containing report by the KFTC, Decision No. 2017-081, dated December 21, 2017; Exhibit 34 (KFTC, Decision No. 97-45, dated 1997); Exhibit 33 (KFTC Decision No. 98-134, July 7, 1998).

<sup>204</sup> *Id.* at Exhibit 46 (containing a Korea Herald report, "POSCO, Hyundai Steel Merger to Benefit Industry," by Ahn Sung-mi; Exhibit 49 (containing an article from the Korea Times, "Voices Growing for Merger of POSCO, Hyundai Steel, by the South East Asia Iron and Steel Institute (SEAISI), dated September 22, 2016).

<sup>205</sup> *See id.* at Exhibits 28-49; *see also* the Domestic Interested Parties' Supplemental PMS Allegation, at Exhibit 1; Letter from Maverick, "Oil Country Tubular Goods from the Republic of Korea: Other Factual Information," dated September 4, 2018 (Maverick's Supplemental PMS Allegation), at Exhibits 1-5.

<sup>206</sup> *See* the Domestic Interested Parties' PMS Allegation, at Exhibit 4.

<sup>207</sup> *Id.* at Exhibit 41.

<sup>208</sup> *See* NEXTEEL PMS Allegation Rebuttal.

NEXTEEL also submitted data on imports into Italy, attempting to show average price points on Korean imports of HRC to demonstrate that NEXTEEL's reported costs for HRC are within the ordinary course of trade.<sup>209</sup> Again, we find that the general nature of the data analysis does not permit a meaningful comparison. NEXTEEL provides a chart that compared its own actual, average costs with the average unit price for HRC imports into Italy and Korea, the Global Export price, the Western European price, and the China benchmark price of HRS.<sup>210</sup> However, NEXTEEL's point that its input costs are consistent with prices in other markets does not refute our finding that global excess steel capacity contributes to a PMS in Korea. As reported in Asian Steel Watch, "China's oversupply situation... is expected to result in increased exports and price decline pressures."<sup>211</sup> This global excess steel capacity has the potential to depress steel prices not just in Korea but in various markets. Although the effect may vary, steel prices in various countries are likely lower than they would be but for global excess capacity. Therefore, a comparison of HRS prices in various countries does not prove that HRS prices in Korea are not lower than they would be but for global excess steel capacity.

NEXTEEL claims that since its reported cost average is within the range of possible average import unit values of HRC from various countries (depending on how the average is calculated), it is "in line" with benchmark prices.<sup>212</sup> However, the values for the countries provided range significantly from \$317/MT for HTS subheading 720839 in New Zealand in 2016, to \$16,736/MT for HTS subheading 720837 in the Czech Republic in 2016.<sup>213</sup> NEXTEEL's cost average happening to fall near the average of the countries listed is, therefore, not indicative of it being "in line" with global HRC prices.

NEXTEEL's attempts to compare average unit prices to NEXTEEL's own costs does not address the purpose of a PMS analysis. In *Biodiesel from Argentina*,<sup>214</sup> Commerce 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." Thus, for the foregoing reasons, we find that the data presented by NEXTEEL are unpersuasive as to whether NEXTEEL's own input costs are within the ordinary course of trade and more importantly, how it demonstrates that a PMS does not exist within the Korean market. As stated in *OCTG from Korea POR 2*, companies compete in a market and have to adjust their pricing in response to market trends. If the market is distorted, companies have to either adjust their pricing to market distortions or leave the market. Thus, NEXTEEL's comparison of the average prices, by tariff code, for purchases from Chinese suppliers against world market prices, does not demonstrate that the prices within the Korean market are not distorted.

We further disagree with the respondents' argument that the record is devoid of quantitative or empirical analysis to determine whether NEXTEEL's HRC costs were incurred in the ordinary

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<sup>209</sup> *Id.* at 11 and Exhibit 9.

<sup>210</sup> *Id.* at 10.

<sup>211</sup> See the Domestic Interested Parties' PMS Allegation, at Exhibit 1 (citing article, "China's Steel Exports Reaching 100 Mt: What It Means to Asia and Beyond," Asian Steel Watch (January 2016)).

<sup>212</sup> See NEXTEEL PMS Allegation Rebuttal, at 8.

<sup>213</sup> *Id.* at Exhibit 7.

<sup>214</sup> 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.

course of trade or that such an analysis is necessary. The record of this review contains sufficient evidence to demonstrate that the market as a whole is distorted, and that a PMS exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the COP within the normal course of business. 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.

We also disagree with SeAH's contention that two of the PMS elements, *i.e.*, strategic alliances and government control over electricity costs, are irrelevant to SeAH. As discussed above, SeAH was recently identified by the KFTC as one of several companies involved in price-fixing schemes dating back to the 1990s, lending support to the finding that strategic alliances exist in Korea, particularly with respect to SeAH.<sup>215</sup> We certainly do not share the respondents' view that price fixing does not distort a market. Coupled with the fact that the Korean market is currently undergoing restructuring of steel manufacturers, we find that the strategic-alliance factor, including the evidence of price fixing, is relevant to SeAH.

Concerning the electricity element, NEXTEEL, SeAH, Hyundai Steel, and AJU Besteel argue that Commerce has previously determined that Korean electricity prices do not confer a subsidy benefit.<sup>216</sup> Although the provision of countervailable subsidies could be a relevant factor supporting the existence of PMS, it is not a prerequisite for finding market distortion. Electricity in Korea functions as a tool of the government's industrial policy, and the largest Korean electricity supplier, KEPCO, is a government-controlled entity. We find here that a PMS may exist where there is government control over prices to such an extent that home market prices cannot be set on a competitive basis.<sup>217</sup> While the respondents argue that Commerce has determined that Korean electricity prices do not confer a subsidy benefit, there is extensive evidence of distortive and anti-competitive government control over electricity prices in the Korean industrial sector.<sup>218</sup> These distortions impact all Korean consumers, including steel manufacturers, who comprise some of the country's largest electricity consumers and, thus, serve as principal beneficiaries of the Korean government's involvement in the market.<sup>219</sup> That Commerce did not find in prior cases that the provision of electricity to industrial users in Korea constituted a countervailable subsidy does not mean that there can be no market distortion in Korean electricity costs.<sup>220</sup>

Finally, 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 to reaching a PMS determination in this administrative review. Although a formal

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<sup>215</sup> See the Domestic Interested Parties' PMS Allegation, at Exhibits 30-34.

<sup>216</sup> See the Domestic Interested Parties' PMS Allegation and the Domestic Interested Parties' Supplemental PMS Allegation.

<sup>217</sup> See *OCTG from Korea POR 2*.

<sup>218</sup> See NEXTEEL Case Brief, at 22; see also SeAH Case Brief, at 2; Hyundai Case Brief, at 7; AJU Besteel Case Brief, at 6-7.

<sup>219</sup> See the Domestic Interested Parties' PMS Allegation, at 9 (citing Maverick's Electricity Allegation, at 17).

<sup>220</sup> See the Domestic Interested Parties' PMS Allegation, at 5 and Exhibit 5 (citing *OCTG from Korea POR 2* and accompanying Issues and Decision Memorandum, at Comment 18 and Exhibit 21; Maverick's Electricity Allegation, at 13-22).

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 or application by the domestic industry, which would require both 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.<sup>221</sup>

### **Comment 1-C: Particular Market Situation Adjustment**

#### *NEXTEEL's Comments:*

- In the *Preliminary Results*, Commerce adjusted NEXTEEL's HRC purchases from POSCO by 47.20 percent, the difference between POSCO's total CVD rate and POSCO's export subsidies in the *HRS from Korea Final Determination*.<sup>222</sup> In so doing, Commerce implicitly concluded that POSCO passed 100 percent of its hot-rolled subsidies on to NEXTEEL, though there is no record evidence to support this.<sup>223</sup>
  - In theory, POSCO could receive a subsidy from the Korean government for its HRC and pass none of that subsidy to NEXTEEL, making the subsidy irrelevant to the price NEXTEEL paid to purchase HRC from POSCO.<sup>224</sup>
  - There is no evidence that any subsidies were passed along to NEXTEEL at any rate, including the rate of 47.20 percent.<sup>225</sup> Commerce's PMS adjustment for NEXTEEL inaccurately and unreasonably attributed the full amount of POSCO's subsidization to NEXTEEL.<sup>226</sup>
  - If Commerce uses subsidies as the basis of any PMS adjustment, this action must be limited to only the amount which the record demonstrates POSCO actually passed subsidies to NEXTEEL.<sup>227</sup> The U.S. Court of Appeals for the Federal Circuit (CAFC) has held that the full amount of a subsidy cannot be presumed to be passed from the recipient of the subsidy to the purchaser of the subsidized asset.<sup>228</sup>
  - When determining the amount of "passed through" benefit, Commerce must determine whether a respondent received an input at a below-market rate as a result of the subsidy received by the supplier. Commerce's upstream subsidy regulations state that Commerce must perform a "competitive benefit" analysis using a hierarchy of five benchmarks.<sup>229</sup>
  - The record contains evidence of NEXTEEL's purchases of HRC from an unaffiliated Japanese supplier; these prices serve as a clean benchmark for what the price of HRC

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<sup>221</sup> See the Domestic Interested Parties' PMS Allegation, 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).

<sup>222</sup> See NEXTEEL Case Brief, at 27-28.

<sup>223</sup> *Id.* at 27-28.

<sup>224</sup> *Id.* at 28.

<sup>225</sup> *Id.*

<sup>226</sup> *Id.* at 30.

<sup>227</sup> *Id.*

<sup>228</sup> *Id.* (citing *Delverde, SrL v. United States*, 202 F.3d 1360, 1364 (Fed. Cir. 2000)).

<sup>229</sup> *Id.* at 29 (citing 19 U.S.C. § 1677-1 and 19 CFR § 351.523(c)(1)).

- would or should have been from POSCO, absent any alleged subsidy.<sup>230</sup> NEXTEEL paid POSCO a higher price for the same grade of HRC than it did to its unaffiliated Japanese supplier.<sup>231</sup>
- Commerce's regulations state that benchmark prices must be reflective of a time period that reasonably corresponds to the time of the purchases of the input product. The CVD margin used by Commerce in this proceeding is from an investigation covering the calendar year of 2014. This contradicts Commerce's own standards.<sup>232</sup>
  - By applying a CVD rate without an upstream subsidy analysis, Commerce has imposed a CVD remedy against NEXTEEL in an antidumping proceeding.
    - There is no CVD case on OCTG from Korea, and applying a CVD rate within the context of a PMS finding allows for unlawful double counting of AD and CVD against NEXTEEL in an antidumping proceeding.<sup>233</sup> Commerce has an established policy against double counting of remedies across AD and CVD proceedings.<sup>234</sup>
  - Commerce must reverse its preliminary use of an AFA CVD rate in determining NEXTEEL's PMS cost adjustment.
    - There is no legal or factual basis for Commerce to apply POSCO's 58.68 percent AFA subsidy rate found in *HRS from Korea Final Determination*.<sup>235</sup> Also, Commerce should not use the revised 41.57 percent subsidy rate stemming from the draft remand in the ongoing litigation before the CIT.<sup>236</sup>
    - The use of an AFA rate from a separate proceeding, *i.e.*, *HRS from Korea Final Determination*, is not based on actual and calculated subsidies concerning the hot-rolled steel input in this case and unreasonably punishes NEXTEEL with a non-cooperative finding.<sup>237</sup>
    - Even assuming distortions exist in the Korean market, a subsidy rate determined in a significantly older proceeding cannot accurately quantify an allegation of distortion of OCTG costs of production in the instant administrative review. Thus, the AFA rate used in the PMS adjustment is irrelevant to the current review period.<sup>238</sup>
    - NEXTEEL's own analysis of the AFA CVD rate of POSCO shows that this rate should be 9.50 percent after removing 34 programs that were found to provide no measurable benefit or not used in the first CVD review of *HRS from Korea Preliminary Results 2016*.<sup>239</sup> The 9.50 percent AFA rate is further reduced to 6.22 percent after removing the export subsidy of 3.28 percent, without even taking into consideration the revisions Commerce made in the *HRS from Korea Final*

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<sup>230</sup> *Id.* at 31.

<sup>231</sup> *Id.*

<sup>232</sup> *Id.* at 31-32.

<sup>233</sup> *Id.* at 32.

<sup>234</sup> *Id.* at 32-33 (citing *Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France*, 69 FR 46501 (August 3, 2004)).

<sup>235</sup> *Id.* at 38-39 (citing *Preliminary Results*, at 22).

<sup>236</sup> *Id.* at 39 (citing *POSCO*; *Final Results of Redetermination Pursuant to Court Remand* (dated November 13, 2018) (*POSCO Redetermination*), at 24).

<sup>237</sup> *Id.*

<sup>238</sup> *Id.* at 40.

<sup>239</sup> *Id.* at 41 and Attachment 1 (citing *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, 2016*; 83 FR 55517 (November 6, 2018) (*HRS from Korea Preliminary Results 2016*) and accompanying Issues and Decision Memorandum, at 15-33).

- Determination* remand proceeding. Accordingly, Commerce should apply the same logic in this review to determine a PMS adjustment.<sup>240</sup>
- The Courts have found that applying an AFA rate to a cooperative respondent is impermissible and punitive in nature.<sup>241</sup> The record involving NEXTEEL's responses does not warrant an AFA application, nor has Commerce afforded the procedural safeguards set forth under the law to apply a punitive rate where a respondent has not failed to comply with requested information.<sup>242</sup>
  - Should Commerce insist on making a PMS finding in this review, it should use the 1.73 percent rate calculated in *HRS from Korea Preliminary Results 2016*, which reflects a calculated rate that pertains to hot-rolled steel that POSCO produced and overlaps with the instant review period.<sup>243</sup>
  - Commerce should not calculate a PMS adjustment for NEXTEEL's Chinese and Japanese HRC costs. It is illogical to apply POSCO's CVD rate based on subsidies from the Korea government to HRC produced by a company outside of Korea.<sup>244</sup> Because POSCO is NEXTEEL's only source of HRC originating from Korea, POSCO should be the only supplier receiving any PMS adjustment, as the subsidy rate taken from *HRS from Korea Preliminary Results 2016* is specific to only Korean inputs.<sup>245</sup>

*SeAH's Comments:*

- If Commerce continues to make a PMS adjustment to SeAH's costs, it should not rely on POSCO's subsidy rate from *HRS from Korea Final Determination*, which is based entirely on AFA.<sup>246</sup>
- Instead, Commerce should rely on the subsidy rate calculated for POSCO in *Cold-Rolled Steel Flat Products*,<sup>247</sup> as this case is more recent than *HRS from Korea Final Determination*, covered a period more contemporaneous with the instant POR, and was not based entirely on AFA.<sup>248</sup>

*Hyundai Steel's Comments:*

- Commerce should reverse its preliminary use of AFA CVD rates in the respondents' NV calculations.<sup>249</sup>
- Commerce has unnecessarily allowed for distortions of the margin calculations in this proceeding by using POSCO's total AFA rate and Hyundai Steel's partial AFA rate from a completely separate CVD proceeding to adjust respondents' purchases of HRC.<sup>250</sup>

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<sup>240</sup> *Id.* at 41-42.

<sup>241</sup> *Id.* at 43 (citing *Albemarle Corp. & Subsidiaries v. United States*, 821 F.3d 1345,1358 (Fed. Cir. 2016) (*Albemarle Corp. v. United States*)).

<sup>242</sup> *Id.* at 44.

<sup>243</sup> *Id.* at 44-45.

<sup>244</sup> *Id.* at 45-46.

<sup>245</sup> *Id.* at 45.

<sup>246</sup> See SeAH Case Brief, at 6-7.

<sup>247</sup> *Id.* (citing *POSCO v. United States*, 296 F. Supp. 3d 1320, 1350 (CIT March 8, 2018)).

<sup>248</sup> *Id.*

<sup>249</sup> See Hyundai Steel Case Brief, at 8.

<sup>250</sup> *Id.*



- The AFA statute, 19 U.S.C. 1677e(d)(3), states that Commerce is not required to estimate what the countervailable subsidy rate would have been if the party to whom Commerce is applying AFA had actually cooperated. Thus, the AFA rate established in the *HRS from Korea Final Determination* is inherently inaccurate as a measure of the actual subsidy rate in the Korean market.<sup>251</sup>
- Under 19 U.S.C. 1677e(b)(1), Commerce can only utilize adverse facts available when an interested party has failed to cooperate to the best of its ability. There is no support on the record for applying the AFA finding for POSCO in the *HRS from Korea Final Determination* to this proceeding.<sup>252</sup>
- Using POSCO's total AFA rate from a completely different proceeding is contrary to the dumping statute's underlying purpose of "calculating margins as accurately as possible," per *Rhone Poulenc v. United States* and reiterated in *Yangzhou Gifts v. United States* and *Albemarle Corp. v. United States*.<sup>253</sup>
- In the *HRS from Korea Final Determination*, Commerce excluded the AFA rate it calculated for POSCO, reasoning that it could not accurately calculate the all-others subsidy rate using the total AFA rate of another company. At the same time, Commerce is using that very same AFA rate to quantify the PMS adjustment that impacts mandatory and non-selected respondents without even a cursory examination of appropriateness.<sup>254</sup>

*AJU Besteel's Comments:*

- The statute mandates that Commerce calculate "margins as accurately as possible," but Commerce's decision to adjust the respondent's purchases of HRC from POSCO based on total AFA and Hyundai's partial AFA rate in a separate proceeding introduces inaccuracies in the margin calculation.<sup>255</sup>
- Commerce's preliminary PMS adjustment relies on POSCO's punitive AFA rate from the CVD investigation against hot-rolled products. Commerce must avoid using a CVD rate which was not calculated, but rather based entirely on an AFA finding.<sup>256</sup>
  - In every subsequent CVD investigation of hot-rolled steel from Korea, POSCO has demonstrated that its calculated rate (non-AFA) is substantially lower than the AFA rate Commerce has relied on to determine the PMS adjustments in this proceeding.<sup>257</sup>
- The period of investigation for the *HRS from Korea Final Determination* was January 1, 2014 through December 31, 2014, which is less contemporaneous with the POR of this administrative review (*i.e.*, September 1, 2016, through August 31, 2017), than the POR

<sup>251</sup> *Id.* (citing 19 U.S.C. 1677e(d)(3)).

<sup>252</sup> *Id.* at 9.

<sup>253</sup> *Id.* (citing *Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States*, 716 F.3d 1370, 1379 (Fed. Cir. 2013) (*Yangzhou Gifts v. United States*) (citing *Rhone Poulenc Inc. v. United States*, 899 F. 2d 1185, 1191 (Fed. Cir. 1990) (*Rhone Poulenc v. United States*)); *Albemarle Corp. v. United States*).

<sup>254</sup> *Id.* at 9-10 (citing *HRS from Korea Final Determination*).

<sup>255</sup> *Id.* at 8-9.

<sup>256</sup> *Id.* at 8.

<sup>257</sup> *Id.* (citing *CTL Plate from Korea Final Determination*; *CTL Plate from Korea*, and *HRS from Korea Preliminary Results 2016*).

for the first CVD administrative review of hot-rolled steel from Korea, which is August 12, 2016, through December 31, 2016.<sup>258</sup>

- Using the AFA rate from the *HRS from Korea Final Determination* as an estimation of respondents' actual rates automatically contains an increase used to deter non-compliance.<sup>259</sup> The CAFC has ruled that while Commerce has wide discretion in determining which facts to rely upon for AFA to deter parties from not cooperating, it has limits in doing so, and it was not Congress's intent for the statute to be used as a punitive measure.<sup>260</sup>
- The CIT remanded to Commerce its decision in the *HRS from Korea Final Determination* based on the fact that Commerce failed to provide justification of its selection of the highest calculated subsidy rates for POSCO.<sup>261</sup> The *CRS from Korea Final Determination* was similarly remanded on like grounds, with the CIT upholding Commerce's redetermination, which included a reduced subsidy rate for POSCO.<sup>262</sup>
- Rates that are pending redetermination should not be relied upon for calculating subsidy rates when more contemporary rates for the same programs are accessible.<sup>263</sup>
- The mandatory respondents and AJU Besteel have fully cooperated in this review, and that fact must be taken into account in Commerce's final results.
- Any calculation adjustments should be based on accurate and reasonable evidence, and Commerce should demonstrate how much the subsidy programs from the *HRS from Korea Final Determination* passed through to the mandatory respondents' downstream OCTG manufacturing.<sup>264</sup>
- POSCO's rate in *HRS from Korea Preliminary Results 2016* more accurately reflects the company's experiences than the rate from the *HRS from Korea Final Determination* since the latter was based on adverse inferences.<sup>265</sup>
  - In *HRS from Korea Preliminary Results 2016*, Commerce found net subsidy rates for POSCO to be 1.73 percent.<sup>266</sup> This is a much lower rate than the 57.04 percent subsidy rate Commerce found for POSCO in the *HRS from Korea Final Determination*.<sup>267</sup>
  - Similarly, the subsidy rate calculated for POSCO in the *CTL Plate from Korea CVD Final* was 4.31 percent, which is more consistent with the rate calculated for POSCO in *HRS from Korea Preliminary Results 2016*.<sup>268</sup>

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<sup>258</sup> See AJU Besteel Case Brief, at 15; see also *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 57705 (December 7, 2017).

<sup>259</sup> *Id.*

<sup>260</sup> *Id.* at 15 (citing *F.lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (*Martino S.p.A. v. United States*)).

<sup>261</sup> *Id.* at 11, 17 (citing *POSCO v. United States*, 337 F. Supp. 3d 1265 (CIT 2018)).

<sup>262</sup> *Id.* at 17-18 (citing *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49943 (July 29, 2016) (*CRS from Korea Final Determination*); *POSCO v. United States*, 296 F. Supp. 3d 1320 (CIT 2018)).

<sup>263</sup> *Id.* at 18.

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> *Id.* at 13 (citing *HRS from Korea Preliminary Results 2016*).

<sup>267</sup> *Id.* at 14 (citing *HRS from Korea Final Determination*).

<sup>268</sup> *Id.* at 16 (citing *CTL Plate from Korea*).

- Although *CTL Plate from Korea CVD Final* involves a separate determination on a different product, the examined programs and denominators used in the calculations were similar to those in the *HRS from Korea Final Determination*.<sup>269</sup>
  - The rates applied in the *CTL Plate from Korea CVD Final* would provide a better indication of POSCO's actual subsidization rates than the rates from the *HRS from Korea Final Determination*.
  - The findings of the *CTL Plate from Korea CVD Final* provide substantiation of the lower subsidy rates found for POSCO in *HRS from Korea Preliminary Results 2016* because the same subsidies were analyzed, and none were specific to a particular product.<sup>270</sup>
  - Because of the rates calculated in *HRS from Korea Preliminary Results 2016*, Commerce is aware that POSCO's total subsidy margin in the *HRS from Korea Final Determination* is incorrect.<sup>271</sup>
- Commerce cannot use data it knows to be incorrect to make a determination.<sup>272</sup> Commerce is fully aware that the CVD rate assigned to POSCO in *HRS from Korea Final Determination* contained inaccurate company-wide margins that have been corrected and updated in the *CTL Plate from Korea CVD Final*.<sup>273</sup>
- The calculation for the PMS adjustment to mandatory respondents' costs of production in the *Preliminary Results* contained an error in that it included the cost of purchased materials from non-Korean suppliers, particularly for HRC.
  - Commerce did not support its rationale that prices tend to converge at an equilibrium or that HRC import prices would sell at prices competitive with domestically produced and subsidized HRC
  - Thus, the all-others' rate from the *HRS from Korea Final Determination* cannot be applied to HRC that Korean manufacturers purchased from non-Korean suppliers.<sup>274</sup>
- Maverick submitted a "regression analysis" that they claim can be used to predict what prices would be in Korea and other markets if there were less "Excess Global Steel Capacity."<sup>275</sup> However, the Maverick's "regression analysis" is illogical; it analyzes alleged global excess steel capacity, not a PMS specific to Korea.<sup>276</sup>
  - Nothing in Maverick's regression analysis purports to measure the "cost of production in the ordinary course of trade" of the steel inputs for the production of OCTG in Korea.<sup>277</sup>

<sup>269</sup> See AJU Besteel Case Brief, at 16.

<sup>270</sup> *Id.*

<sup>271</sup> *Id.* at 17.

<sup>272</sup> *Id.* at 17 (citing *Anshan Iron & Steel Company, Ltd., et al., v. United States*, 27 CIT 1234, 1243 (CIT 2003) ("[{D}]eference is not owed to a determination that is based on data that the agency generating those data indicates are incorrect."), citing *Borlem S.A. - Empreendimentos Industriais v. United States*, 913 F.2d 933, 937 (Fed. Cir. 1990) and *Union Camp Corp. v. United States*, 53 F. Supp. 2d 1310, 1325 (CIT 1999)).

<sup>273</sup> *Id.*

<sup>274</sup> See AJU Besteel Case Brief, at 19.

<sup>275</sup> *Id.* at 19-20 (citing Letter, "Oil Country Tubular Goods from the Republic of Korea: Other Factual Information," dated September 4, 2018).

<sup>276</sup> *Id.* at 20.

<sup>277</sup> *Id.*

- Even if a properly constructed regression analysis were relevant to the identification of a PMS, Maverick’s analysis remains insufficient. Due to the wide range of products encompassed within Maverick’s calculated average unit values, the excess steel capacity and the price variations purportedly identified are contaminated by the mix of products.<sup>278</sup>
- Under Maverick’s model, any reduction in “Global Excess Capacity” will result in higher prices. If true, producers would have control over market prices by simply manipulating the capacity of steel. In the real world, this model fails, and Commerce cannot base its results on this flawed model.<sup>279</sup>
- Maverick’s regression analysis identifies only correlation, not causation, and cannot be used to project outcomes outside the range of data analyzed in the manner proposed by Maverick.<sup>280</sup>
- Even if Commerce were to find that Maverick applied and calculated their regression correctly, the analysis does not imply anything about the direction of the causal relationship between “Global Excess Steel Capacity” and Average Unit Values. It is entirely possible that both the “Global Excess Steel Capacity” and the “Average Unit Values” are functions of some other variable not identified by Maverick.<sup>281</sup>
- Because Maverick ignored all other factors that affect market prices, their regression analysis is inherently flawed and, thus, not a reliable basis upon which Commerce can quantify any PMS adjustment.<sup>282</sup>
- Maverick’s proposed model of the Global Steel Market is contrary to the economic principles that quantities supplied in a market respond to prices, and that prices are set by the interplay of supply and demand.<sup>283</sup>
- Maverick’s regression model is based on a model of global excess capacity, reflects all crude steel, and is not specific to Korea.<sup>284</sup> In addition, it is overly broad, assuming an 85 percent global capacity utilization rate as a target capacity, without any evidentiary basis to support the reasonableness of this high assumption.<sup>285</sup>
- Maverick’s approach to calculate a PMS adjustment is overly simplistic and careless. A positive correlation, as shown by Maverick regarding global overcapacity and Korean steel prices, indicates that the two series follow the same trend, and does not necessarily indicate that one variable explains or determines the other.<sup>286</sup>

*Husteel’s Comments:*

- It is unlawful to use an AFA CVD subsidy rate from another proceeding and apply it to the respondents’ costs in this AD case without any factual, record evidence supporting

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<sup>278</sup> *Id.*

<sup>279</sup> *Id.* at 21-22.

<sup>280</sup> *Id.* at 21.

<sup>281</sup> *Id.* at 23.

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

<sup>283</sup> *Id.*

<sup>284</sup> *Id.*

<sup>285</sup> *Id.*

<sup>286</sup> *Id.* at 26.

the use of that rate to determine a PMS adjustment. For the final results of review, Commerce should make a reasoned determination based on record evidence.<sup>287</sup>

- The continued use of the AFA rate from *HRS from Korea Final Determination* as a basis for the PMS adjustment in the instant review ignores the fact that in subsequent reviews of that order and in a more recent investigation of *CTL Plate from Korea Preliminary Determination*,<sup>288</sup> Commerce determined that POSCO did not receive the subsidies to which it applied the AFA rate.<sup>289</sup>
- The AD/CVD laws require application of distinct remedies for AD and CVD cases and allegations therein. Commerce's determination in the *HRS from Korea Final Determination* is specific to that investigation, the results of which cannot be applied to the subject merchandise at issue in this case.<sup>290</sup>
- Commerce's finding that the mandatory respondents' production is benefitting from an upstream subsidy is contrary to the statute that addresses upstream subsidies. Under 19 U.S.C. 1671(e) and 1677-1(a), application of an upstream subsidy requires an allegation be submitted and analyzed, which has not been done in this case.<sup>291</sup>
- Commerce's long-standing practice is to decline to make adjustments to a respondent's costs to account for countervailing subsidies. In the instant case, employing this methodology results in double-counting the subsidy benefit to POSCO and the AD duty calculation for the mandatory respondents.<sup>292</sup>

*U.S. Steel's Rebuttal Comments:*

- Commerce properly applied a PMS adjustment to NEXTEEL and SeAH's input costs in the *Preliminary Results* and should continue to do so for the final results.
- NEXTEEL's argument that Commerce should base its PMS finding on a quantitative analysis using HRC benchmark data it placed on the record is incorrect. Nowhere does the statute require recourse to benchmarks.<sup>293</sup> Commerce is given the authority to use "any other calculation methodology" to account for distortions under section 773b(e) of the Act.<sup>294</sup> Despite having used benchmarks in other proceedings, such as in *Biodiesel from Indonesia*, the facts supporting the existence of a PMS are case-specific.<sup>295</sup>

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<sup>287</sup> *Id.* at 14 and 16.

<sup>288</sup> *Id.* at 19 (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) (*CTL Plate from Korea Preliminary Determination*) and accompanying Issues and Decision Memorandum; *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 82 FR 16341 (April 4, 2017) (*CTL Plate from Korea Final Determination*) and accompanying Issues and Decision Memorandum, at 16-18).

<sup>289</sup> *Id.* at 17-19 (citing, e.g., *CTL Plate from Korea* and accompanying Issues and Decision Memorandum, at 16-18; *HRS from Korea Preliminary Results 2016* and accompanying Issues and Decision Memorandum).

<sup>290</sup> *Id.* at 15 (citing 19 U.S.C. 1671).

<sup>291</sup> *Id.*

<sup>292</sup> *Id.* at 15-16.

<sup>293</sup> See U.S. Steel Rebuttal Brief, at 31.

<sup>294</sup> See *id.*; see also 773b(e) of the Act.

<sup>295</sup> See *id.* at 32; see also *Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018) (*Biodiesel from Indonesia*), and accompanying Issues and Decision Memorandum, at Comments 3-4.

- The PMS adjustment applied by Commerce in the *Preliminary Results* is in accordance with law, is grounded in substantial evidence, and results in the most accurate rate, as required by the statute.
- Commerce correctly adjusted for distorted HRC prices by adjusting respondents' HRC costs by the entirety of the countervailing duty margin applicable to hot-rolled steel from Korea, minus export subsidies.<sup>296</sup>
- Commerce's adjustment method in the *Preliminary Results* is reasonable because it used the most recent subsidy rate associated with the input and adjusting for the effect of that benefit on HRC production.<sup>297</sup> Commerce's PMS finding and adjustment in the *Preliminary Results* did not result in double counting.<sup>298</sup>
- NEXTEEL's argument is entirely hypothetical and irrelevant, since even they acknowledge there is no CVD order on OCTG from Korea, and no pending petition.<sup>299</sup> A CVD case could be used to address subsidization, but there is no requirement for Commerce to utilize the CVD statute.<sup>300</sup>
- NEXTEEL erroneously contends that Commerce erred by failing to perform a pass-through test; NEXTEEL cites no authority for applying this test, and a pass-through analysis would be irrelevant to this proceeding.<sup>301</sup>
- Husteel has misconstrued the effect of the PMS adjustment; the countervailing duty impacts POSCO's hot-rolled steel imports whereas the PMS adjustment addresses the distorted costs of HRC incorporated into OCTG. Thus, there is no double-counting, as Husteel claims.<sup>302</sup>
- Commerce properly made PMS adjustments where it could quantify the impact of a given PMS factor.
- Commerce's application of the most recent CVD rate in hot-rolled steel from Korea on a producer-specific basis, adjusting HRC sourced from POSCO using the currently applicable rate for hot-rolled steel produced by POSCO, and adjusting HRC sourced from other Korean producers and other Chinese and Japanese producers according to the currently applicable all-others rate from the same proceeding, satisfies the statutory mandate that Commerce apply "another calculation methodology" to account for identified distortions.<sup>303</sup>
- It is not necessary for Commerce to distinguish prior cases from this administrative review to apply a different calculation methodology, though the prior cases are, in fact, distinguishable from this administrative review, specifically regarding benchmarking.<sup>304</sup>
- Commerce's adjustment to the Chinese- and Japanese-sourced HRC based upon the "all-others" CVD rate from the *HRS from Korea Final Determination* is a reasonable measure of the adjustments that an exporter of HRC to the Korean market would have to make in

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<sup>296</sup> See U.S. Steel Rebuttal Comments, dated February 19, 2019, at 29.

<sup>297</sup> *Id.*

<sup>298</sup> *Id.*

<sup>299</sup> *Id.*

<sup>300</sup> *Id.* at 31.

<sup>301</sup> See U.S. Steel Rebuttal Brief, at 30.

<sup>302</sup> *Id.*

<sup>303</sup> *Id.* at 32.

<sup>304</sup> *Id.* at 33.

order to sell its products there.<sup>305</sup> Korean HRC subsidies cause a reduction in production costs and thereby enable producers to undersell competitively priced HRC. The adjustment increases the price by the amount of domestic subsidies.<sup>306</sup>

- Since the statute does not require Commerce to use the respondents' preferred methodology, and because Commerce's methodology is reasonable, Commerce should continue to use the same methodology for the final results.<sup>307</sup>
- Commerce properly selected the currently applicable product- and producer-specific CVD rate as the adjustment figure.<sup>308</sup>
- Respondents' claim that the use of an AFA rate is unreasonable because it introduces inaccuracies into Commerce's calculations is an incorrect understanding of the application of AFA rates, in general. AFA rates are meant to account for imperfections within proceedings and in the context of HRC prices, the AFA rate reasonably accounts for distortions associated with such prices."<sup>309</sup>
- Just as the AFA rate was the most reasonably accurate margin available in the underlying CVD proceeding, it is the most reasonably accurate PMS adjustment now available to Commerce.<sup>310</sup>
- Respondents' request that Commerce use the revised rates from the remand of the CVD order is inappropriate since those revised rates reflect a draft remand redetermination, not a final court decision.<sup>311</sup>
- Respondents cite to no statutory or regulatory basis by which Commerce may extend the timeline of this review to allow for completion of the final results of the first administrative review of *HRS from Korea Preliminary Results 2016*.<sup>312</sup>
- If Commerce decides to use a different PMS adjustment other than that obtained from using the subsidy rates in the *HRS from Korea Final Determination*, the regression analysis suggested by Maverick is the next best choice.<sup>313</sup>
- The global focal point of the regression analysis is applicable because the purpose of a constructed value is to deduce costs in the ordinary course of trade. However, there is no viable home market for OCTG in Korea, so it is justifiable for Commerce to analyze data outside of Korea, an analysis that is demonstrated in Maverick's regression.<sup>314</sup>
- Likewise, Chinese overproduction infiltrates other countries beside Korea on account of its utter volume, thus necessitating a global analysis to determine what the Korean market might be in the ordinary course of trade without such encroachment by Chinese imports.<sup>315</sup>
- Accepting Husteel and AJU Besteel's argument for a more complex economic analysis would not necessarily make Commerce's analysis any more accurate. Furthermore, they

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<sup>305</sup> *Id.* at 34 (citing *HRS from Korea Final Determination*).

<sup>306</sup> *Id.* at 34.

<sup>307</sup> *Id.* at 34-35.

<sup>308</sup> *Id.* at 35.

<sup>309</sup> *Id.* at 36 (citing *Tianjin Mach. Imp. & Exp. Corp. v. United States*, 31 C.I.T. 1416, 1434 (2007)).

<sup>310</sup> *Id.* at 36-37.

<sup>311</sup> *Id.* at 39.

<sup>312</sup> *Id.* at 39-40.

<sup>313</sup> *Id.* at 41.

<sup>314</sup> *Id.*

<sup>315</sup> See U.S. Steel Rebuttal Brief, at 42.

cite no statute or authority requiring a more complex economic analysis than what the submitted regression analysis sets forth.<sup>316</sup>

- Husteel and AJU Besteel's case briefs are merely untimely rebuttals of Maverick's regression analysis.<sup>317</sup>
- In submitting their regression analysis, Maverick was not required to provide an exhaustive statistical analysis and were practical in providing the submission on regression analysis that they did.<sup>318</sup> In addition, the methodology of the regression analysis was explained well using publicly available, contemporaneous data for the POR. The regression analysis model provides statistically and economically significant results which can be utilized to find the 2017 non-distorted Korean import average unit value.<sup>319</sup>

*SeAH's Rebuttal Comments:*

- For the final results of review, Commerce should reject Maverick's proposed global regression analysis.<sup>320</sup> Commerce has previously rejected this analysis in *Welded Line Pipe from Korea*,<sup>321</sup> citing to a lack of quantitative analysis of price effects for a PMS adjustment.<sup>322</sup>
- Commerce's PMS adjustment to steel coils purchased from non-Korean suppliers based on subsidies received by Korean steel producers is illogical and unsupported by record evidence. Should Commerce determine, however, that a PMS exists with respect to steel coils, then it should limit the adjustment only to steel coils purchased from Korean suppliers.<sup>323</sup>

*NEXTEEL's Rebuttal Comments:*

- Commerce should not apply any regression analysis in the final results.<sup>324</sup>
- Commerce has had time since the *Preliminary Results* to consider this regression analysis, and it has concluded that the regression analysis does not provide a reasonable basis to value hot rolled steel inputs or measure a PMS.<sup>325</sup>
- Commerce's preliminary results in another proceeding addressed a similar allegation; Commerce determined that it was not clear that the domestic parties' regression analysis reasonably quantified any price impact.<sup>326</sup>

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<sup>316</sup> *Id.*

<sup>317</sup> *Id.*

<sup>318</sup> *Id.*

<sup>319</sup> *Id.* at 42-43.

<sup>320</sup> See SeAH Rebuttal Brief, at 3.

<sup>321</sup> *Id.* (citing *Welded Line Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 84 FR 4046 (February 14, 2019) (*Welded Line Pipe from Korea*) and accompanying Issues and Decision Memorandum, at 17-18).

<sup>322</sup> *Id.* at 3-4.

<sup>323</sup> *Id.* at 4.

<sup>324</sup> See NEXTEEL Rebuttal Brief, at 8.

<sup>325</sup> *Id.*

<sup>326</sup> *Id.* at 8-9 (citing *Welded Line Pipe from the Republic of Korea* and accompanying Preliminary Decision Memorandum, at 18).



- Consistent with Commerce’s previous analysis, Commerce should conclude that Maverick’s regression analysis does not reasonably quantify any price impact of global excess steel capacity on NEXTEEL’s costs and disregard this analysis in the final results.

**Commerce Position:** 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 *HRS from Korea Final Determination*.<sup>327</sup> For these final results, we have continued to make an adjustment for the PMS by upwardly adjusting the respondents’ HRC costs based on the subsidy rates from *HRS from Korea Final Determination*. However, because we revised the subsidy rate in *HRS from Korea Final Determination*, as a result of litigation, we have used the revised rate for the PMS adjustment in the margin calculation for each mandatory respondent in the final results of review.

NEXTEEL contends that POSCO’s subsidy rate from the *HRS from Korea Final Determination* is irrelevant to the instant review because it covered 2014 (*i.e.*, it is not contemporaneous), was based on total AFA, and does not relate to OCTG. Regarding the fact that the rates from the CVD investigation on *HRS from Korea Final Determination* precede the instant POR in this proceeding, this is not a disqualifying factor. As explained above, we revised this rate pursuant to litigation. Also, we continue to find that NEXTEEL’s argument that *HRS from Korea Final Determination* is inapplicable because it does not relate to OCTG to be misplaced, as we are applying the adjustment to the cost of inputs used in the production of OCTG (*i.e.*, HRC), rather than OCTG itself. Accordingly, we continue to find that use of the subsidy rates from *HRS from Korea Final Determination*, concerning the input used to produce OCTG, is appropriate.

Regarding the calculation adjustments, interested parties suggest various alternatives to the PMS adjustment made by Commerce in the *Preliminary Results*. For instance, AJU Besteel suggested that Commerce use the CVD rate calculated in *HRS from Korea Preliminary Results 2016*.<sup>328</sup> We find that we cannot rely on this rate, however, because this is a preliminary rate and is subject to change for the final results of that review.

Husteel contends that the AFA rate used as the basis for the PMS adjustment in this review is inappropriate and untenable. Husteel argues that in other cases, such as *CTL Plate from Korea Final Determination*, which involved the same companies and similar subsidy programs, Commerce “did not find anything.”<sup>329</sup> Husteel argues that, nevertheless, Commerce continued to use a CVD rate from a different, unrelated proceeding for the PMS adjustment in this review.<sup>330</sup> We find, however, that Husteel’s argument is misplaced, in that the PMS adjustment must take into account the HRC input consumed by the respondents in the production of the subject merchandise. We do not consider it appropriate to use any rate from any case without considering whether the case is relevant to the input at issue. That is, the rate must be applicable to the input for the product subject to the scope description. Thus, we find that we cannot rely on

<sup>327</sup> See *HRS from Korea Final Determination*.

<sup>328</sup> See AJU Besteel Case Brief, at 14.

<sup>329</sup> *Id.* at 16.

<sup>330</sup> See Husteel Case Brief, at 18.

the rates determined in *CTL Plate from Korea Final Determination*, as the basis for a PMS adjustment in this review, since CTL plate is not an input to OCTG.

Concerning the argument that Commerce may not rely on a subsidy finding that was based entirely on AFA, we disagree that this should discredit the use of such a rate in making a PMS adjustment. The AFA rate assigned to POSCO in the *HRS from Korea Final Determination* at issue here was imposed because the respondent failed to cooperate to the best of its abilities; however, this does not mean that the rate is inaccurate or unreliable. In fact, this rate, as modified on remand, was recently affirmed by the CIT.<sup>331</sup> We find that the CVD rate from the *HRS from Korea Final Determination* represents an appropriate measure of the subsidies being received by the producers for the production of HRC.<sup>332</sup> AFA rates are not a penalty being applied to respondents, but are, rather, a reasonable basis for the adjustment being enacted by Commerce to support the PMS adjustment in this segment of this proceeding.

NEXTEEL and SeAH argue that Commerce should not make an upward adjustment in the amount of the U.S. CVD rate to the acquisition cost of imported HRC purchases, when those purchases never benefited from the subsidies by the Korean government. While those input purchases never directly benefited from the subsidies, we disagree with the respondents' contention that Korean subsidies on domestically produced HRC had no effect on the price of HRC imported into Korea. In a market economy, where goods are competitively priced, domestic and imported prices will converge at an equilibrium. This is particularly true with a common and fungible commodity such as HRC. Thus, because domestic subsidies lower the COP and the price of HRC in Korea, it is logical that the price of imported HRC will be adjusted to remain competitive with the domestically produced and subsidized HRC. In other words, domestic and imported prices of HRC converge to a lower market equilibrium price than if the domestically produced Korean HRC did not benefit from Korean government subsidies.<sup>333</sup>

With respect to the regression model submitted by Maverick, we are not utilizing this model for the final results of review, as the model does not provide a sufficient basis for a PMS adjustment that would account for the impact of global excess capacity on the price of HRC inputs. The petitioners submitted a substantially identical regression model in the investigations of LDWP from Korea and Turkey.<sup>334</sup> In the *LDWP from Korea Final Determination* and *LDWP from Turkey Final Determination*, Commerce explained, in detail, why the regression analysis did not provide an accurate basis for such an adjustment, despite Commerce's affirmative PMS decision. That analysis applies equally to this case. Among other technical insufficiencies of the model, we find, for instance, that the model specifies only one predictor variable, global excess capacity, which is not country-specific, and thereby omits other country-specific variables that affect import AUVs, such as GDP growth, demand growth in key downstream sectors and industries, and the currency exchange rate. While the fixed effects component of Maverick's model

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<sup>331</sup> See *POSCO v. United States*, Slip. Op. 19-52, at 9 (CIT May 1, 2019).

<sup>332</sup> See *HRS from Korea Final Determination* and accompanying Issues and Decision Memorandum.

<sup>333</sup> See *OCTG from Korea POR 2* and accompanying Issues and Decision Memorandum, at 19; see also *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 51927 (October 15, 2018) and accompanying Issues and Decision Memorandum, at 12.

<sup>334</sup> See *Large Diameter Welded Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 84 FR 6374 (February 27, 2019) (*LDWP from Korea Final Determination*) and accompanying Issues and Decision Memorandum, at Comment 2.

accounts for time-*invariant* variables that differ across countries, it does not account for time-*variant* variables such as those that are noted above. Therefore, although Commerce agrees with the Domestic Interested Parties' qualitative assessment of the PMS in the Korean steel market, the purpose of a regression analysis in this case is to reasonably *quantify* price effects for purposes of a PMS adjustment. We, therefore, find that Maverick's regression analysis does not accomplish the quantifying aspect of a PMS adjustment.

Contrary to the respondent's arguments, and as explained in the *Preliminary Results*, we continue to find that the subsidy rates from *HRS from Korea Final Determination* are more appropriate than the subsidy rates from *CTL Plate from Korea Final Determination* because the former rates are for hot-rolled steel, the input used to make OCTG, whereas the latter are not. In our view, a difference in the PORs of these 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 *HRS from Korea Final Determination* are an appropriate basis for making a PMS adjustment in this review.

After consideration of interested parties' comments regarding the application of additional adjustments, we continue to find that the subsidy rates from the *HRS from Korea Final Determination* are the best information available on the record with which to make a PMS 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 to make an adjustment for those inputs for the final results of this review.

#### **Comment 1-D: Major Input Analysis**

##### *NEXTEEL's Comments:*

- Commerce must conduct its major input analysis after applying any PMS adjustment to POSCO's HRC prices to avoid double-counting PMS.<sup>335</sup>
- In the *Preliminary Results*, Commerce incorrectly adjusted NEXTEEL's HRC purchases from POSCO twice: once under the major input rule and again with a PMS adjustment.
- If Commerce determines that a PMS adjustment is required, Commerce should conduct its major input analysis with PMS-adjusted HRC costs for POSCO.
- In *OCTG from Korea POR 1*,<sup>336</sup> Commerce concluded that no major input adjustment was warranted because NEXTEEL's HRC costs had already been adjusted for the PMS.
- For the final results, to avoid adjusting the HRC cost twice for the same rationale, Commerce should not apply both a major input adjustment and a PMS adjustment.

##### *U.S. Steel's Rebuttal Comments:*

- NEXTEEL inaccurately conflated Commerce's analysis of affiliation between NEXTEEL and POSCO with its PMS analysis.

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<sup>335</sup> See NEXTEEL Case Brief, at 47.

<sup>336</sup> *Id.* (citing *OCTG from Korea POR 1* and accompanying Issues and Decision Memorandum, at Comment 32).

- The major input adjustment and the PMS adjustment serve two separate functions. The major input adjustment adjusts HRC costs from an affiliated supplier to reflect arm's-length prices. The PMS adjustment increases the arm's-length prices to account for the PMS. For the final results, Commerce should continue to make both the major input and the PMS adjustments.<sup>337</sup>

**Commerce Position:** As noted in Commerce's response to Comment 10 below, for these final results, we have found that NEXTEEL is not affiliated with POSCO in the current POR. Accordingly, the arguments concerning the major input analysis no longer apply as the transactions between NEXTEEL and POSCO were between unaffiliated parties.

### **Comment 1-E: Application of PMS Adjustment to Non-Selected Companies**

#### *ILJIN's Comments:*

- Because ILJIN makes only seamless OCTG, not welded OCTG, Commerce cannot apply its PMS finding to ILJIN, as HRC is not an input for seamless OCTG.<sup>338</sup>
- Calculating a cash deposit rate with an adjustment to a company's COP for products where the facts are undisputed as to whether that company uses the HRC input is unreasonable and contrary to law.
- Should Commerce decide not to reverse its PMS decision for the final results, it should calculate a cash deposit rate for ILJIN without a PMS adjustment.<sup>339</sup>

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

- In the *HRS from Korea Final Determination*, Commerce excluded the AFA rate it calculated for POSCO, reasoning that it could not accurately calculate the all-others subsidy rate using the total AFA rate of another company. At the same time, Commerce is using that very same AFA rate to quantify the PMS adjustment that impacts mandatory and non-selected respondents without even a cursory examination of appropriateness.<sup>340</sup>

#### *AJU Besteel's Comments:*

- Commerce must ensure that it does not punish the mandatory respondents or AJU unreasonably by applying an outdated AFA rate from another proceeding.
- In *HRS from Korea Final Determination*, Commerce specifically stated that it "...cannot accurately calculate POSCO's CVD subsidy rate;" yet, this very same AFA rate is being relied upon to calculate the "all others" rate for non-selected respondents.<sup>341</sup>

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<sup>337</sup> See U.S. Steel Rebuttal Brief, at 25-26.

<sup>338</sup> *Id.* at 8.

<sup>339</sup> *Id.* at 9.

<sup>340</sup> *Id.* at 9-10 (citing *HRS from Korea Final Determination*).

<sup>341</sup> *Id.* at 9-10.

*U.S. Steel Rebuttal Comments:*

- The non-selected companies' arguments that they should receive an individual rate as a non-mandatory respondent based on the irrelevance of certain PMS factors to their respective situation is not supported by the cumulative nature of the all-others rate.<sup>342</sup>

**Commerce Position:** ILJIN, Hyundai and AJU Besteel argue that we cannot arbitrarily assign a cash deposit rate to non-selected respondents that includes an inappropriate PMS adjustment. They contend that where a company produces a different type of OCTG, *e.g.*, seamless OCTG, the input used in the calculation of the PMS adjustment, *i.e.*, HRC, is not applicable. Therefore, they argue that the PMS adjustment is not appropriate in the case of the non-selected respondents.

The arguments raised by the non-selected respondents are misplaced. When we assign a rate to non-selected respondents, we generally assign the average of the rates of the individually examined respondents. That rate serves as a proxy for those companies that were not selected for individual examination. It would defeat the purpose of assigning a rate based on our individual examination of selected respondents to companies not selected for review if we had to take into account the experience, pricing and/or cost data of each non-selected company. To do so would compromise Commerce's authority to limit examination to a reasonable number of companies and require collecting additional information from the non-selected companies and impact the timeliness within which we could conduct an administrative review. For these reasons, we select only a limited number of respondents to examine during the administrative review, as discussed in the Respondent Selection Memorandum.<sup>343</sup>

Our practice of assigning cash deposit rates to non-selected companies has been enumerated in many proceedings conducted by Commerce.<sup>344</sup> In this administrative review, we based our selection of examined respondents on producers accounting for the largest volume of subject merchandise, pursuant to section 777A(c)(2) of the Act.<sup>345</sup> Specifically, when faced with a large number of exporters/producers, section 777(A)(c)(2) of the Act gives Commerce the discretion to limit its examination to a reasonable number of companies if it is not practicable to examine all companies. Generally, we look to section 735(c)(5) of the Act, which provides instructions for calculating the all others rate in an investigation, for guidance when calculating the rate for respondents not individually examined in an administrative review.

Where respondent selection is based on the largest exporters, Commerce normally assigns to exporters not selected as mandatory respondents a weighted average of the rates individually calculated for the mandatory respondents. In such circumstances, Commerce excludes any rates

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<sup>342</sup> *Id.*

<sup>343</sup> See "Selection of Respondents for the 2016-2017 Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from the Republic of Korea," dated January 3, 2018 (Respondent Selection Memorandum).

<sup>344</sup> See, *e.g.*, *Hydrofluorocarbon Blends From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 17380, 17381 (April 25, 2019) (*Hydrofluorocarbon Blends from China*); *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 63619 (December 11, 2018) (*CWP from Korea 2016-17*) and accompanying Issues and Decision Memorandum, at 3.

<sup>345</sup> See Respondent Selection Memorandum, at 3.

that were zero, *de minimis*, or based entirely on facts available when calculating the weighted-average rate assigned to non-mandatory respondents, pursuant to section 735(c)(5) of the Act.<sup>346</sup> Because we have not selected ILJIN, Hyundai, AJU Besteel and the other 30 companies for individual examination in this review, their rate is based on the average rate of the individually examined respondents, which was determined based on the data of such respondents. Such rate was determined consistently with the statutory requirements, including the PMS adjustment. Accordingly, we have assigned a weighted-average cash deposit rate to these companies that includes the PMS adjustment at issue, in accordance with both the statute and Commerce's practice, for the final results of review.

## Comment 2: Calculation of Constructed Value Profit

### *SeAH's Comments:*<sup>347</sup>

- Commerce should not use SeAH's Canadian market information from the first administrative review (POR1) to calculate the CV profit rate in the current administrative review since that information is not contemporaneous and bears no relation to the current profitability of OCTG sales.
- Although contrary to the U.S. antidumping statute, Commerce's recent *Line Pipe from Korea* decision to disregard the use of sales found to be dumped by a foreign country should now preclude the use of SeAH's POR1 data for CV profit in this case since the underlying data was likewise subject to a foreign country's finding of dumping.<sup>348</sup>
- The fiscal year 2017 financial statements submitted for Tenaris S.A. (Tenaris), PAO TMK (TMK), Chung Hung Steel Corporation, and Borusan Mannesmann Boru Sanayi Ve Ticaret Anonim Sirketi (Borusan Mannesmann) provide a more reasonable proxy for CV profit as they are more contemporaneous with the current administrative review and reflect the profitability of companies selling in global markets.
- If Commerce continues to calculate CV profit under section 773(e)(2)(B)(iii) of the Act, a lack of information does not excuse Commerce from applying the statutorily imposed profit cap.<sup>349</sup> While not sufficient to meet the requirements of the statute, Commerce's use of a global profit cap in the remand determination of the LTFV investigation is more consistent with the statute than not applying any profit cap.<sup>350</sup>

### *NEXTEEL's Comments:*<sup>351</sup>

- Commerce's use of SeAH's two-year old profit rates is punitive as those rates are not representative of what a Korean producer would have reasonably expected to earn during this

<sup>346</sup> See *Preliminary Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 70 FR 67412, 67415-19 (November 7, 2005) (*Artist Canvas Preliminary Determination*) (in which Commerce explained its practice with respect to respondent selection).

<sup>347</sup> See SeAH Case Brief, at 13-16.

<sup>348</sup> *Id.* at 14-15 (citing *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 33919 (July 18, 2018) (*Line Pipe from Korea 2015-2016*) and accompanying Issues and Decision Memorandum, at Comment 12).

<sup>349</sup> *Id.* at 16 (citing, e.g., *Husteel v United States*, 98 F. Supp 3d 1314, 1348-49 (September 2, 2015)).

<sup>350</sup> *Id.* at 16 (citing Final Redetermination Pursuant to Court Remand, *Husteel Co., Ltd., et al., v. United States*, Consol. Court No. 14-00215, February 22, 2016, at 23).

<sup>351</sup> See NEXTEEL Case Brief, at 48-56.

review due to the changes in the market conditions between *OCTG from Korea POR 1* and the current review period, most notably, the significant increase in the price of HRC inputs.

- Consistent with Commerce and CIT precedent, Commerce should decline the use of SeAH's POR1 data since the market factors in third countries subject to antidumping orders distort prices and render them an inappropriate source for NV or CV profit.<sup>352</sup>
- Contrary to Commerce's statements at the *Preliminary Results* that they lacked sufficient detail to determine the portion of total sales revenues related to OCTG, the TMK Annual Report shows that 46 percent of the company's sales were of seamless and welded OCTG.
- The TMK 2017 financial statements are the best available source for CV profit since they are contemporaneous with POR3, OCTG made up the plurality of TMK's sales revenues, and TMK's operations are very comparable to NEXTEEL's operations.
- Alternatively, and consistent with *OCTG from Ukraine* and the World Trade Organization (WTO) dispute panel decision which found Commerce's definition of "same general category" to be "impermissibly narrow," Commerce should expand its definition of same general category and rely on NEXTEEL's own profit experience on line and standard pipe products.<sup>353</sup>
- If Commerce continues to find line and standard pipe products outside the same general category under alternative (i), Commerce should consider NEXTEEL's data as "any reasonable method" under alternative (iii) since these data are more appropriate than the unreasonable and outdated CV profit information from POR1.

*Maverick's Rebuttal Comments:*<sup>354</sup>

- Consistent with the prior reviews of this proceeding, Commerce should continue to find that SeAH's POR1 data is the best information available for determining CV profit and the profit cap, which has been upheld by the CIT.
- Commerce has primarily relied on a factor other than contemporaneity in selecting CV profit sources - "the greater the similarity between business operations and products, the more likely that there is a greater correlation in the profit experience of the companies."<sup>355</sup>
- Commerce has, in fact, based CV profit on sales that were two years removed from the period covered, and the courts have upheld the use of prior-period information for calculating CV profit.<sup>356</sup>

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<sup>352</sup> *Id.* at 51-52 (citing, e.g., *Certain Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review*, 68 FR 59366 (October 15, 2016) and accompanying Issues and Decision Memorandum, at Comment 9; *Line Pipe from Korea; Alloy Piping Prod. Inc., v. United States*, 26 CIT 330, 201 F. Supp. 1267 (CIT 2002)).

<sup>353</sup> *Id.* at 55 (citing *Certain Oil Country Tubular Goods from Ukraine: 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; *United States – Anti-Dumping Measures on Certain Oil Country Tubular Goods from Korea*, WT/DS488 (Panel Report, November 14, 2017)).

<sup>354</sup> See *Maverick Rebuttal Brief*, at 3-14.

<sup>355</sup> *Id.* at 6-7 (citing, e.g., *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) (*Lined Paper from India*) and accompanying Issues and Decision Memorandum, at Comment 3).

<sup>356</sup> *Id.* at 7 (citing, e.g., *Notice of Preliminary Results of New Shipper Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from Ecuador*, 71 FR 34888, 34891-92 (June 16, 2006); *Atar S.r.l. v. United States*, 730 F.3d 1320, 1323, 1329 (Fed. Cir. 2013)).

- Commerce should reject the respondents' arguments that the POR1 market conditions do not bear any relationship to current conditions since the information on which respondents base these claims have not been verified and reflect mere speculation.
- Consistent with the *Preliminary Results*, Commerce should continue to find that the IPSCO, Chung Hung, and Borusan Mannesmann financial statements submitted by respondents are not viable CV profit sources since they either lack sufficient detail or primarily represent non-OCTG products. Further, Commerce should continue to find that the Tenaris financial statements are less specific to OCTG than the POR1 data and, unlike the POR1 data, do not represent the experience of a Korean producer.
- Consistent with *Lined Paper from India*, Commerce should continue to reject the TMK financial statements because non-subject merchandise accounted for more than 50 percent of the company's sales.<sup>357</sup>
- Consistent with the second administrative review (POR2), Commerce should continue to reject NEXTEEL's argument to expand the definition of "same general category" to accept non-OCTG products since Commerce is not bound by WTO dispute panel decisions and Commerce has previously distinguished the facts in *OCTG from Ukraine* from the Korean OCTG proceedings.
- Commerce should reject NEXTEEL's argument to use its own sales of standard pipe under alternatives (B)(i) or (B)(iii) since standard pipes are not in the same general category of products as OCTG, and NEXTEEL's profit ratio is not public information.
- Commerce should reject respondents' argument that it is inappropriate to use data subject to a foreign government's findings of dumping. Both Commerce and the CIT have stated that the use of SeAH's POR1 data was reasonable since it was the best information available, and, further, Commerce relied only on the Canadian sales that were made in the ordinary course of trade (*i.e.*, passed the cost test).<sup>358</sup>
- Commerce's *Line Pipe from Korea* decision does not impede the use of SeAH's POR1 data in this case since it is the best information available, relies only on above-cost sales, and, to the extent that such a profit rate is derived from dumped sales, it would be conservative.
- SeAH's suggestion to apply a global-market profit rate as the profit cap should be rejected since, unlike at the time of the remand, the SeAH data from POR1 is readily available.

**Commerce Position:** In these final results, we have continued to use the ratios calculated for SeAH in *OCTG from Korea POR 1* as the source of CV profit and selling expenses.<sup>359</sup> 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 1* 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 prior review (*i.e.*, *OCTG from Korea POR 1*) 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

<sup>357</sup> *Id.* at 10 (citing *Lined Paper from India* and accompanying Issues and Decision Memorandum, at Comment 3).

<sup>358</sup> *Id.* at 12 (citing *NEXTEEL* at 21).

<sup>359</sup> See *OCTG from Korea POR 1* and accompanying Issues and Decision Memorandum, at Comment 1.



on SeAH's CV profit and selling expense ratios from *OCTG from Korea POR 1* to derive CV profit and selling expenses in these final results.

In the instant review, SeAH and NEXTEEL did not have viable home or third-country markets to serve as a basis for NV. Thus, we based NV on CV consistent with section 773(a)(4) of the Act.<sup>360</sup> Likewise, absent a viable home or third-country market, and absent any evidence of the actual amounts incurred or realized by SeAH or NEXTEEL 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.

As we also noted in *OCTG from Korea POR 1*, 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:

(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")}.<sup>361</sup>

The statute does not establish a hierarchy for selecting among the alternatives for calculating CV profit and selling expenses.<sup>362</sup> Moreover, as noted in the SAA, "the selection of an alternative will be made on a case-by-case basis, and will depend, to an extent, on available data."<sup>363</sup> 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 1*, 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.<sup>364</sup> We must, therefore, weigh the value of the available data and, in particular, determine which requirement is more relevant for this case based upon

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<sup>360</sup> *Id.*

<sup>361</sup> *Id.*

<sup>362</sup> See SAA, as reprinted in 1994 U.S.C.C.A.N., at 840 ("At the outset, it should be emphasized, consistent with the Antidumping Agreement, new section 773(e)(2)(B) does not establish a hierarchy or preference among these alternative methods. Further, no one approach is necessarily appropriate for use in all cases.")

<sup>363</sup> *Id.* at 840.

<sup>364</sup> See *OCTG from Korea POR 1* and accompanying Issues and Decision Memorandum, at Comment 1.

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 and NEXTEEL are not in the same general category of merchandise as OCTG.<sup>365</sup> Further, Commerce cannot rely on alternative (ii) because there is no evidence that NEXTEEL 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 under consideration. However, when selecting a profit rate from available record evidence, we may not be able to find a source that perfectly 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 1*; (2) NEXTEEL's POR profit on home market sales of standard pipe; (3) the audited 2017 financial statements of Nippon Steel; (4) the audited 2017 financial statements of Tenaris; (5) the audited 2017 financial statements of TMK; (6) the audited 2017 financial statements of Borusan Mannesmann; (7) the audited 2017 financial statements of Chung Hung Steel Corporation; (8) the audited 2017 financial statements of Maharashtra Seamless Limited; and (9) the audited 2017 financial statements of EVRAZ plc (EVRAZ).<sup>366</sup>

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<sup>365</sup> The CIT upheld this decision from the less-than-fair-value investigation of *OCTG from Korea Final Determination*. See *Husteel Co. v. United States*, 180 F. Supp. 3d 1330, 1338-39 (*Husteel II*).

<sup>366</sup> NEXTEEL submitted profit data pertaining to its own production of standard pipe during the POR, as well as the financial statements of Tenaris, TMK, Borusan Mannesmann, and Nippon Steel. See NEXTEEL Letter, "Oil Country Tubular Goods from the Republic of Korea: NEXTEEL's Submission of Factual Information and Comments for CV Profit and Selling Expenses," dated July 13, 2018 (NEXTEEL July 13, 2018 Letter). SeAH submitted the financial statements of Tenaris, TMK, Chung Hung Steel Corporation, and Borusan Mannesmann. See SeAH Letter, "Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea for the 2016-2017 Review Period—Response to Request for CV Profit and Selling Expense Comments and Information," dated July 13, 2018 (SeAH July 13, 2018 Letter). In addition, on May 16, 2018, Maverick and U.S. Steel submitted the financial statements of Tenaris, Maharashtra Seamless Limited, and EVRAZ, and on July 13, 2018, Maverick and U.S. Steel submitted information concerning the CV profit and selling expense rate calculated for SeAH in *OCTG from Korea POR 1*. See the Domestic Interested Parties' PMS Allegation; see also the

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 with 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. In fact, the courts have recognized that the issue of contemporaneity does not override the imperative that the information being used is the best available and most accurate. For example, in relation to the use of surrogate financial statements in non-market economy cases, the Court has found that "contemporaneity is not a compelling factor where the alternative data is only a year-and-a-half distant from the POI."<sup>367</sup> Although this is a market economy case, the general principle that a less contemporaneous data may be preferable if it otherwise constitutes best available and most accurate information.

Further, 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.<sup>368</sup> The profit is specific to 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).

NEXTEEL asserts that the standard pipe it produces consists of "the same general category of product" as OCTG and, therefore, argues that its POR home market sales of standard pipe represent a viable source of CV profit and the profit cap source. We find NEXTEEL's argument unpersuasive. First, as we determined in the *OCTG from Korea Final Determination*<sup>369</sup> and upheld by the CIT<sup>370</sup> and the CAFC,<sup>371</sup> these non-OCTG pipe products are not in the same

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Domestic Interested Parties' Letter, "Oil Country Tubular Goods from the Republic of Korea: CV Profit and Selling Expense Comments and Information," dated July 13, 2018. Finally, on July 20, 2018, NEXTEEL, SeAH, and the Domestic Interested Parties' submitted rebuttal comments and information. *See*, respectively, NEXTEEL Letter, "Certain Oil Country Tubular Goods from the Republic of Korea: NEXTEEL's Rebuttal Comments for CV Profit and Selling Expenses," dated July 20, 2018; SeAH Letter, "Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea for the 2016-17 Review Period – Response to Wiley Rein's July 16 CV Profit and Selling Expense Submission," dated July 20, 2018; the Domestic Interested Parties' Letter, "Oil Country Tubular Goods from the Republic of Korea: Rebuttal Comments on CV Profit and Selling Expense," dated July 20, 2018.

<sup>367</sup> *See, e.g., Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, 366 F. Supp. 2d 1264, 1275 (CIT 2005); *Yantai Oriental Juice Co. v. United States*, 26 CIT 605, 617 (June 18, 2002).

<sup>368</sup> *Id.*

<sup>369</sup> *See OCTG from Korea Final Determination* and Final Redetermination Pursuant to Court Remand, upheld in *Husteel II*.

<sup>370</sup> *See Husteel II* 180 F. Supp. 3d, at 1342.

<sup>371</sup> *See Husteel Co., Ltd. v. United States*, 710 Fed Appx. 890 \* (February 7, 2018) (Fed. Cir. Rule 36 Affirmance).

general category of products as OCTG.<sup>372</sup> Also, consistent with our findings in *OCTG from Korea POR I*, to the extent that NEXTEEL contends that we found 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.<sup>373</sup> Moreover, if all the appropriate expenses are included in NEXTEEL's home market profit calculation, the company had a net loss on standard pipe sales.<sup>374</sup> A net loss is not a profit.

Further, in arguing that line pipe and standard pipe are of the "same general category of products" as OCTG, NEXTEEL relies on a WTO Panel Report. However, 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."<sup>375</sup> Our determination of the same general category of products is consistent with U.S. law, which is consistent with our international obligations.

Moreover, we find NEXTEEL's reliance on *OCTG from Ukraine* to be unavailing. NEXTEEL has argued that because Commerce determined to "reject" OCTG as being within the scope of the *OCTG from Ukraine* investigation, it should consider 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. However, in this regard, we agree with Maverick 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 API specifications for OCTG, but should nevertheless still be included in a respondent's margin calculation.<sup>376</sup> 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 the fact that they subsequently were inspected and identified as either damaged or unusable as prime merchandise. Moreover, in *OCTG from Ukraine*, Commerce further noted that some of the "reject" sales were sold at virtually the same price as "prime" sales, which further supported Commerce's conclusion that the "reject" sales were indeed sales of subject merchandise.<sup>377</sup> There is no similar evidence on the record of this case. Further, the CIT agreed with Commerce's decision that the facts in *OCTG from Ukraine* are different from

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<sup>372</sup> 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. The WTO reports are not self-executing and, thus, have no effect until and unless implemented pursuant to the statutory scheme. Accordingly, consistent with the statutory scheme, we have initiated a section 129 proceeding, in which we intend to address the WTO report referenced by NEXTEEL.

<sup>373</sup> 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.

<sup>374</sup> See NEXTEEL July 13, 2018 Letter, at Exhibit 1 (Sales – COGS – G&A – INTEX – Selling Expenses).

<sup>375</sup> See S. Report No 103-412 Section 102 (1994) and the SAA, at 1032.

<sup>376</sup> See *OCTG from Ukraine* and accompanying Issues and Decision Memorandum, at Comment 2.

<sup>377</sup> *Id.*

those in the investigation of OCTG from Korea, where Commerce excluded non-OCTG pipe from the same general category of products as OCTG:

The respondents' reliance on the inclusion of certain rejected pipe 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 the *OCTG from Ukraine* investigation does not render Commerce's determination in the OCTG from Korea investigation unreasonable. In *OCTG from Ukraine*, 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.<sup>378</sup>

With respect to Tenaris, TMK, Borusan Mannesmann, Nippon Steel, Chung Hung Steel Corporation, Maharashtra Seamless Limited, and EVRAZ, we find that each of these data sources is less specific to OCTG than are the SeAH financial data. In particular, with the possible exceptions of Tenaris and TMK, the financial statements of these companies predominantly reflect sales of non-OCTG pipe products. Borusan Mannesmann's financial statements reflect significant sales of products (*i.e.*, line pipe and other pipe products) other than OCTG.<sup>379</sup> In this regard, Commerce noted in POR2 and in *OCTG from Turkey* that it would be inappropriate to use Borusan Mannesmann's financial statements because "the statements primarily reflect the operations for products other than OCTG."<sup>380</sup> There is no evidence that Borusan Mannesmann's operations have meaningfully changed in the current POR. On Nippon Steel's financial statements, pipes and tubes represent a small part of the company's steelmaking segment, and only a fraction of this actually reflects sales of OCTG.<sup>381</sup> We also find Chung Hung Steel Corporation's financial statements not to be specific to the OCTG industry since only 7.2 percent of the company's sales pertain to steel pipe, and an even smaller percentage than this amount would reflect sales of OCTG.<sup>382</sup> These non-OCTG products include, among others, hot-rolled steel coils, fine blanking and formability coils, cold-rolled full hard steel coils, carbon steel pipes, galvanized steel pipes, PE coated steel pipes, and API lines pipes.<sup>383</sup> While Maharashtra Seamless Limited predominantly produces steel pipe and tubes, the financial statements fail to indicate what portion of its sales are of OCTG.<sup>384</sup> The EVRAZ financial statements and annual report show the company had significant sales of non-OCTG steel, iron ore, vanadium, and coking coal products. Further, the industry segment under which EVRAZ reports OCTG sales shows a net loss for 2017.<sup>385</sup> Finally, while Tenaris' and TMK's data include profit from sales of OCTG and other products in the same general category, SeAH's

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<sup>378</sup> See *Husteel II*, 180 F. Supp. 3d, at 1343.

<sup>379</sup> See NEXTEEL and SeAH July 13, 2018 Letters, at Exhibit 5 and Attachment 4, respectively.

<sup>380</sup> See *OCTG from Korea POR 2* and accompanying Issues and Decision Memorandum, at Comment 7; see also *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 41971 (July 18, 2014) (*OCTG from Turkey*) and accompanying Issues and Decision Memorandum, at Comment 3.

<sup>381</sup> See NEXTEEL July 13, 2018 Letter, at Exhibit 3-B.

<sup>382</sup> See SeAH July 13, 2018 Letter, at Attachment 3.

<sup>383</sup> *Id.*

<sup>384</sup> See the Domestic Interested Parties' PMS Allegation, at Exhibit 51.

<sup>385</sup> *Id.* at Exhibit 52.

profit data is specific to OCTG. Therefore, we find that, consistent with the CAFC's opinion in *Atar S.R.L. v. United States*,<sup>386</sup> where the court upheld the use of prior period CV profit information that were two years removed from the period covered, 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.

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 our position from *OCTG from Korea POR I*,<sup>387</sup> as we stated:

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.<sup>388</sup>

While NEXTEEL and SeAH note that there is now a formal finding of dumping in the Canadian market, we are unpersuaded that this distorts a CV profit which reflects only the above-cost OCTG sales made by SeAH in the Canadian market. Rather, as Maverick and U.S. Steel suggest, a finding of dumping would seemingly result in an understated or conservative CV profit. Moreover, the CIT recently considered and rejected this argument stating that Commerce "subjected SeAH's Canadian sales to the cost test, and only those sales that were above the cost of production (*i.e.*, made in the ordinary course of trade) were used in constructing the aggregate profit and selling expenses."<sup>389</sup> Thus, we do not find that the facts in the instant review differ from those at issue in the first administrative review.

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<sup>386</sup> See *Atar S.R.L. v. United States*.

<sup>387</sup> See *OCTG from Korea POR I*, and accompanying Issues and Decision Memorandum, at Comment 1.

<sup>388</sup> *Id.*

<sup>389</sup> See *NEXTEEL*, at 21.

Lastly, we disagree with SeAH's and NEXTEEL's assertion that "drastic changes" have occurred in the OCTG market from the first administrative review to the current administrative review. While OCTG producers faced a decline in oil and gas prices throughout 2015 and 2016, the public financial statements submitted for the record demonstrate improved conditions by 2017. For example, Tenaris, a company with sales revenue that is predominantly reflective of OCTG products, actually experienced an improvement in financial performance in fiscal year 2017 relative to fiscal year 2016.<sup>390</sup> Accordingly, we are unable to conclude that the alleged "drastic changes" existed between 2015 and 2017 and led to an inevitable deterioration in the financial performance of OCTG companies in 2017.

Based on our analysis, and consistent with the position taken in *OCTG from Korea POR I*, 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 I* in accordance with section 773(e)(2)(A) of the Act (*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.<sup>391</sup> However, in the instant review and for the reasons noted above, the SeAH data used in *OCTG from Korea POR I* is available. For the reasons noted above, we consider the SeAH financial data from *OCTG from Korea POR I* 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 the sale of OCTG in its third country market is the best data to be used as the "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,<sup>392</sup> Commerce reasons that SeAH's profit data are the best suitable data to use as the basis for the calculation of the profit cap.

In summary, for the final results, after considering the record evidence and the arguments raised in the parties' case and rebuttal briefs, we have continued to use SeAH's CV profit and selling

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<sup>390</sup> See, *e.g.*, NEXTEEL July 13, 2018 Letter, at Exhibit 1.

<sup>391</sup> See *Husteel II*, 180 F. Supp. 3d, at 1337.

<sup>392</sup> See SAA, at 841.

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

### Comment 3: Differential Pricing

#### *SeAH's Comments:*

- In the *Preliminary Results*, Commerce applied its differential pricing analysis to determine whether there was a pattern of prices for comparable merchandise that differed significantly among purchasers, regions, or time periods for SeAH's U.S. sales.<sup>393</sup> SeAH agrees with Commerce's application of the average-to-average (A-to-A) comparison method; however, its use of the differential pricing analysis is both mathematically and legally improper.
- Commerce may adopt a rule that establishes arbitrary 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. Instead, because Commerce applied the cut-offs used in the differential pricing analysis on a case-by-case basis, it must explain in each case why the application of the differential analysis is appropriate in this case.<sup>394</sup>
- This principle has been recognized by the CIT and CAFC in cases addressing the *de minimis* standard applied by Commerce in investigations.<sup>395</sup> In the past, Commerce applied a 0.5 percent *de minimis* standard as a matter of policy, but without a specific provision in the regulations at the time, and in litigation the CIT and CAFC held that, because the *de minimis* standard had not been promulgated as a regulation in accordance with the provisions of the APA, Commerce was not permitted to apply that rule automatically in every case.<sup>396</sup> Under the principles recognized in *Carlisle Tire* and *Washington Raspberries*, Commerce's use of the differential pricing analysis can be sustained only if it provides both evidence and analysis showing why the cut-offs used the 0.8 cut-off used for the Cohen's *d* test and the 33- and 66-percent cut-offs used for the "ratio test."<sup>397</sup>
- When Commerce first applied its differential pricing analysis, it asserted that the reliance on the Cohen's *d* test (and, in particular, on the 0.8 cut-off for determining whether an effect size is large) is appropriate because the cut-offs proposed by Professor Cohen "have been widely adopted."<sup>398</sup> Professor Cohen himself made clear that his proposed cut-offs 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)."<sup>399</sup>

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<sup>393</sup> See SeAH's Case Brief, at 21-22 (citing the Preliminary Decision Memorandum, at 11).

<sup>394</sup> *Id.* at 22 (citing *Pac. Gas & Elec. Co. v. Fed. Power Comm'n*, 506 F.2d 33, 38 (D.C. Cir. 1974)).

<sup>395</sup> *Id.* at 23 (citing, e.g., *Carlisle Tire v. United States*, 634 F. Supp. 419, 423 (CIT 1986) (*Carlisle Tire*); *Washington Red Raspberry Comm'n. v. United States*, 859 F.2d 898, 903 (Fed. Cir. 1988) (*Washington Raspberries*)).

<sup>396</sup> *Id.*

<sup>397</sup> *Id.* at 25.

<sup>398</sup> *Id.* (citing *Final Results of the Antidumping Duty Administrative Review: Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea; 2013-2014*, 81 FR 46647 (July 18, 2016) (*A-312 Stainless Steel Pipe from Korea*) and accompanying Issues and Decision Memorandum, at 15).

<sup>399</sup> *Id.* at 26 (citing *OCTG from Korea POR 1* and accompanying Issues and Decision Memorandum, at Comment 2, citing Cohen, *Statistical Power Analysis for the Behavioral Sciences* (2d ed. 1988) (*Statistical Power*), at 19-20).



- In past cases, Commerce has admitted that Professor Cohen placed such limitations on his analysis, but maintains that those limitations apply only to the section describing the “Introduction and Use” of his Chapter on the “The T Test for Means.”<sup>400</sup> According to Commerce, the “The T Test for Means” is irrelevant to the differential pricing analysis, because “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.”<sup>401</sup>
- While Commerce may consider the “The T Test for Means” to be irrelevant to its goal of identifying “targeted dumping,” it was very much relevant to Professor Cohen’s development and presentation of his  $d$  statistic, and the various cut-offs he proposed for determining whether  $d$  is small, medium, or large. While the title of Chapter 2 of *Statistical Power* is “The T Test for Means,” Professor Cohen’s entire explanation of the  $d$  statistic is found in Chapter 2 and is the only subject of that chapter. Furthermore, Professor Cohen made it clear that the  $d$  statistic was an expression of the results of the t-test for means.<sup>402</sup>
- Although in past cases Commerce argued that its differential pricing analysis is not meant to be a “power analysis,” it has also claimed that the development and presentation of the  $d$  statistic was meant to establish a framework for something very different from the differential pricing analysis.<sup>403</sup> In other words, Commerce has taken a statistical tool that it claims was intended to provide a “T-Test for Means” in order to “guide researchers in their construction of a project in order to obtain a prescribed ‘power,’” and used it for a purpose and in a situation that Professor Cohen never intended. As a result, nothing in *Statistical Power* supports Commerce’s claim that the cut-offs used are “fixed thresholds” or can provide justification for Commerce’s use of the  $d$  statistic in its differential pricing analysis in situations that are not consistent with the limitations that Professor Cohen described.<sup>404</sup>
- As noted above, the  $d$  statistic can 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 sample sizes.<sup>405</sup> SeAH’s U.S. sales data does not meet these requirements because the data for each control number (CONNUM ) does not represent a normal population and the subsets being compared in the differential pricing analysis do not have substantially equal variances or substantially equal number of data points.<sup>406</sup> In such circumstances, the  $d$  statistic simply does not provide meaningful results.
- As a separate matter, Commerce has asserted in the past that the conditions laid out by Professor Cohen are irrelevant because it is analyzing the complete population of the respondent’s U.S. sales, and not just a sample.<sup>407</sup> Mathematically, that assertion is untenable.

<sup>400</sup> *Id.* (citing *OCTG from Korea POR I* and accompanying Issues and Decision Memorandum, at Comment 2).

<sup>401</sup> *Id.*

<sup>402</sup> *Id.* at 26-27 (citing *Statistical Power*, at 20).

<sup>403</sup> *Id.* at 27-28 (citing *OCTG from Korea POR I* and accompanying Issues and Decision Memorandum, at Comment 2; *Welded Line Pipe from Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015) (*Line Pipe from Korea*) and accompanying Issues and Decision Memorandum, at VI.B.1 and Comment 1).

<sup>404</sup> *Id.* at 28-29.

<sup>405</sup> *Id.* at 30 (citing *Statistical Power*, at 19-20).

<sup>406</sup> *Id.* (citing Memorandum, “Analysis of Data Submitted by SeAH Steel Corporation for the Preliminary Results of the 2016-2017 Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea,” dated October 3, 2018 (SeAH Preliminary Calculation Memorandum), at Attachment 4).

<sup>407</sup> *Id.* at 30-31.

Normal distributions — whether consisting of a sample or the entire population — have mathematical characteristics that non-normal distributions do not have.<sup>408</sup> Professor Cohen explicitly relied on the mathematical characteristics of normal distributions in the development and justification of his proposed cut-offs.<sup>409</sup>

- Commerce’s assertion that Professor Cohen’s proposed cutoffs can be used whenever a complete population is being analyzed is completely unsupported by any evidence on the record. A number of academic analyses demonstrate that, when the conditions set out by Professor Cohen are not met, the *d* statistic ceases to be a useful measure of effect sizes.<sup>410</sup> Although in other cases Commerce argued that the “best way to measure an effect is to conduct a census of an entire population but this is seldom feasible in practice,” there is nothing in that statement that suggests 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.<sup>411</sup>
- Commerce has never explained why the thresholds used in the “ratio test” should be 33 and 66 percent, and not some other numbers (such as 40 and 80 percent, 50 and 90 percent, or any two other numbers between 0 and 100), nor has it explained why a ratio between 33 and 66 percent calls for consideration of the transaction-to-average methodology only for the sales that “pass” the Cohen’s *d* test, while a ratio of 66 percent or more calls for the application of the transaction-to-average methodology for all sales.<sup>412</sup> Commerce’s numerical thresholds have not been established through notice-and-comment rulemaking, then they can only be upheld if supported by substantial evidence on the record in each case in which they are applied.<sup>413</sup>
- The statute permits Commerce to depart from the normal A-to-A comparison to account for targeted dumping (in investigations) only if it “explains why such differences cannot be taken into account using” an A-to-A or transaction-to-transaction (T-to-T) calculation methodology.<sup>414</sup>
- The price differences that give rise to a finding of targeted dumping are primarily a function of the different treatment of negative dumping margins under Commerce’s “standard” methodology where “zeroing” is not used, and its “alternate” methodologies where negative

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<sup>408</sup> *Id.* at 31.

<sup>409</sup> *Id.* (citing *Statistical Power*, at 19-26).

<sup>410</sup> *Id.* (citing Robert Coe, *It’s The Effect Size, Stupid: What “Effect Size” Is and Why It Is Important*, 2002 Annual Conference of the British Educational Research Association, University of Exeter, Exeter, Devon, England, September 12–14, 2002 (*Effect Size*); R. Grissom and J. Kim, *Effect Sizes for Research: Univariate And Multivariate Applications* (2d ed. 2012), at 66).

<sup>411</sup> *Id.* at 32 (citing *OCTG from Korea POR I* and accompanying Issues and Decision Memorandum, at Comment 2, citing P. Ellis, *The Essential Guide to Effect Sizes (Guide to Effect Sizes)*. *Guide to Effect Sizes* specifically warns that test statistics (like Cohen’s *d*) are problematic when the data is not normally distributed, and that Cohen’s *d* cannot be used “[i]f the standard deviations of the two groups differ.”).

<sup>412</sup> *Id.* at 34 (citing, e.g., *OCTG from Korea POR I* and accompanying Issues and Decision Memorandum, at Comment 2; *Line Pipe from Korea* and accompanying Issues and Decision Memorandum, at Comment 1; and *A-312 Stainless Steel Pipe from Korea* and accompanying Issues and Decision Memorandum, at Comment 4. In these cases, Commerce provided an explanation for its cut-offs using circular reasoning, i.e., that the cut-offs chosen are reasonable simply because Commerce has concluded that the cut-offs are reasonable).

<sup>413</sup> *Id.* at 35 (citing *Carlisle Tire*, 634 F. Supp. 419, 423; *Washington Raspberries*, 859 F.2d 898, 903).

<sup>414</sup> *Id.* at 36 (citing section 777A(d)(1)(B) of the Act; 19 U.S.C. 1677f-1(d)(1)(B)).

margins are “zeroed.”<sup>415</sup> Differences in dumping margins generated by the application of “zeroing” are not the same as differences in dumping margins caused by patterns of price differences by customer, region, or time period and Commerce has failed to explain why those patterns cannot be addressed using the normal comparison methodologies.<sup>416</sup>

- In addition, Commerce has not provided any support for its assertion that the difference in weighted-average dumping margins is “meaningful” when there is at least a 25 percent change in margin between the A-to-A and alternative calculation method.<sup>417</sup> While SeAH agrees with the application of the A-to-A method, without a reasonable basis for that numerical threshold, Commerce’s use of a 25 percent measure to decide which margin calculation to apply is inherently arbitrary and improper.<sup>418</sup>
- The Act normally requires Commerce to calculate dumping margins in investigations using one of two methodologies: by comparing an average NV to an average U.S. price, or by comparing the NVs for individual transactions to the U.S. prices for individual transactions.<sup>419</sup> As a general rule, the Act does not permit Commerce to compare an average NV to U.S. prices for individual transactions in an investigation.<sup>420</sup>
- The statute provides an exception to this general rule when targeted dumping is found to exist, but that exception, which might permit Commerce to calculate dumping margins by comparing an average NV to U.S. prices for individual transactions, applies only when there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and if the administering authority explains why such differences cannot be taken into account using a method described in section 777A (d)(1)(A)(i) or (ii) of the Act.<sup>421</sup>
- The conditions permitting the use of an average-to-transaction (A-to-T) comparison methodology are not satisfied in this case and the exception set forth in section 777A(d)(1)(B) of the Act does not apply, and Commerce is required by statute, to continue to calculate dumping margins using the A-to-A methodology for all of SeAH’s U.S. sales in its final results.<sup>422</sup>

*Maverick’s Rebuttal Comments:*

- As in prior reviews, SeAH challenges Commerce’s use of its differential pricing analysis to determine whether there was a pattern of prices for comparable merchandise that differs significantly among purchasers, regions, or time period as mathematically and legally improper.<sup>423</sup> More specifically, in this review, SeAH repeats its arguments from the *Second Review*: (a) Commerce has not sufficiently explained or justified its analytical bases for the use of the certain cutoffs in the Cohen’s *d* test (0.8 percent) and the ratio test (33 and 66

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<sup>415</sup> *Id.*

<sup>416</sup> *Id.*

<sup>417</sup> *Id.* (citing Preliminary Decision Memorandum at 12).

<sup>418</sup> *Id.*

<sup>419</sup> *Id.* at 37 (citing section 777A(d)(1)(A) of the Act; 19 U.S.C. 1677f-1(d)(1)(A)).

<sup>420</sup> *Id.*

<sup>421</sup> *Id.* (citing section 777A(d)(1)(B) of the Act; 19 U.S.C. 1677f-1(d)(1)(B)). If those conditions are not met, Commerce is not permitted to depart from the A-to-A (or T-to-T) methodology that is normally required in investigations.

<sup>422</sup> *Id.* at 38.

<sup>423</sup> See *Maverick Rebuttal Brief*, at 14-17.

percent, respectively); (b) Commerce must explain its use of the methodology in every case; (c) that the differential pricing analysis must explain why an A-to-A or T-to-T methodology is insufficient to calculate a dumping margin; and (d) that Commerce's use of an A-to-T comparison methodology is contrary to the statute.<sup>424</sup>

- Commerce has already addressed each element of these arguments in the *Second Review*.<sup>425</sup> Moreover, the CIT and CAFC have upheld Commerce's application of the differential pricing methodology.<sup>426</sup> In fact, the CIT recently upheld Commerce's differential pricing methodology in an appeal of the first review, in which SeAH likewise challenged the exact same aspects of the differential pricing methodology that it now raises before Commerce in its case brief.<sup>427</sup> In its decision, the Court affirmed the constituent parts of the differential pricing methodology that SeAH continues to challenge in its case brief, including: (a) Commerce's use of numerical thresholds; (b) the Cohens-*d* test; (c) the 33 and 66 percent ratio thresholds; and (d) Commerce's explanation of "why the alleged pattern of price differences could not be taken into account by the normal A-to-A test."<sup>428</sup>
- As SeAH agrees with the outcome of Commerce's analysis in the Preliminary Results, this issue should be considered to be moot in the final results.<sup>429</sup>

**Commerce Position:** We disagree with SeAH that the differential pricing analysis, including the Cohen's *d* test, is unreasonable, unlawful, or arbitrary. As an initial matter and to the contrary, we note that the CAFC has upheld key aspects of Commerce's differential pricing analysis, including the application of the "meaningful difference" standard, 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.<sup>430</sup> In *NEXTEEL*, the CIT rejected SeAH's challenge to our differential pricing analysis and held that "the steps underlying the differential pricing analysis as applied by Commerce {are} reasonable."<sup>431</sup> As explained in the *Preliminary Results*, Commerce continues to develop its approach pursuant to its authority to address potential masked

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<sup>424</sup> *Id.* (citing *OCTG from Korea POR 2*, 83 FR 17146 (April 18, 2018) (*Second Review*) and accompanying Issues and Decision Memorandum, at Comment 8).

<sup>425</sup> *Id.*

<sup>426</sup> *Id.* (citing, e.g., *Stanley Works Langfang Fastening Sys. Co. v. United States*, 333 F. Supp. 3d 1329, 1343-60 (CIT 2018); *Tri Union Frozen Prods., Inc. v. United States*, 163 F. Supp. 3d 1255, 1295-1310 (CIT 2016) (*Tri Union*)).

<sup>427</sup> *Id.* (citing *NEXTEEL*, at 23-31).

<sup>428</sup> *Id.* (citing *NEXTEEL*).

<sup>429</sup> *Id.*

<sup>430</sup> 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*).

<sup>431</sup> See *NEXTEEL*.

dumping.<sup>432</sup> In carrying out this statutory objective, Commerce determines whether “there is a *pattern of export prices* (or constructed export prices) for comparable merchandise *that differs significantly* among purchasers, regions, or periods of time, and.... why such differences cannot be taken into account using {the A-to-A or T-to-T comparison method}.”<sup>433</sup> With the statutory language in mind, Commerce relied on the differential pricing analysis to determine whether these criteria are satisfied such that application of an alternative methodology may be appropriate.<sup>434</sup>

Because the statute does not explicitly discuss how Commerce should conduct its determination of less than fair value in reviews,<sup>435</sup> carrying out the purpose of the statute, here, is a gap filling exercise properly conducted by Commerce.<sup>436</sup> Commerce finds that the purpose of section 777A(d)(1)(B) is to evaluate whether the A-to-A method is the appropriate measure to determine whether, and if so to what extent, a given respondent is dumping the merchandise at issue in the U.S. market.<sup>437</sup> While “targeting” and “targeted dumping” may be used as a general expression to denote this provision of the statute, these terms impose no additional requirements beyond those specified in the statute for Commerce to otherwise determine that the A-to-A method is not appropriate based upon a finding that the two statutory requirements have been satisfied.<sup>438</sup> The CIT and the CAFC have upheld Commerce’s application of its differential pricing analysis to evaluate the statutory requirements.<sup>439</sup>

SeAH presents several arguments regarding Commerce’s differential pricing analysis in the *Preliminary Results*, the first of which is that Commerce should follow the APA to justify the numerical thresholds used in the differential pricing analysis, *i.e.*, the 0.8 cut-off used for the Cohen’s *d* test and the 33- and 66-percent cut-offs used for the ratio test. As explained in past cases, the notice and comment requirements of the APA do not apply “to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.”<sup>440</sup> 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.<sup>441</sup> As the CAFC has recognized, Commerce is entitled to make changes and adopt a new approach in the context of its proceedings, provided it explains the basis for the

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<sup>432</sup> See Preliminary Decision Memorandum, at 11.

<sup>433</sup> See section 777A(d)(1)(B) of the Act (emphasis added); see also *Tri Union*, 163 F. Supp. 3d 1255, 1302 (“{h}ad Congress intended to impose upon Commerce a requirement to ensure statistical significance, Congress presumably would have used language more precise than ‘differ significantly.’”).

<sup>434</sup> See 19 CFR 351.414(c)(1).

<sup>435</sup> See *Timken Co. v. United States*, 968 F. Supp. 2d 1279, 1286 & n. 7 (CIT 2014).

<sup>436</sup> See *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843-44 (1984).

<sup>437</sup> See 19 CFR 351.414(c)(1).

<sup>438</sup> See, *e.g.*, *Samsung v. United States*, 72 F. Supp. 3d 1359, 1364 (CIT 2015) (“Commerce may apply the A-to-T methodology ‘if (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and (ii) the administering authority explains why such differences cannot be taken into account using the A-to-A or T-to-T methodologies. *Id.* 1677f-1(d)(1)(B). Pricing that meets both conditions is known as ‘targeted dumping.’”).

<sup>439</sup> See, *e.g.*, *JBK RAK LLC v. United States*, 790 F.3d 1358 (Fed. Cir. 2015).

<sup>440</sup> See, *e.g.*, *Second Review*, at Comment 8 (citing 5 U.S.C. 553(b)(3)(A)).

<sup>441</sup> See *Differential Pricing Analysis; Request for Comments*, 79 FR 26720, 26722 (May 9, 2014) (*Differential Pricing Comment Request*).

change, and the change is a reasonable interpretation of the statute.<sup>442</sup> The CAFC has also held that Commerce’s meaningful difference analysis was reasonable.<sup>443</sup> 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 {Commerce} 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.<sup>444</sup>

Moreover, 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 {A-to-A} comparison method, {Commerce} expects to continue to develop its approach with respect to the use of an alternative comparison method.”<sup>445</sup> Further developments and changes, along with further refinements, are expected in the context of our proceedings based upon an examination of the facts and the parties’ comments in each case.

Regarding SeAH’s arguments concerning our reliance on the Cohen’s *d* test and on the 0.8 cut-off for determining whether an effect size is large, we disagree. 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.”<sup>446</sup> The Cohen’s *d* coefficient is a recognized measure which gauges the extent (or “effect size”) of the difference between the means of two groups and provides “a simple way of quantifying the difference between two groups and has many advantages over the use of tests of statistical significance alone.”<sup>447</sup> Robert Coe, in *Effect Size*, points out that “{e}ffect size quantifies the size of the difference between two groups, and may

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<sup>442</sup> See *Saha Thai Steel Pipe Company v. United States*, 635 F.3d 1335, 1341 (CAFC 2011); and *Washington Raspberries*, 859 F. 2d at 902-03; *Carlisle Tire*, 634 F. Supp., at 423 (discussing exceptions to the notice and comment requirements of the APA).

<sup>443</sup> See *Apex II*, 862 F.3d 1337, 1347-1351.

<sup>444</sup> See *Apex Frozen Foods Private Ltd. v. United States*, 144 F. Supp. 3d 1308, 1322 (CIT 2016).

<sup>445</sup> See *Differential Pricing Comment Request*, 79 FR at 26722.

<sup>446</sup> See Preliminary Decision Memorandum, at 11-12.

<sup>447</sup> See *Effect Size*, included in letter from SeAH to Commerce, “Information Relating to ‘Differential Pricing Analysis’” (May 9, 2016), Attachment II.

therefore be said to be a true measure of the significance of the difference.”<sup>448</sup> *Effect Size* 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*:

Dr. Paul Ellis, in *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.<sup>449</sup>

Commerce further stated in *Shrimp from Vietnam*:

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 {Vietnam Association of Seafood Exporters} accedes to the distinction and meaning of “effect size” when it states “{w}hile 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.” {Commerce} agrees with this statement -- statistical significance is not relevant to {Commerce’s} examination of an exporter’s U.S. prices when examining whether such prices differ significantly. {Commerce’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,

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<sup>448</sup> *Id.*

<sup>449</sup> See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2014-2015*, 81 FR 62717 (September 12, 2016) (*Shrimp from Vietnam*) and accompanying Issues and Decision Memorandum, at 16-17 (citations omitted), citing *Guide to Effect Sizes*, at 3-5.

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."<sup>450</sup>

Lastly, in *Shrimp from Vietnam*, Commerce again pointed to Dr. Ellis, where he addresses populations of data, stating that, "Dr. Ellis also states in his publication that the "best way to measure an effect is to conduct a census of an entire population but this is seldom feasible in practice."<sup>451</sup>

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

The second measurement is whether there is a practical significance of the difference between the means of the two sets of data, as measured by an "effect size" such as the Cohen's *d* coefficient. As noted above, this measures the real-world relevance of this difference "and may therefore be said to be a true measure of the significance of the difference."<sup>452</sup> This is the basis for Commerce's determination of 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:

Professor Cohen himself made clear that his proposed cut-offs 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).'<sup>453</sup>

We find SeAH's claim to be 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

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<sup>450</sup> *Id.*

<sup>451</sup> See *Shrimp from Vietnam* at 17, citing *Guide to Effect Sizes*.

<sup>452</sup> See *Effect Size*.

<sup>453</sup> See SeAH Case Brief at 26 (citing *OCTG from Korea POR I* and accompanying Issues and Decision Memorandum, at Comment 2, citing *Statistical Power*, at 19-20).



that sample size and sample distribution have no impact on the description of “effect size” for sampled data,<sup>454</sup> but that is not the basis for Commerce’s analysis of SeAH’s U.S. sales price data.

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

The arithmetic mean is by far the most frequently used measure of location by behavioral scientists, and hypotheses about means the most frequently tested. The tables have been designed to render very simple the procedure for *power analysis* in the case where two samples, each of  $n$  cases, have been randomly and independently drawn from normal populations, and the investigator wishes to test the null hypothesis that their respective population means are equal...<sup>455</sup>

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 the sampling technique, including sample size and potential sampling error, with the stipulated effect size. The Cohen’s  $d$  test and Dr. Cohen’s thresholds in these final results only measure the significance of the observed differences in the mean prices for the test and comparison groups with no need to draw statistical inferences regarding sampled price date or the “power” of 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 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

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<sup>454</sup> See, e.g., *Statistical Power* 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.

<sup>455</sup> See *Statistical Power*, at 19 (emphasis in italics, SeAH’s quotation underlined).

Cohen's *d* test is not a reasonable tool for use as part of an analysis to determine whether a pattern of prices differ significantly.<sup>456</sup>

As Commerce explained in the *Preliminary Results*, the magnitude of the price differences as measured with the Cohen's *d* coefficient:

... can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.<sup>457</sup>

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 the "real world" understanding of the small, medium and large thresholds, where a "large" difference "is represented by the mean IQ difference estimated between holders of the Ph.D. degree and typical college freshmen, or between college graduates and persons with only a 50-50 chance of passing an academic high school curriculum. These seem like grossly perceptible and therefore large differences, as does the mean difference in height between 13- and 18-year-old girls..."<sup>458</sup> In other words, Dr. Cohen was stating that it is obvious on its face that there are differences in intelligence between highly educated individuals and struggling high school students, and between the height of younger and older teenage girls. Likewise, the "large" threshold is a reasonable yardstick to determine whether prices differ significantly.

Therefore, Commerce disagrees with SeAH's 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 of the "large" threshold is reasonable and consistent with the requirements of section 777A(d)(1)(B) of the Act.

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<sup>456</sup> See *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) and accompanying Issues and Decision Memorandum, at Comment 3 (*quoting* Dave Lane, *et al.*, "Effect Size," Section 2 "Difference Between Two Means"); *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 and Decision Memorandum, at Comment 4 (*quoting* 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 and Decision Memorandum, at Comment 7 (*quoting* same).

<sup>457</sup> Nonetheless, these thresholds, as with the approach incorporated in the differential pricing analysis itself, may be modified given factual information and argument on the record of a proceeding. See *Preliminary Decision Memorandum*, at 12.

<sup>458</sup> See *Statistical Power*, at 27.

Finally, we note that, in the *Preliminary Results*, we 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.”<sup>459</sup> SeAH 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.

We disagree 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, {Commerce} reasonably established a 33 percent threshold to establish whether there exists a pattern of prices that differ significantly. {Commerce} 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, {Commerce} 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 {Commerce} to separate the effect of the sales where prices differ significantly from those where prices do not differ significantly. Accordingly, {Commerce} considered whether, as an appropriate alternative comparison method, the A-to-T method should be applied to all U.S. sales. Finally, when {Commerce} 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, {Commerce} finds that it is appropriate to address the concern of masked dumping by considering the application of the A-to-T method as an alternative to the A-to-A method for only those sales which constitute the pattern of prices that differ significantly.<sup>460</sup>

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 suggests 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

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<sup>459</sup> See Preliminary Decision Memorandum, at 12.

<sup>460</sup> See *Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods from India*, 79 FR 41981 (July 18, 2014) (*OCTG from India*) and accompanying Issues and Decision Memorandum, at Comment 1.

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'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.

Commerce disagrees, in part, with SeAH that "the mere existence of different results is plainly insufficient, by itself, to satisfy the statutory requirements"<sup>461</sup> whether the A-to-A method can account for significant price differences which are 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 identical results. This is evidenced above with the calculation results for SeAH in these final results.<sup>462</sup>

The difference in the calculated results specifically reveals the extent of the masked, or "targeted," dumping which is being concealed when applying the A-to-A method.<sup>463</sup> The difference in these two results is caused by higher U.S. prices offsetting lower U.S. prices where the dumping, which may be found on lower priced U.S. sales, is hidden or masked by higher U.S. prices,<sup>464</sup> such that the A-to-A method would be unable to account for such differences.<sup>465</sup> Such masking or offsetting of lower prices with higher prices may occur implicitly within the averaging groups or explicitly when aggregating the A-to-A comparison results. Therefore, in order to understand the impact of the unmasked "targeted dumping," 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 EP, or CEP, with NV). It is the interaction of these many comparisons of EP or CEP with NV, 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,

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<sup>461</sup> See SeAH Case Brief, at 36.

<sup>462</sup> See Memorandum, "Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea: Final Calculation Memorandum – SeAH Steel Corporation," dated May 17, 2019 (SeAH Final Sales Calculation Memorandum).

<sup>463</sup> See *Koyo Seiko Co., Ltd. v. United States*, 20 F.3d 1156, 1159 (Fed. Cir. 1994) ("The purpose of the antidumping statute is to protect domestic manufacturing against foreign manufacturers who sell at less than fair market value. Averaging U.S. prices defeats this purpose by allowing foreign manufacturers to offset sales made at less-than-fair value with higher priced sales. Commerce refers to this practice as 'masked dumping.' By using individual U.S. prices in calculating dumping margins, Commerce is able to identify a merchant who dumps the product intermittently—sometimes selling below the foreign market value and sometimes selling above it. We cannot say that this is an unfair or unreasonable result." (internal citations omitted)).

<sup>464</sup> See SAA, at 842.

<sup>465</sup> See *Union Steel v. United States*, 713 F.3d 1101, 1108 (Fed. Cir. 2013) ("{the A-to-A} comparison methodology masks individual transaction prices below normal value with other above normal value prices within the same averaging group.").

which states that “targeted dumping” is a situation where “an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions.”<sup>466</sup> The comparison of a weighted-average dumping margin based on comparisons of weighted-average U.S. prices that also reflects offsets for non-dumped sales, with a weighted-average dumping margin based on comparisons of individual U.S. prices without such offsets (*i.e.*, with zeroing) precisely examines the impact on the amount of dumping which is hidden or masked by the A-to-A method. Both the weighted-average U.S. price and the individual U.S. prices are compared to an NV that is independent from the type of U.S. price used for comparison, and the basis for NV will be constant because the characteristics of the individual U.S. sales<sup>467</sup> remain constant, whether weighted-average U.S. prices or individual U.S. prices are used in the analysis.

Consider the simple situation where there is a single, weighted-average U.S. price, and this average is made up of a number of individual U.S. sales which exhibit different prices, and the two comparison methods under consideration are the A-to-A method with offsets (*i.e.*, without zeroing) and the A-to-T method with zeroing.<sup>468</sup> The NV 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 NV is less than all U.S. prices and there is no dumping;
- 2) the NV is greater than all U.S. prices and all sales are dumped;
- 3) the NV is nominally greater than the lowest U.S. prices such that there is a minimal amount of dumping and a significant amount of offsets from non-dumped sales;<sup>469</sup>
- 4) the NV 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 NV is in the middle of the range of individual U.S. prices, such that there is both a significant amount of 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

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<sup>466</sup> See SAA, at 842.

<sup>467</sup> These characteristics include may include such items as product, level-of-trade, time period, and whether the product is considered as prime- or second-quality merchandise.

<sup>468</sup> The calculated results using the A-to-A method with offsets (*i.e.*, no zeroing) and the calculated results using the A-to-T method with offsets (*i.e.*, no zeroing) will be identical. Accordingly, this discussion is effectively between the A-to-T method with offsets and the A-to-T method with zeroing. See SeAH Final Sales Calculation Memorandum, which identifies the specific calculation results for SeAH in these final results.

<sup>469</sup> As discussed further below, please note that scenarios 3, 4 and 5 imply that there is a wide enough spread between the lowest and highest U.S. prices so that the differences between the U.S. prices and normal value can result in a significant amount of dumping and/or offsets, both of which are measured relative to the U.S. prices.

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.

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 NV 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, we find that the meaningful difference test reasonably fills the gap in the statute to consider why, or why not, the A-to-A method (or T-to-T method) cannot account for the significant price differences in SeAH’s pricing behavior in the U.S. market. Congress’s intent of addressing “targeted dumping,” when the requirements of section 777A(d)(1)(B) of the Act are satisfied,<sup>470</sup> would be thwarted if the A-to-T method without zeroing were applied since this will always produce the identical results when the standard A-to-A method without zeroing is applied. Under that scenario, both methods would inherently mask dumping. It is for this reason that we find 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, we continue to find that application of the A-to-T method, with zeroing, is an appropriate tool to address masked “targeted dumping,”<sup>471</sup> and has applied an alternative comparison methodology based on the A-to-T method to calculate the weighted-average dumping margin for SeAH in these final results.

We disagree with SeAH that it has failed to satisfy the statutory requirements of section 777A(d)(1)(B) of the Act and consider the application of an alternative comparison method based on the A-to-T method. As set forth in the *Preliminary Results*<sup>472</sup> 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’s discretion in executing the trade statute.

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<sup>470</sup> See SAA, at 842-843.

<sup>471</sup> See *Apex I*, 37 F. Supp. 3d, at 1296.

<sup>472</sup> See Preliminary Decision Memorandum, at 10-12.

## SeAH-Specific Issues

### **Comment 4: Freight Revenue Cap**

#### *SeAH's Comments:*

- In the *Preliminary Results*, Commerce capped the freight revenue adjustment by the actual amount of associated freight expenses.<sup>473</sup> Commerce has previously used this methodology by considering freight as a service instead of as part of the sale of subject merchandise.<sup>474</sup>
- Freight cost, however, is not a service offered to SeAH's customers. Neither SeAH nor its U.S. affiliates offer or provide freight services, so charging an additional fee for freight services is merely a differentiation of costs.<sup>475</sup>
- In *Dongguan Sunrise Furniture*, the CIT ruled that Commerce could treat freight revenue as something different than U.S. price.<sup>476</sup> However, even if freight revenue is treated separately from U.S. price in Commerce's margin calculations, Commerce's *Preliminary Results* in this case do not reflect proper usage of that disaggregation because Commerce included some or all of the independently invoiced freight revenue in its calculation of the starting U.S. price.<sup>477</sup>
- Further, by making an upward adjustment capping the independently-invoiced freight revenue, Commerce did not justify how it concluded that freight revenue is a price for a service that is distinguishable from the price of the merchandise itself. The *Preliminary Results* instead concluded that: 1) even when freight is independently invoiced, freight services are included in the price of the merchandise, and the costs for those services are deducted from the starting U.S. price; and 2) some fraction of the independently invoiced freight revenue is part of the starting price, but any amount over and above the actual freight cost is not. There is no statutory basis for calculating freight revenue and capping it in this manner.<sup>478</sup>
- By including this freight revenue cap, Commerce does not account for potential losses incurred by the company in terms of the difference between actual freight costs and freight revenue. In order to maintain consistency, Commerce should either include or ignore both profits and losses on freight revenue in its calculations, instead of only accounting for profits.<sup>479</sup>

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<sup>473</sup> See Preliminary Decision Memorandum, at 15; see also SeAH Case Brief, at 17.

<sup>474</sup> See, e.g., *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*; 2012-2013, 79 FR 64170 (Oct. 28, 2014) (*Welded Steel Pipe from Thailand*), and accompanying Issues and Decision Memorandum, at 12.

<sup>475</sup> *Id.*

<sup>476</sup> See *Dongguan Sunrise Furniture v. United States*, 865 F. Supp. 2d 1216, 1249-50 (CIT 2012) (*Dongguan Sunrise Furniture*).

<sup>477</sup> *Id.* at 18-19.

<sup>478</sup> See SeAH Case Brief, at 20.

<sup>479</sup> *Id.* at 21.



*Maverick's Rebuttal Comments:*

- Commerce was correct to deduct SeAH's freight expenses and cap its freight revenue at the amount of separately invoiced freight costs.<sup>480</sup>
- SeAH's arguments that Commerce (1) has no statutory authority to deduct separately-invoiced freight costs when adjusting EP and CEP; and (2) that Commerce was in opposition to the statute when it capped freight revenue at the corresponding amount of freight charges, were both rejected by the CIT in its recent opinion in *NEXTEEL*.<sup>481</sup> In *NEXTEEL*, the CIT ruled that Commerce's treatment of SeAH's freight revenue was in accordance with the law.<sup>482</sup>
- The CIT similarly ruled in *Dongguan Sunrise Furniture* that Commerce's downward adjustment to U.S. price in its utilization of a freight revenue cap is consistent with 19 U.S.C. 1677a(c)(2)(A) even though this statute does not expressly address freight revenue because, as the Court explained, "[s]uch adjustments prevent exporters from improperly inflating the export price of a good by charging a customer for freight more than the exporters' actual freight expenses."<sup>483</sup>
- It is Commerce's normal practice to cap freight revenue by the amount of freight-related expenses.<sup>484</sup>

**Commerce Position:** We disagree with SeAH and have continued to apply the freight revenue cap to its sales in these final results, particularly because this methodology for capping freight revenue was affirmed by the CIT in litigation regarding *OCTG from Korea POR 1*. According to Section 772(c)(2)(A) of the Act, "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."<sup>485</sup> Section 772(c)(2)(A) of the Act requires Commerce to make certain adjustments to the starting U.S. price such that it is on the same basis as NV, such that that a proper comparison can be made with NV.

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*

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<sup>480</sup> See *Maverick Rebuttal Brief*, at 17.

<sup>481</sup> See *NEXTEEL*.

<sup>482</sup> *Id.*

<sup>483</sup> See *NEXTEEL*, at 32; see also *Dongguan Sunrise Furniture*, at 50-52.

<sup>484</sup> See *OCTG from Korea POR 2* and accompanying Issues and Decision Memorandum, at 87; see also *Welded Steel Pipe from Thailand: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 64170 (October 28, 2014), and accompanying Issues and Decision Memorandum at 12; *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) (*Wood Flooring from China LTFV Final Determination*), accompanying Issues and Decision Memorandum at 104-106; *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), accompanying Issues and Decision Memorandum, at 6-8.

<sup>485</sup> See *Dongguan Sunrise Furniture*, 865 F. Supp. 2d, at 1249-50.

*Pipe from Thailand*, that it 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).<sup>486</sup> This methodology prevents an exporter from improperly inflating its EP or CEP for a good by charging a customer more for freight than the exporter's actual freight expenses.

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 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."<sup>487</sup> 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.'"<sup>488</sup>

This allows Commerce to achieve an "apples-to-apples" comparison between the CEP (or EP) and NV. 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 CEP. 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 CEP 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).<sup>489</sup> 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.

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<sup>486</sup> See, e.g., *Welded Steel Pipe from Thailand*, and accompanying Issues and Decision Memorandum, at Comment 12; *Wood Flooring from China LTFV Final Determination* and accompanying Issues and Decision Memorandum, at Comment 39; *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.

<sup>487</sup> See *Dongguan Sunrise Furniture*, 865 F. Supp. 2d, at 1249-50.

<sup>488</sup> *Id.*, 865 F. Supp. 2d, at 1249.

<sup>489</sup> *Id.* ("Thus, it was reasonable for Commerce not to consider freight revenue as part of the price of the subject merchandise.").

## Comment 5: Interest Income Offset

*Maverick's Comments:*<sup>490</sup>

- SeAH's interest income offset to its consolidated financial expenses should be reduced to include only the amounts that were substantiated as short-term in nature.

*SeAH's Rebuttal Comments:*<sup>491</sup>

- Since all of SeAH's unconsolidated interest income is short-term in nature and accounts for 80 percent of the consolidated interest income, it is reasonable to treat all of the consolidated interest income as short-term as well. Therefore, the full amount of the consolidated interest income should be allowed as an offset to consolidated financial expenses.

**Commerce Position:** In calculating a respondent's COP and CV, it is Commerce's well-established practice to allow a respondent to offset financial expenses from the consolidated financial statements with short-term interest income generated from the consolidated company's current assets and working-capital accounts.<sup>492</sup> However, when the record evidence does not demonstrate that the financial income received is related to a company's current assets and working capital, Commerce routinely excludes the income item as an offset to financial expenses.<sup>493</sup>

Commerce has, in certain past cases, considered the nature of the underlying interest-bearing assets in deciding whether to include or exclude interest income.<sup>494</sup> Likewise, Commerce has allowed respondents to apply a ratio of the short- to long-term interest income from the unconsolidated company's financial statements to the interest income of the consolidated company to determine the short-term interest income offset to the financial expenses. Using the ratio of the short- to long-term interest income from the unconsolidated statements is a reasonable proxy where the vast majority of the interest income on the consolidated financial statements comes directly from the unconsolidated financial statements. However, in the instant case, most of SeAH's interest income on its unconsolidated financial statements is from affiliated parties, and the interest income from affiliated parties is eliminated in the consolidated financial statements.<sup>495</sup> Consequently, in this case, allowing SeAH to determine its short-term interest income offset by applying a ratio, where a most of the income is from affiliated parties, is unreasonable. The only record evidence supporting what portion of the consolidated interest

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<sup>490</sup> See *Maverick Case Brief*, at 3-4.

<sup>491</sup> See *SeAH Rebuttal Brief*, at 2-3.

<sup>492</sup> See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47551 (September 16, 2009) and accompanying Issues and Decision Memorandum, at Comment 7; *Stainless Sleet Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 73 FR 7710 (February 11, 2008) and accompanying Issues and Decision Memorandum, at Comment 11; *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 74 FR 65751 (December 11, 2009) (*PRCBs from Thailand*), and accompanying Issues and Decision Memorandum, at Comment 5.

<sup>493</sup> See, e.g., *PRCBs from Thailand*, and accompanying Issues and Decision Memorandum, at Comment 5.

<sup>494</sup> See *id.*; see also *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008) and accompanying Issues and Decision Memorandum, at Comment 14.

<sup>495</sup> See *SeAH Cost Verification Report*, at 25 and cost verification exhibit (CVE) 16.

income is short-term in nature, is the short-term interest income on the unconsolidated financial statements that was generated from unaffiliated parties and is included as part of the interest income on the consolidated financial statements. In light of the lack of any other record evidence to support SeAH's claim that the majority of the interest income on the consolidated financial statements was generated from short-term sources, we have determined it is appropriate to allow only the confirmed unconsolidated short-term interest income from unaffiliated parties as the offset to the financial expenses.

#### **Comment 6: Calculation of General and Administrative Expenses Incurred by SeAH's U.S. Affiliate**

*SeAH's Comments.*<sup>496</sup>

- In the *Preliminary Results*, Commerce applied the G&A expense ratio of SaAH Steel's U.S. affiliate, Pusan Pipe America, Inc. (PPA) to the cost of the imported pipe, regardless of whether the imported pipe was further manufactured or not, and then, contrary to both long-standing practice and the statute, Commerce deducted the amount related to the non-further manufactured pipe from CEP.
- When a company is only engaged in sales activities, Commerce's long-standing practice is to treat all G&A expenses as selling expenses; inversely, when a company is engaged in both selling and manufacturing activities, Commerce only applies the company-wide G&A expense ratio to further manufacturing costs and does not classify any G&A expenses as selling expenses.<sup>497</sup>
- Section 772(d) of the Act does not direct Commerce to deduct all administrative expenses from CEP. Rather, the statute specifically limits CEP adjustments to selling expenses and further manufacturing costs; therefore, because G&A expenses are not selling expenses Commerce's recent decision to deduct from CEP the G&A expenses related to non-further manufactured products is contrary to the statute.
- This new practice creates an imbalance in Commerce's calculations since SeAH engages in both manufacturing and sales operations in Korea; yet, Commerce does not include any portion of SeAH's G&A expenses as a home market ISE for which a "CEP offset" might be allowed.
- Consistent with well-established practice and section 772(d)(2) of the Act, Commerce should only deduct from CEP the G&A expenses attributable to PPA's further manufacturing activities.

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<sup>496</sup> See SeAH Case Brief, at 7-10.

<sup>497</sup> *Id.* at 7-9 (citing Commerce Policy Paper #H "Definition of 'Selling Expenses' in the Context of the Exporter's Sales Price Provisions," Potts/Eiss (undated) (Policy Paper #H); *Calcium Aluminum Cement, Cement Clinker, and Flux from France*, 59 FR 14136, 14146-47 (March 25, 1994) (*Cement from France*); *First Administrative Review of Certain Activated Carbon from the Peoples 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)).

*Maverick's Rebuttal Comments*.<sup>498</sup>

- Consistent with recent cases, Commerce should continue to apply PPA's G&A expense ratio to all products sold in the U.S. market, *i.e.*, both the resold and further manufactured products.<sup>499</sup>
- SeAH's arguments were already rejected in the second review when Commerce found that PPA's G&A activities support both resold and further manufactured products; thus, the adjustments were required to properly capture the expenses associated with these activities.<sup>500</sup>
- The undated policy memorandum and the two prior Commerce decisions cited by SeAH fail to address the treatment of G&A expenses when a U.S. company engages in both selling and further manufacturing activities.

**Commerce Position:** We agree with Maverick that PPA's G&A expenses should be allocated to all products sold in the U.S. market (*i.e.*, the imported pipe, whether further manufactured or not). 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."<sup>501</sup>

While the calculation of the G&A expense ratio is not at question here, it is instructive to review Commerce's calculation methodology. In calculating a G&A expense ratio, Commerce normally includes certain expenses and revenues that relate to the general operations of the company as a whole and to the accounting period, as opposed to including only those expenses that directly relate to manufacturing merchandise. The CIT has agreed with Commerce that G&A expenses are those expenses which relate to the general operations of the company as a whole, rather than to the production process.<sup>502</sup> Consequently, Commerce has long recognized that a company's general activities benefit both products that have been manufactured and those that were merely traded (*i.e.*, products purchased and resold without processing). As part of its normal operations, a company may purchase merchandise for resale to satisfy customer needs; Commerce considers any ancillary expenses associated with arranging such purchases to be related to the general operations of the company. As such, Commerce accounts for both the ancillary expenses (numerator) and the purchase price (denominator) of resold merchandise in a respondent's G&A expense ratio calculation even though the respondent did not produce the merchandise. Therefore, under Commerce's normal methodology, the numerator for the G&A expense ratio

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<sup>498</sup> See *Maverick Rebuttal Brief*, at 26-29.

<sup>499</sup> *Id.* at 28 (citing, *e.g.*, *Cold-Rolled Steel Flat Products from Brazil: Final Determination of Sales at Less Than Fair Value*, 81 FR 49946 (July 29, 2016), and accompanying Issues and Decision Memorandum, at Comment 7; *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015)).

<sup>500</sup> See *Maverick Rebuttal Brief* at 28 (citing *OCTG from Korea POR 2* and accompanying Issues and Decision Memorandum, at Comment 13).

<sup>501</sup> See *United States Steel Corp. v. United States*, 712 F. Supp. 2d 1330, 1336 (CIT 2010); see also section 772(d)(1) of the Act.

<sup>502</sup> See *U.S. Steel Group, et al. v. United States*, 998 F. Supp 1151, 1154 (C.I.T. 1998) (citing *Rautaruukki Oy v. United States*, 19 CIT 438, 444 (1995)).

includes company-wide G&A expenses, while the denominator includes both the cost of merchandise that has been manufactured and the cost of merchandise purchased for resale.<sup>503</sup>

In this case, SeAH does not dispute that PPA, its affiliated reseller in the United States, employs individuals responsible for overseeing, coordinating and supporting the purchases and sales of both further and non-further manufactured products.<sup>504</sup> Thus, PPA's G&A activities support the general activities of the company, encompassing the sale and further manufacture of products, and the sale of non-further manufactured products. Yet, SeAH incorrectly contends that Commerce's practice with regard to a further manufacturer is to apply the company-wide G&A expense ratio only to further manufacturing costs, and not to the full cost of the further manufactured products (*i.e.*, purchased pipe costs plus further manufacturing costs) or to the pipe costs of the directly resold products. In misstating Commerce's practice, SeAH cites to a 1995 policy paper. However, the policy paper is inapposite because the topic of Policy Paper #H (*i.e.*, the proper allocation of selling expenses between direct and indirect expenses) is separate and distinguishable from the issue here: how to properly account for the G&A expenses that have been allocated over the full cost of the products sold (*i.e.*, the imported pipe, whether further processed or not, and the further manufacturing costs, which form the denominator to the G&A expense ratio calculation). More importantly, SeAH does not provide any citations where a U.S. reseller both directly resold and further manufactured products before reselling them. Instead, SeAH cites only to *Activated Carbon from China* and to *Cement from France*, neither of which directly address the issue at hand of how to account for a U.S. affiliate's G&A expenses where the company both resells and further processes products. Rather, both cases address the classification of expenses as selling or G&A for purposes of calculating the ISE and G&A expense ratios. In *Activated Carbon from China*, Commerce allowed a respondent's allocation methodology used in its normal records to classify certain expenses as ISE or G&A-related activities.<sup>505</sup> In *Cement from France*, Commerce stated that because "these expenses are more appropriately characteristic of G&A expenses, we have reclassified them from indirect selling to G&A expenses based on verified data on the record."<sup>506</sup> Again, neither of these cases are representative of Commerce's practice on this issue nor address the issue of how to treat the expenses classified as G&A-related activities when a U.S. reseller both directly resells and further manufactures products before reselling them.

Contrary to SeAH's contentions, Commerce has specifically noted that where a company engages in both further manufacturing and reselling activities, it is appropriate to allocate G&A expenses to all company activities.<sup>507</sup> For example, in *CTL Plate from France*, Commerce

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<sup>503</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17413 (March 26, 2012) (*BMCRF from Korea*) and accompanying Issues and Decision Memorandum, at Comment 33; *Metal Calendar Slides from Japan: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 71 FR 36063 (June 23, 2006) and accompanying Issues and Decision Memorandum, at Comment 10.

<sup>504</sup> See, e.g., SeAH Case Brief, at 7.

<sup>505</sup> See *Activated Carbon from China* and accompanying Issues and Decision Memorandum, at Comment 5b.

<sup>506</sup> See *Cement from France* and accompanying Issues and Decision Memorandum, at Comment 18.

<sup>507</sup> See, e.g., *Certain Hot-Rolled Steel Flat Products from Brazil: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 53424 (August 12, 2016) (*Hot-Rolled Steel from Brazil*), and accompanying Issues and Decision Memorandum, at Comment 5; *Certain*

addressed the issue stating that “we agree that G&A activities support the general activities of a company as a whole, including its sales and manufacturing functions,” and that, “consistent with our decision in *Line Pipe from Korea*, we find it is appropriate to allocate G&A expenses to all company activities where the company engages in both further manufacturing and reselling activities.”<sup>508</sup> Thus, we find that SeAH errs in contending that Commerce’s practice is to calculate a company-wide G&A expense ratio but only apply the ratio to the further manufacturing costs, and not to the full cost of the further manufactured products or to the pipe costs of the directly resold products, despite the fact the both are represented in the denominator of the G&A expense ratio calculation.

In fact, because the denominator of the G&A expense ratio as calculated by SeAH (*i.e.*, the cost of goods sold from the financial statements) includes both directly resold and further manufactured OCTG (*i.e.*, the cost of the imported pipe plus the further manufacturing costs),<sup>509</sup> Commerce’s approach is balanced and reasonable. Commerce’s application of PPA’s G&A expense ratio does not over- or under-apply G&A expenses, but, rather, properly assigns the reseller’s G&A expenses proportionally to both groups of products. Applying such a ratio to only the cost of further manufacturing would result in a mismatch between the figures used in the G&A expense ratio calculation (imported pipe costs, whether further manufactured or not, plus further manufacturing costs) and the basis on which the ratio is applied (further manufacturing costs only). Thus, it is appropriate to assign PPA’s G&A expenses to both imported and resold products and to further manufactured products. Accordingly, for further manufactured products, Commerce applied PPA’s G&A expense ratio to the total cost of the further manufacturing plus the COP of the imported OCTG pipe and included the amount as further manufacturing, as contemplated under section 772(d)(2) of the Act. Additionally, for products not further manufactured, Commerce applied PPA’s G&A expense ratio to the COP of the imported OCTG and included the amount as an adjustment under section 772(d)(1)(D) of the Act.

While SeAH contends that, under section 772(d) of the Act, G&A expenses can only be deducted from CEP to the extent that they are part of the cost of further manufacturing, we disagree. The CIT has recognized that “in calculating U.S. prices using the {constructed export 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.”<sup>510</sup> In fact, SeAH acknowledges that it is permissible for Commerce to treat all of an affiliated reseller’s G&A expenses as an indirect selling adjustment to CEP where the company only engages in selling activities. However, when a company engages in both selling and manufacturing activities, SeAH incorrectly presumes that any G&A expenses allocated to the cost of the imported pipe must be disregarded and only the G&A expenses relative to further manufacturing costs may be accounted for in the calculation of CEP. SeAH considers that once a label is affixed to G&A or selling expenses, these categories become exclusive. However, if all G&A expenses can be treated as indirect selling expenses when only reselling activities occur, and all

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*Carbon and Alloy Steel Cut-to-Length Plate from France: Final Determination of Sales at Less Than Fair Value*, 82 FR 16363 (April 4, 2017) (*CTL Plate from France*) and accompanying Issues and Decision Memorandum, at Comment 17.

<sup>508</sup> See *CTL Plate from France* and accompanying Issues and Decision Memorandum, at Comment 17.

<sup>509</sup> See SeAH August 3, 2018 QR, at Appendices S2E-5 and S2E-6.

<sup>510</sup> See *United States Steel Corp. v. United States*, 712 F. Supp. 2d 1330, 1336 (CIT 2010); and section 772(d)(1) of the Act.

G&A expenses can be treated as further manufacturing expenses when further manufacturing activities occur, Commerce has the discretion to allocate G&A expenses to both resold and further manufactured products when both activities occur. Thus, we find that SeAH's argument that PPA's G&A expenses can only be deducted from CEP to the extent that they are part of the cost of further manufacturing is without merit.

Finally, SeAH argues that because it engages in both manufacturing and sales operations in Korea, "there is an imbalance in Commerce's calculations — since it deducts U.S. G&A expenses as an indirect selling expense but does not include Korean G&A expenses as a home-market (or third-country) indirect selling expense for which a 'CEP offset' might be allowed."<sup>511</sup> Record evidence, however, fails to support SeAH's position. SeAH's reported G&A expenses are included as part of the COP as directed under section 773(b)(3)(B) of the Act, and the calculation of that ratio used a denominator for the cost of goods sold (COGS) denominator, which included the cost of all products sold, whether or not they were simply purchased and resold or they were manufactured by SeAH. However, SeAH's purchased and resold products would likely not be considered reportable merchandise, since SeAH would not be the producer. Because it is likely that SeAH would not have been required to report or disclose purchased and directly-resold products, there would have been no need to report the G&A expenses allocated to such products.<sup>512</sup> Nevertheless, SeAH's NV is based on CV; therefore, home market sales and any potential price adjustments to such sales prices have not been reported by SeAH. Hence, it would have been inappropriate for Commerce to include SeAH's G&A expenses in selling expenses as they suggest, and Commerce did not do so.

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.<sup>513</sup> Therefore, in addition to applying the G&A expense ratio to the further manufacturing costs, we have also calculated the G&A expenses related to the pipe products sold in the United States (*i.e.*, the imported pipe, whether further manufactured or not) by applying PPA's G&A expense ratio to the COP of imported pipes. Consistent with the *Preliminary Results*, we then adjusted CEP for the G&A expenses related to all resold and further manufactured pipes that were reported in the sales database for purposes of the final results.

#### **Comment 7: Treatment of Cost Variances for a Single Production Order Produced during POR and Non-POR Periods**

*Maverick's Comments:*<sup>514</sup>

- The POR costs reported for one CONNUM produced under a single pipe production order, which was begun during the POR and completed after the POR, are distorted since all cost variances related to the input raw material (skelp) were applied to the POR pipe production.

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<sup>511</sup> See SeAH Case Brief, at 10.

<sup>512</sup> See SeAH March 18, 2016 QR, at page 41.

<sup>513</sup> See, *e.g.*, *Hot-Rolled Steel from Brazil* and accompanying Issues and Decision Memorandum, at Comment 5.

<sup>514</sup> See Maverick Case Brief, at 2-3.



- In prior reviews, Commerce has required SeAH to manually allocate such cost variances between the POR and non-POR periods.<sup>515</sup> Therefore, consistent with the approach in prior reviews, Commerce should allocate the skelp cost variances for the identified pipe production order between its POR and non-POR production.

*SeAH's Rebuttal Comments:*<sup>516</sup>

- The cost variances on the pipe production order, which were related to processing skelp into pipe, were appropriately allocated between the POR and non-POR production; however, the cost variances related to processing HRC into skelp should not be allocated to the post-POR period since the skelp was produced under a separate skelp production order that was completed and closed during the POR.

**Commerce Position:** We agree with Maverick that it is appropriate to allocate the skelp cost variances between the pipe quantities produced in the POR and non-POR periods. SeAH's production of pipe includes two major production stages (*i.e.*, skelp production and pipe production), which are tracked under separate production orders.<sup>517</sup> Thus, the cost variances related to processing HRC into skelp are recognized on the skelp production order and the cost variances related to processing skelp into pipe are recognized on the pipe production order. Ultimately, the skelp cost variances are transferred to the finished pipe produced from the skelp.<sup>518</sup> Hence, the total actual cost of the pipe produced should include the cost variances associated with both the skelp and pipe processing stages. However, for the pipe production order at question, the entire cost variance associated with the skelp consumed in making the pipe was applied to the pipe quantities produced during the POR, while none was allocated to the pipe quantities produced after the POR.<sup>519</sup> Therefore, for the final results, we find it is appropriate to allocate the skelp cost variances associated with this one production order between the pipe quantities produced during and after the POR.

## **Comment 8: Inventory Valuation Loss**

*SeAH's Comments:*<sup>520</sup>

- SeAH's reported cost of manufacturing reflects the actual historical cost of the raw materials and work-in-process (WIP) consumed; therefore, Commerce's preliminary decision to include the raw material and WIP inventory valuation losses in the G&A expense ratio double counts costs.
- Commerce previously declined to include inventory valuation losses where raw materials and WIP inventory accounts are not directly written down and the actual historical cost of inventory is recognized in the company's product cost calculations.<sup>521</sup>

<sup>515</sup> *Id.* at 2 (citing *OCTG from Korea POR 1* and accompanying Issues and Decision Memorandum, at Comment 13).

<sup>516</sup> See SeAH Rebuttal Brief, at 1-2.

<sup>517</sup> See SeAH Cost Verification Report, at 5.

<sup>518</sup> *Id.*

<sup>519</sup> *Id.* at 20.

<sup>520</sup> See SeAH Case Brief, at 11-12.

<sup>521</sup> *Id.* (citing, *e.g.*, *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review*, 75 FR 34980 (June 21, 2010) and accompanying Issues and Decision Memorandum, at Comment 2).

- Consistent with its previous conclusions, Commerce should exclude the raw material and WIP inventory valuation losses from SeAH's G&A expense ratio in the final results.

*Maverick's Rebuttal Comments:*<sup>522</sup>

- SeAH's policy in its normal books and records is to restate its inventories on a quarterly basis; therefore, Commerce should continue to include the inventory valuation losses in SeAH's G&A expense ratio in order to ensure that all costs have been captured.

**Commerce Position:** We disagree with SeAH that the inventory valuation losses related to raw materials and WIP should be excluded from the reported costs. Accordingly, consistent with the *Preliminary Results*, we have continued to include the raw material and WIP valuation losses in SeAH's G&A expense ratio for the purposes of these final results.

In its normal books and records, SeAH restates its quarterly inventory balances to the lower of cost or net realizable value and records the corresponding inventory valuation loss, or reversal gain, in the income statement.<sup>523</sup> On the balance sheet, the adjustments are recorded to separate contra-inventory accounts which, as SeAH pointed out, do not impact the item-specific raw material and WIP values that are ultimately used to calculate product-specific costs.<sup>524</sup> As a result, SeAH argues that including both the actual historical cost of the inputs in production costs and the inventory valuation gains or losses in the G&A expense ratio is double-counting. We disagree. SeAH's restatement of its inventories to the lower of cost or net realizable value is a periodic adjustment required for SeAH's audited financial statements that are based on the Generally Accepted Accounting Principles (GAAP).<sup>525</sup> On the balance sheet, the provision reflects the net loss in the value of inventories that a company is holding at that time, while the income statement reflects the incremental gain or loss for the period. Thus, in accordance with GAAP, SeAH is recognizing the gains or losses associated with the inventory it is currently holding on its balance sheet, which are unrelated to the inventory that was consumed in current production. In calculating a G&A expense ratio, Commerce normally includes such period expenses, *i.e.*, those that are more related to an accounting period and not directly related to manufacturing merchandise, as they are related to the general operations of the company as a whole. The CIT has agreed with Commerce that G&A expenses are those expenses which relate to the general operations of the company as a whole rather than to the production process.<sup>526</sup> Consequently, we find it appropriate to include SeAH's raw material and WIP inventory valuation losses which were recorded in the company's GAAP-based income statement in the G&A expense ratio. In fact, Commerce has previously determined that the gains and losses on periodic raw material and WIP inventory revaluations are related to the general operations of the company as a whole and should be included in the reported costs.<sup>527</sup>

<sup>522</sup> See *Maverick Rebuttal Brief*, at 24-26.

<sup>523</sup> See *SeAH Cost Verification Report*, at 4.

<sup>524</sup> See *SeAH August 3, 2018 QR*, at 11.

<sup>525</sup> See *SeAH June 8, 2018 QR*, at Appendix SA-2-B, note 2.(5) to the financial statements.

<sup>526</sup> See *U.S. Steel Group, et al. v. United States*, 998 F. Supp 1151, 1154 (CIT 1998) (citing *Rautaruukki Oy v. United States*, 19 C.I.T. 438, 444 (1995)).

<sup>527</sup> See, *e.g.*, *PRCBs from Thailand* and accompanying Issues and Decision Memorandum, at Comment 3; *Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 19153 (April 12, 2004) and accompanying Issues and Decision Memorandum, at Comment 7; *Stainless Steel Sheet*

While we recognize that in certain proceedings Commerce has excluded raw material and WIP inventory valuation losses, this does not necessarily mean that such treatment was appropriate. Commerce is not obligated to “accept an incorrect methodology and perpetuate a mistake because it was accepted” in previous proceedings.<sup>528</sup> Moreover, the courts have affirmed Commerce’s discretion to change its position as long as the agency provides an explanation for doing so.<sup>529</sup> We find that the inventory valuation losses are periodic adjustments, which are related to the general operations of the company as a whole and were properly recognized in SeAH’s GAAP-based financial statements. As such, we find it appropriate to continue to include the raw material and WIP inventory valuation losses in the calculation of SeAH’s G&A expense ratio for purposes of the final results.

## **Comment 9: Penalties Expense**

*SeAH’s Comments:*<sup>530</sup>

- Commerce should exclude the fine imposed by the KFTC from the G&A expense ratio since it was related to 2003 - 2013 bids for the sale of line pipe in the Korean market and is unrelated to sales of OCTG in the U.S. market. Commerce should exclude the fine imposed by the KFTC from the G&A expense ratio since it was related to 2003 - 2013 bids for the sale of line pipe in the Korean market and is unrelated to sales of OCTG in the U.S. market.

*Maverick’s Rebuttal Comments:*<sup>531</sup>

- Commerce should continue to include the fine in SeAH’s G&A expense ratio since it is an indirect expense that is related to the company’s general operations as a whole, rather than to any specific production process.
- Commerce has previously found it appropriate to include penalties and fines in G&A expenses even in cases where they were related to non-subject merchandise and stemmed from a prior year.<sup>532</sup>

**Commerce Position:** Consistent with the *Preliminary Results*, we have continued to include the KFTC fine in SeAH’s G&A expense ratio for the final results. In calculating the G&A expense ratio, Commerce normally includes certain expenses and revenues that relate to the general operations of the company as a whole, as opposed to including only those expenses that directly

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*And Strip in Coils from Taiwan: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 76721 (December 13, 2002), and accompanying Issues and Decision Memorandum, at Comment 9.

<sup>528</sup> See *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 64 FR 38756, 38789 (July 19, 1999).

<sup>529</sup> See *Timken Co. v. United States*, 23 C.I.T. 509, 515 (1999); *Asociacion Colombiana de Exportadores v. United States*, 6 F. Supp. 2d 865, 879-80 (Ct. Int’l Trade 1998); *Anshan Iron & Steel Co. v. United States*, 28 C.I.T. 1728, 1735 (2004).

<sup>530</sup> See SeAH Case Brief, at 12-13.

<sup>531</sup> See Maverick Rebuttal Brief, at 21-24.

<sup>532</sup> *Id.* at 23-24 (citing *CWP from Korea* and accompanying Issues and Decision Memorandum, at Comment 4; *Magnesium Metal from the Russian Federation: Notice of Final Determination of Sales at Less Than Fair Value*, 70 FR 9041 (February 24, 2005) (*Magnesium from Russia*) and accompanying Issues and Decision Memorandum, at Comment 10).

relate to the production of the merchandise under consideration. The CIT agreed with Commerce that G&A expenses are those expenses which relate to the general operations of the company as a whole rather than to the production process.<sup>533</sup> Consequently, where there are expenses that are not directly related to current production, Commerce considers it more appropriate to treat the indirect expenses as G&A and allocate them to the cost of producing all products.<sup>534</sup>

In prior cases, Commerce has specifically addressed the treatment of fines and penalties, finding them to be related to the general operations of the company, rather than the current production of a specific product.<sup>535</sup> Further, where the event that led to the fine or penalty stemmed from a prior period, Commerce's practice is to follow the treatment of the expense in the respondent's GAAP-based financial statements.<sup>536</sup> In SeAH's fiscal year 2017 financial statements, the fine at question was treated as a current year miscellaneous loss reported under other non-operating expenses.<sup>537</sup> Therefore, based on our past practice and consistent with SeAH's GAAP-based financial statements, we have continued to include the fine in SeAH's G&A expense ratio for the final results.

### **NEXTEEL-Specific Issues**

#### **Comment 10: Affiliation Between NEXTEEL and POSCO**

##### *NEXTEEL's Comments:*

- NEXTEEL's U.S. sales through POSCO Daewoo were only a small percentage of NEXTEEL's total U.S. sales, and Commerce did not take this into account in the *Preliminary Results*.<sup>538</sup>
- In the investigation and first and second administrative reviews of this proceeding, Commerce found that POSCO was positioned to exert prominent influence over NEXTEEL because of POSCO's involvement in NEXTEEL's production and sales processes, particularly because of the large volume of NEXTEEL's sales that went through POSCO Daewoo. Facts that supported finding POSCO and NEXTEEL affiliated in the underlying investigation of this review are no longer relevant in this review.<sup>539</sup>
- 19 CFR 351.102(b) states that a close supplier relationship constitutes affiliation if there is the potential for the relationship to impact decisions on production, pricing, or cost of

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<sup>533</sup> See *U.S. Steel Group, et al. v. United States*, 998 F. Supp 1151, 1154 (C.I.T. 1998) (citing *Rautaruukki Oy v. United States*, 19 C.I.T. 438, 444 (1995)).

<sup>534</sup> See, e.g., *BMCRCF from Korea* and accompanying Issues and Decision Memorandum, at Comment 33; *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24239, 24354 (May 6, 1999), and accompanying Decision Memorandum, at Comment 25.

<sup>535</sup> See, e.g., *CWP from Korea* and accompanying Issues and Decision Memorandum, at Comment 4; *Magnesium from Russia* and accompanying Issues and Decision Memorandum, at Comment 10.

<sup>536</sup> See, e.g., *CWP from Korea* and accompanying Issues and Decision Memorandum, at Comment 4; *Chlorinated Isocyanurates from Spain: Final Results of Antidumping Duty Administrative Review*, 74 FR 50774 (October 1, 2009) and accompanying Issues and Decision Memorandum, at Comment 1.

<sup>537</sup> See SeAH August 3, 2018 QR, at Appendix S2D-9-A.

<sup>538</sup> See NEXTEEL Case Brief, at 56-57.

<sup>539</sup> *Id.* at 57.

the subject merchandise. The relationship must also be “so significant that it could not be replaced.”<sup>540</sup> Likewise, the SAA states that Commerce can only find that close supplier relationship exudes control if “the supplier or buyer becomes reliant on another.”<sup>541</sup>

- In its opinion in *Husteel*, the CIT cited 19 U.S.C. 1677(33)(G) which states that “{c}ontrol will not be found to exist unless the relationship in question ‘has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.’”<sup>542</sup>
- Commerce rejected the petitioners’ claim that respondents were affiliated with POSCO in *Cold-Rolled and CORE from Korea*.<sup>543</sup> In that case, Commerce determined that the weight of one supply source was not sufficient on its own singular merits for proving reliance to establish that a close supplier relationship exists. Also, as in that case, there are no formal or informal directives on the record which require that NEXTEEL purchase HRC from POSCO.<sup>544</sup>
- The evidence which Commerce relied upon during the investigation and the first two administrative reviews to ascertain control by POSCO over NEXTEEL was only a temporary condition. The record in the instant review has since changed with respect to the supplier-sales relationship.<sup>545</sup>
- NEXTEEL can, and does, purchase inputs from other suppliers, and NEXTEEL did not have any sales to POSCO Daewoo during a large part of the POR.<sup>546</sup>

*U.S. Steel’s Rebuttal Comments:*

- NEXTEEL’s arguments are impractical because record evidence shows that NEXTEEL and POSCO are affiliated through a close relationship pursuant to 19 U.S.C. 1677(33)(G) as well as the SAA, which define affiliation due to the volume of HRC that NEXTEEL still purchases from POSCO.<sup>547</sup>
- Moreover, NEXTEEL continues to sell subject merchandise through POSCO Daewoo, which goes even beyond a close supplier relationship. Therefore, Commerce was accurate in determining that POSCO’s involvement on both the production and sales sides of NEXTEEL’s operations put it in a position to exert restraint or direction over NEXTEEL as concerns pricing, production, and sales of OCTG, as required to amount to affiliation.<sup>548</sup>

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<sup>540</sup> *Id.* (citing 19 CFR 351.102(b)(3)).

<sup>541</sup> *Id.* (citing Uruguay Round Agreements Act Statement of Administrative Action, attached to H.R. Rep. No. 103-316 Vol. I at 873 (1994), reprinted in 1994 U.S.C.C.A.N 3773, 4163 (SAA)).

<sup>542</sup> See NEXTEEL Case Brief, at 58 (citing *Husteel v. United States*, 98 F.Supp.3d 1315, 1350 (CIT 2015) (*Husteel*), at 56-57).

<sup>543</sup> See NEXTEEL Case Brief, at 58 (citing *Cold-Rolled and CORE from Korea* and accompanying Issues and Decision Memorandum).

<sup>544</sup> See NEXTEEL Case Brief, at 61.

<sup>545</sup> *Id.* at 61 (citing NEXTEEL’s Sales Verification Exhibit SV-5; NEXTEEL’s August 13, 2018 Section D Supplemental Response (NEXTEEL August 13, 2018 SQR), at Exhibit SD-2-12-C).

<sup>546</sup> See NEXTEEL Case Brief, at 62.

<sup>547</sup> See U.S. Steel Rebuttal Brief, at 44.

<sup>548</sup> *Id.* at 44-45.

- The relationship between NEXTEEL and POSCO is longstanding and was found by Commerce to constitute an affiliation in the underlying investigation as well the first and second administrative reviews of OCTG from Korea.<sup>549</sup>
- NEXTEEL's citation of *Cold-Rolled and CORE from Korea* as evidence of no affiliation between NEXTEEL and POSCO is not relevant for this review because in that review, Commerce was considering whether or not affiliation existed between the two companies based solely on input of HRC POSCO provided to NEXTEEL, whereas in this review, Commerce found in the *Preliminary Results* that affiliation exists based on POSCO's overwhelming involvement on both sides of NEXTEEL's manufacturing.<sup>550</sup>
- Commerce should continue to find that NEXTEEL, POSCO, and POSCO Daewoo are affiliated for the final results.<sup>551</sup>

**Commerce Position:** In accordance with section 771(33) of the Act, the following persons shall be considered affiliated: (A) members of a family, including brothers and sisters, spouse, ancestors, and lineal descendants; (B) any officer or director of an organization and such organization; (C) partners; (D) employer and employee; (E) any person directly or indirectly owning, controlling, controlled by, or holding with power to vote, five percent or more of the voting stock or shares of any organization and such organization; (F) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) any person who controls any other person and such other person. To find affiliation between two companies, at least one of the criteria above must be applicable.

Section 771(33) of the Act further provides that “{f}or purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.” Commerce's regulations at 19 CFR 351.102(b)(3) state that, in finding affiliation based on control, Commerce will consider, among other factors: (i) corporate or family groupings; (ii) franchise or joint venture agreements; (iii) debt financing; and (iv) close supplier relationships.

Control between persons may exist in close supplier relationships in which either party becomes reliant on one another.<sup>552</sup> With respect to close supplier relationships, Commerce has determined that the threshold issue is whether either the buyer or seller has, in fact, become reliant on the other. Only if such reliance exists does Commerce then determine whether one of the parties is in a position to exercise restraint or direction over the other.<sup>553</sup> Commerce will not, however, find affiliation on the basis of this factor unless the relationship has the potential to affect decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.<sup>554</sup>

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<sup>549</sup> *Id.* at 45.

<sup>550</sup> *Id.* at 46 (citing *Cold-Rolled CORE from Korea*).

<sup>551</sup> See U.S. Steel Rebuttal Brief, at 47.

<sup>552</sup> See, e.g., SAA, at 838.

<sup>553</sup> See, e.g., *Wood Flooring from China LTFV Final Determination* and accompanying Issues and Decision Memorandum, at Comment 21.

<sup>554</sup> See 19 CFR 351.102(b)(3).

In establishing whether there is a close supplier relationship, Commerce normally looks to whether one of the parties has become reliant on the other. However, in this situation, the argument for affiliation has gone beyond a close supplier relationship since the *OCTG from Korea Investigation*. POSCO has been involved in both the production and sales sides of NEXTEEL's operations involving subject merchandise throughout each segment of this proceeding.<sup>555</sup> The combination of its involvement on both the production and sales sides has created a unique situation where POSCO has been operationally in a position to exercise restraint or direction over NEXTEEL in a manner that affected the pricing, production, and sale of OCTG.

The preamble to Commerce's regulations states that section 771(33) of the Act, which refers to a person being "in a position to exercise restraint or direction," properly focuses Commerce on the *ability* to exercise "control," rather than the actual exercise of control over specific transactions. In this case, given POSCO's involvement as a supplier, as well as its involvement in the sales process, Commerce has previously found that POSCO has been in a unique position to exercise restraint or control over NEXTEEL.

NEXTEEL argues that, since the LTFV investigation, NEXTEEL's purchases of HRC from suppliers other than POSCO and POSCO affiliates have increased, while NEXTEEL's sales through POSCO Daewoo have decreased, as evidenced by information on the record of the instant review period.<sup>556</sup> Given the changes to the percentages of NEXTEEL's sales to POSCO and POSCO's affiliates, particularly, we find that the record no longer supports finding that NEXTEEL is affiliated with POSCO and POSCO Daewoo. We agree with NEXTEEL that the significant decline in its U.S. sales through POSCO Daewoo in the instant review period warrants finding that affiliation no longer exists between the two companies.

Record information shows that, during the POR, NEXTEEL purchased the majority of its HRC inputs from POSCO for the production of OCTG.<sup>557</sup> Record information also shows that, while NEXTEEL continued to sell OCTG through POSCO Daewoo during the POR, the percentage of NEXTEEL's sales of OCTG sold through POSCO Daewoo was significantly lower than the percentage of NEXTEEL's sales of OCTG through POSCO Daewoo during the LTFV investigation.<sup>558</sup> In the current POR, POSCO Daewoo's involvement in selling NEXTEEL's OCTG was relatively minor and, thus, does not support a finding that POSCO was in a position to exercise restraint or control over NEXTEEL. Since NEXTEEL's sales through POSCO Daewoo have declined by such a significant amount as compared with the LTFV investigation, we find that the "unique situation" created by the combination of NEXTEEL's involvement on both the production and sales sides of OCTG does not exist in this review period.<sup>559</sup>

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<sup>555</sup> See, e.g., NEXTEEL's Sales Verification Exhibit SV-5.

<sup>556</sup> See *id.* at 6; see also NEXTEEL Final Sales Calculation Memorandum; NEXTEEL's combined NEXTEEL/PDA U.S. sales database, NXPDAUS02, submitted with NEXTEEL's June 7, 2018 Supplemental Response.

<sup>557</sup> *Id.*

<sup>558</sup> See *id.*; see also *Preliminary Results* and accompanying Preliminary Decision Memorandum, at 9-10; U.S. Steel Rebuttal Brief, at 44.

<sup>559</sup> See *OCTG from Korea POR 1* and accompanying Issues and Decision Memorandum, at 124-127; see also NEXTEEL's Sales Verification Exhibit SV-5.

For these reasons, the record evidence does not support a finding that POSCO has the ability to exercise control or restraint over NEXTEEL, as required by the statute for finding affiliation.<sup>560</sup> Therefore, given the change to the percentage of NEXTEEL's sales through POSCO Daewoo, we find that the record no longer supports finding that NEXTEEL is affiliated with POSCO in the current POR.

Further, while the record in this administrative review is clear that the sales through POSCO Daewoo have significantly declined since the LTFV investigation, the record is unclear as to the reason behind the significant decline of OCTG sales through POSCO Daewoo. Accordingly, should NEXTEEL be selected as a mandatory respondent in a subsequent administrative review, we intend to further develop the record regarding the relationship between NEXTEEL and POSCO, including the sales relationship and activity related to POSCO in selling OCTG to the United States.

### **Comment 11: Resales of Merchandise from First Review**

#### *NEXTEEL Comments:*

- During the first administrative review, NEXTEEL's reseller, POSCO Daewoo, reported sales of subject merchandise in its U.S. sales database that were sold to a customer that refused to accept a certain portion of those sales. Nevertheless, Commerce calculated a margin for the first review inclusive of the rejected sales.<sup>561</sup>
- Since the first review, POSCO Daewoo found another purchaser for those goods and sold the merchandise to the new customer(s). For the merchandise that was resold during the current review period, NEXTEEL reported the resold merchandise in its U.S. sales database. Commerce however, should remove those sales from the U.S. sales database for the final results, as it can only review that entry one time.<sup>562</sup>
- Section 772(b) of the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States."<sup>563</sup> While POSCO Daewoo reported the second sale of said merchandise in the sales database of this review, the first sale was already reported to Commerce during the first review period. Commerce therefore, should therefore remove the resold merchandise from the U.S. sales database reported in the current review.

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<sup>560</sup> See Section 771(33) of the Act; *see also* 19 CFR 351.102(b)(3).

<sup>561</sup> See *id.* at 63; *see also* NEXTEEL's Sales Verification Exhibit SV-5; POSCO Daewoo Section A Response, dated February 9, 2018, at A-18; POSCO Daewoo Sections C-E Response, dated February 27, 2018, at C-7.

<sup>562</sup> See NEXTEEL Case Brief, at 64 (citing *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 40492 (July 15, 2008) (*Frozen Warmwater Shrimp from India*) and accompanying Issues and Decision Memorandum, at Comment 8; *Notice of Preliminary Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia*, 72 FR 30773 (June 4, 2007), at 30774; unchanged in *Notice of Final Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia*, 72 FR 57298 (October 9, 2007) (*Concrete Reinforcing Bars from Latvia*)).

<sup>563</sup> See NEXTEEL Case Brief, at 64.



*U.S. Steel Rebuttal Comments:*

- The record demonstrates that the sales in question did not constitute actual sales to the first unrelated customer, because the customer declined acceptance of said merchandise in the first administrative review.<sup>564</sup>
- NEXTEEL's reliance upon *Frozen Warmwater Shrimp from India* and *Concrete Reinforcing Bars from Latvia* as Commerce precedent to exclude sales that have already been reviewed is misplaced, as those cases pertained to instances where the same entry was reported in two different proceedings and did not pertain to cancelled sales.<sup>565</sup>
- Commerce's practice is to exclude cancelled sales and include resales in the current period in the margin calculation, consistent, for instance, with *Large Residential Washers from Korea* in which the sale was cancelled and then resold.<sup>566</sup>
- NEXTEEL misinterprets the statute under section 772(b) of the Act as a basis to consider the first sale to the unrelated customer to be the cancelled sale and the second sale to be the resale reported in this administrative review. Because the sale that took place in the first review period was cancelled, it never occurred; thus, the sale in this review constitutes the first sale to the unaffiliated customer.<sup>567</sup>

**Commerce Position:** NEXTEEL correctly points to section 751(a)(2)(A) of the Act, which directs Commerce to calculate CEP based on the price at which the merchandise was first sold. That is, while subject merchandise may be resold to an unaffiliated customer, Commerce is concerned with the sale to the first unaffiliated party to calculate CEP. Because the merchandise at issue was sold and thus, reported to Commerce, during the first review period, and then resold in the current review period, we first look to determine which transaction constitutes the first sale to the unaffiliated customer.

Record evidence demonstrates that after it was resold, the merchandise went to an unaffiliated further-processor's yard (FP facility) located within the United States.<sup>568</sup> As discussed in the NEXTEEL verification report, company officials presented to us a package (Linkage Packet) that identified the records maintained by both NEXTEEL and PDA used to reconcile the initial sale and the resale of the subject merchandise, including spreadsheets, invoices and entry summaries.<sup>569</sup> Included in this packet was also PDA's Inventory Listing, which identified the location of the FP facility at which the rejected merchandise was stored.<sup>570</sup> While not identified in that verification exhibit, the address of the FP facility is included in POSCO Daewoo's questionnaire response.<sup>571</sup> Thus, the merchandise in question was entered into the United States only one time, during the first review period and we included it in our dumping calculations in the first administrative review.

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<sup>564</sup> See U.S. Steel Rebuttal Brief, at 47.

<sup>565</sup> *Id.* at 48 (citing *Frozen Warmwater Shrimp from India* and accompanying Issues and Decision Memorandum, at Comment 8; *Concrete Reinforcing Bars from Latvia* and accompanying Issues and Decision Memorandum).

<sup>566</sup> *Id.* at 49 (citing *Large Residential Washers from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review*; 2012-2014, 80 FR 55595 (September 16, 2015) (*Large Residential Washers from Korea*)).

<sup>567</sup> See *id.* at 49-50; see also 772(b) of the Act.

<sup>568</sup> See Letter, "Oil Country Tubular Goods from the Republic of Korea: POSCO Daewoo's Section A Questionnaire Response," dated February 12, 2018 (PDA Section A Response), at 11-12.

<sup>569</sup> See NEXTEEL Sales Verification Report, at 7 and sales verification exhibit (SV) – PD-5.

<sup>570</sup> See SV-PD-5, at 3.

<sup>571</sup> See PDA, dated February 12, 2018, at Exhibit A-13-C.

We disagree with U.S. Steel’s reasoning that because the merchandise was resold, the resold merchandise thereby constitutes the “first sale.” U.S. Steel points to *Large Residential Washers from Korea*, as that case dealt with merchandise that was cancelled and then resold. However, in that case, Commerce also indicated that in accordance with section 751(a)(2)(A), Commerce is required to calculate the dumping margin for each entry of subject merchandise. That is, Commerce reviews an entry only once. Further, Commerce noted in that case the inability of the respondent to demonstrate that the merchandise had already been reported and thus, reviewed by Commerce. Specifically, Commerce stated that “LGE’s argument would have merit if LGE were to have demonstrated that the sales reported in its defective sales database are the resales of merchandise already reported in the non-defective database.”<sup>572</sup> Furthermore, regardless of whether the merchandise at issue was cancelled, the question is whether respondent can report a linkage between the original sale and the resale, corresponding with our practice to review an entry only one time. This practice has been enumerated in previous cases, including *Frozen Warmwater Shrimp from India*,<sup>573</sup> *Concrete Reinforcing Bars from Latvia*,<sup>574</sup> and *Wire Rods from India*.<sup>575</sup> In this case, NEXTEEL provided the requisite information to demonstrate that the merchandise at issue was reviewed by Commerce during the first review period. Therefore, for the final results of review, we have removed the resales from NEXTEEL’s margin calculation and will not calculate and assess additional antidumping duties on the merchandise at issue, given that the duties were already assessed on the same merchandise in the first administrative review.

## Comment 12: Non-Prime Products

### *NEXTEEL’s Comments:*

- In the *Preliminary Results*, Commerce allocated the total OCTG manufacturing costs, less the sales revenue of non-prime products, to total prime OCTG products, based on the premise that non-prime pipe cannot be used for the same application as prime products.
- Commerce’s adjustment was inappropriate and should be eliminated in the final results. In *OCTG from Ukraine*,<sup>576</sup> Commerce held that non-prime OCTG is, in fact, subject merchandise.

<sup>572</sup> See *Large Residential Washers from Korea* and accompanying Issues and Decision Memorandum, at Comment 3.

<sup>573</sup> See *Frozen Warmwater Shrimp from India* and accompanying Issues and Decision Memorandum, at Comment 8.

<sup>574</sup> See *Concrete Reinforcing Bars from Latvia*, 72 FR at 30774.

<sup>575</sup> See *Issues and Decision Memorandum for Mukand Limited in the Antidumping Duty Administrative Review of Stainless Steel Wire Rods from India for the Period of Review December 1, 2004, through November 30, 2005*, 71 FR 40696 (July 18, 2006) (*Wire Rods from India*).

<sup>576</sup> See NEXTEEL’s Case Brief at 65 (citing *Certain Oil Country Tubular Goods from Ukraine: 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*)).

- If Commerce determines that an adjustment is required, Commerce should correct several clerical errors in its calculation. In Commerce's adjustment, the calculation of the average revenue per metric ton (MT) appears to be understated.<sup>577</sup>
- Further, to calculate the amount to be allocated to prime OCTG products, Commerce compared the per unit weighted-average cost of manufacture (COM) of all products to the per unit average sales value of non-prime products. However, this amount should be derived using the per unit weighted-average COM of non-prime products only.<sup>578</sup>

*U.S. Steel's Rebuttal Comments:*

- In the *Preliminary Results*, Commerce reallocated costs for non-prime products because, according to NEXTEEL, its non-prime products are not capable of being used for the same applications as prime OCTG.<sup>579</sup>
- In *OCTG from Ukraine*, Commerce found that the rejected OCTG merchandise was within the scope of the investigation and required the respondent to report the sales as non-prime.<sup>580</sup> In the instant case, NEXTEEL only sold prime merchandise to the United States during the POR and reported no sales of defective pipe.
- In the *OCTG from Korea Final Determination*,<sup>581</sup> Commerce addressed the appropriateness of assigning full cost to non-prime products. Specifically, Commerce allocated a portion of the manufacturing costs of respondent's non-prime products costs to prime OCTG because it found that downgraded non-prime pipe cannot be used in the same applications as the subject merchandise. This issue was not addressed in *OCTG from Ukraine*.
- In the instant case, Commerce correctly determined that non-prime products should not be allocated full costs in accordance with established practice.
- Contrary to NEXTEEL's claims, Commerce's calculation does not include clerical errors. For the final results, Commerce should not make changes to its calculation.

**Commerce Position:** NEXTEEL's non-prime products should not be allocated full cost because they are not capable of being used for the same applications as prime OCTG. As explained in *OCTG from Korea Final Determination* and *OCTG from Korea POR 1*, the issue here is whether the non-prime products can still be used in the same applications as the subject merchandise (*i.e.*, whether it is still OCTG).<sup>582</sup> The downgrading of a product from one grade to another will vary from case to case. Sometimes the downgrading is minor, and the product remains within a product group, while at other times the downgraded product differs significantly, and it no longer belongs to the same group and cannot be used in the same applications as the prime product.

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<sup>577</sup> See NEXTEEL's Case Brief at 65 (citing Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the *Preliminary Results* – NEXTEEL Co., Ltd.," dated October 3, 2018 (NEXTEEL's Preliminary Cost Calculation Memorandum), at 2).

<sup>578</sup> See NEXTEEL's Case Brief at 65-66 (citing NEXTEEL's Preliminary Cost Calculation Memorandum, at Attachments 4A and 4B).

<sup>579</sup> See U.S. Steel's Rebuttal Brief at 50 (citing NEXTEEL's Preliminary Cost Calculation Memorandum, at 2).

<sup>580</sup> See U.S. Steel's Rebuttal Brief at 51 (citing *OCTG from Ukraine* and accompanying Issues and Decision Memorandum, at Comment 2).

<sup>581</sup> See U.S. Steel's Rebuttal Brief, at 51 (citing *OCTG from Korea Final Determination* and accompanying Issues and Decision Memorandum, at Comment 18).

<sup>582</sup> See *OCTG from Korea Final Determination* and accompanying Issues and Decision Memorandum, at Comment 18; see also *OCTG from Korea POR 1* and accompanying Issues and Decision Memorandum, at Comment 33.

Consequently, if the product is not capable of being used for the same applications, the product's market value is usually significantly impaired, often to a point where its full cost cannot be recovered. Therefore, instead of attempting to judge the relative values and qualities between grades, Commerce adopted the reasonable practice of looking at whether the downgraded product can still be used in the same applications as its prime counterparts.<sup>583</sup>

With this distinction in mind, we have reviewed the information on the record of this review related to NEXTEEL's downgraded merchandise that is detected at the final testing stage of the production process. We find that NEXTEEL's reliance on *OCTG from Ukraine* is misplaced. In *OCTG from Ukraine*, the rejected OCTG merchandise that Commerce found was within the scope of the investigation consisted of products that entered the United States as OCTG and, subsequent to the entry, upon inspection, were deemed to be damaged or otherwise non-compliant with API standards and could not be repaired in a way to make them meet these standards.<sup>584</sup> In the instant case, the merchandise initially intended to be produced as OCTG was downgraded to non-prime at the end of the production process and was never certified to be sold as OCTG. According to NEXTEEL, non-prime products cannot be used in the same applications as the OCTG products subject to the investigation. Pipes that are downgraded at the final testing stage on the OCTG production lines do not meet the strict technical requirements specified in the API 5CT standards for these products and are unsuitable for use in applications defined under API 5CT. NEXTEEL does not issue a mill certificate for the products downgraded to non-prime and they are generally used for structural purposes such as pile.<sup>585</sup> In addition, the sales (*i.e.*, market) prices of NEXTEEL's downgraded non-prime products are considerably less than the full production costs that the company assigns to them in the normal course of business.<sup>586</sup> The difference between the cost and the sales price of the non-prime products is in large part due to the fact that these products are not OCTG and cannot be used in the same applications as the specialized, high-value OCTG products. Consequently, assigning full costs to these non-prime products does not reasonably reflect the costs associated with the production and sale of the merchandise. Therefore, for the final results, we have continued to adjust NEXTEEL's reported costs to value the downgraded non-prime products at their sales price, while allocating the difference between the full production cost and market value of the non-prime products to the production costs of prime-quality OCTG.

Further, Commerce's adjustment calculation does not include clerical errors. The average revenue per MT amount calculated by Commerce is not understated. The difference between the average revenue of non-prime products as calculated by NEXTEEL and Commerce is due to

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<sup>583</sup> See *OCTG from Korea Final Determination* and accompanying Issues and Decision Memorandum, at Comment 18; see also *OCTG from Korea POR 1* and accompanying Issues and Decision Memorandum, at Comment 33; *Steel Concrete Reinforcing Bar From Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 79 FR 21986 (September 15, 2014) (*Rebar from Turkey*), and accompanying Issues and Decision Memorandum, at Comment 15; *Welded Line Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) and accompanying Issues and Decision Memorandum, at Comment 9.

<sup>584</sup> See *OCTG from Ukraine* and accompanying Issues and Decision Memorandum, at Comment 2.

<sup>585</sup> See NEXTEEL's July 13, 2018 supplemental sections A-D questionnaire response, at 4-6; see also NEXTEEL's August 13, 2018 supplemental section D questionnaire response, at 11-14. Exhibit SD2-5.

<sup>586</sup> See NEXTEEL's Preliminary Cost Calculation Memorandum, at Attachments 4A and 4B.

rounding. The quantity used in Commerce's calculation was obtained from the electronic version of Exhibit SD2-17-g (*i.e.*, "SD2-17-g.xlsx"), which includes all decimal places.<sup>587</sup> Further, Commerce's calculation of the average net loss is correct. As explained in *OCTG from Korea POR I*, NEXTEEL's methodology fails to recognize that the per unit CONNUM-specific weighted-average COM reported in its cost database includes both prime OCTG and non-prime products. Accordingly, it is appropriate to calculate the amount to be allocated to prime OCTG products using the per unit weighted-average COM of all products because the resulting adjustment will be applied to a per unit weighted-average COM that includes both prime OCTG and non-prime products. Therefore, for the final results, we have not made changes to the calculation.

### **Comment 13: Warranty Expense Calculation**

#### *NEXTEEL's Comments:*

- In the *Preliminary Results*, Commerce double-counted NEXTEEL's reported warranty expenses by summing together the values reported in the two warranty expense fields (*i.e.*, WARRU and WARRU2).<sup>588</sup>
- NEXTEEL reported its three-year warranty expenses on a per-unit basis under WARRU field, consistent with Commerce's calculation methodology. However, in response to Commerce's supplemental questionnaire, NEXTEEL reported transaction-specific expenses paid during the POR under the WARRU2 field. Thus, adding together the values reported under both fields results in double counting, which should be corrected for the final results of review.<sup>589</sup>

*No other parties commented on this issue.*

**Commerce Position:** We agree with NEXTEEL, and we have removed the WARRU2 variable from the calculation of direct selling expenses for the final results of review, in order to accurately reflect NEXTEEL's warranty expenses.

### **Comment 14: Reported Grade**

#### *U.S. Steel's Comments:*

- NEXTEEL did not consistently report the grade of certain products and incorrectly reported information in the PRODCOD1U database field, as evidenced in the NEXTEEL verification exhibits. Because the CONNUM construct should properly reflect the physical characteristics of the merchandise under review, NEXTEEL should revise the information reported for certain products for the final results of review.<sup>590</sup>

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<sup>587</sup> See NEXTEEL's August 13, 2018 supplemental section D questionnaire response; *see also* NEXTEEL's Preliminary Cost Calculation Memorandum, at Attachments 4A and 4B.

<sup>588</sup> See SeAH Case Brief, at 68.

<sup>589</sup> *Id.* at 68-69.

<sup>590</sup> See U.S. Steel's Case Brief, at 9-10. Because certain aspects of this issue are business proprietary; *see also* NEXTEEL Final Sales Calculation Memorandum.

*NEXTEEL's Rebuttal Comments:*

- U.S. Steel claims, incorrectly, that NEXTEEL did not report CONNUM data for certain sales.<sup>591</sup> However, record information demonstrates that NEXTEEL reported all information in the form and manner requested by Commerce; thus, there is no basis to modify the CONNUM, as U.S. Steel suggests.
- The claimed inconsistency applies to a single record in PDA's U.S. sales database that is linked to multiple NEXTEEL sales that entered during the first review period and subsequently underwent further manufacturing.<sup>592</sup>
- NEXTEEL reported these sales consistent with Commerce's instructions in its supplemental questionnaire, such that the record reflects both the "as imported" and "as sold" product thus, taking into account the further processing activities (*e.g.*, coupling and threading).<sup>593</sup>

**Commerce Position:** We disagree with U.S. Steel and have not made a change to NEXTEEL's CONNUM, as suggested by U.S. Steel. As stated in the SAA, the "...starting point for model matching is always the physical characteristics of the product."<sup>594</sup> Commerce carefully examines model-matching characteristics during the LTFV investigation and requests information from respondents in each segment of the proceeding on the product characteristics used to construct the control numbers for model-matching purposes during the investigation and subsequent reviews.

In the current review, we collected information regarding NEXTEEL's product characteristics for the merchandise under review and examined them, in detail, during verification, including products that were further manufactured. As discussed in the verification report, our examination of the products produced and sold, including the product at issue, was consistent with the information reported to Commerce in its questionnaire response.<sup>595</sup>

**Comment 15: Suspended Production Loss**

*NEXTEEL's Comments:*

- NEXTEEL suspended production in one of its plants' slitting and threading lines during the POR. In the *Preliminary Results*, Commerce revised NEXTEEL's general and administrative (G&A) expense rate to include the suspended production loss amount in the G&A expenses and exclude the loss from the cost of goods sold (COGS) denominator.<sup>596</sup> Commerce determined that because production was suspended for an extended period of time, the loss related to the company as a whole.

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<sup>591</sup> See NEXTEEL's Rebuttal Brief at 5. Because certain aspects of NEXTEEL's rebuttal arguments are business proprietary; *see also* NEXTEEL Final Sales Calculation Memorandum.

<sup>592</sup> See NEXTEEL Rebuttal Brief, at 5.

<sup>593</sup> See *id.* at 6-8; *see also* PDA's August 14, 2018, Supplemental Response, at SE-6; PDA's U.S. sales database, PDAUS02, submitted with PDA's June 7, 2018 Supplemental Response; NEXTEEL'S June 7, 2018 Sections A-D Supplemental Response, at SC-12 (responding to Commerce's request to include a second CONNUM on the data files reflecting the product "as sold").

<sup>594</sup> See SAA, at 27378.

<sup>595</sup> Because certain aspects of this discussion are proprietary, in nature, *see* NEXTEEL Final Sales Calculation Memorandum.

<sup>596</sup> See NEXTEEL's Case Brief at 66 (citing NEXTEEL's Preliminary Cost Calculation Memorandum, at 3.

- NEXTEEL did not include the suspended loss in the reported costs because in its normal books and records NEXTEEL recorded the costs related to these lines directly to COGS, not as part of COM.
- The suspended production loss is not related to the company's overall management of its operations, but rather consisted of manufacturing related costs, borne by the products manufactured on the lines that were shut down. Further, these costs should not be reclassified as general because they are temporary and limited in nature.
- If Commerce determines that the suspended production loss should be allocated to all products, an adjustment to total COM would be more appropriate.

*U.S. Steel's Rebuttal Comments:*

- Commerce's practice with respect to suspended losses is to include them in G&A expenses, because the costs represent a burden to the company as a whole.<sup>597</sup>
- Contrary to NEXTEEL's claim, record evidence demonstrates that the shutdowns were for extended periods of time (*e.g.*, twelve months for the threading production line).<sup>598</sup>
- For the final results, Commerce should continue to include the suspended production loss in the G&A expenses, because this loss was not attributed to any products and was incurred over an extended period of time.

**Commerce Position:** We agree with U.S. Steel that NEXTEEL suspended production for an extended period of time and that an adjustment to the reported G&A expenses is appropriate. As discussed in NEXTEEL's Cost Verification Report, the suspension loss relates to idled slitting (*i.e.*, used for skelp production) and threading (*i.e.*, used for OCTG production) lines in one of NEXTEEL's production facilities during fiscal years 2016 and 2017.<sup>599</sup> It is Commerce's normal practice to include routine shutdown expenses (*i.e.*, maintenance shutdowns) in a respondent's reported costs. In *Cement from Mexico*,<sup>600</sup> Commerce found that shutdown costs related to one of the respondent's facilities were properly included in the COM. However, in the instant review, the suspended loss is not related to a routine shutdown; rather, it relates to NEXTEEL's suspension of production on certain lines for an extended period of time.<sup>601</sup> As explained in *OCTG from Korea POR 1*, unlike a routine maintenance shutdown, once a production line is suspended, it no longer relates to the ongoing production. Regardless of the reason for the suspension, in contrast to the routine maintenance shutdowns, there are no longer products produced on those production lines or current intentions to produce products on those lines that can bear the burden of the costs associated with those production lines.<sup>602</sup> As such, because NEXTEEL suspended the production lines for an extended period of time, we consider

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<sup>597</sup> See U.S. Steel's Rebuttal Brief at 54, citing *OCTG from Korea POR 1* and accompanying Issues and Decision Memorandum, at Comment 34).

<sup>598</sup> See U.S. Steel's Rebuttal Brief at 55 (citing NEXTEEL's Case Brief, at 66).

<sup>599</sup> See Memorandum, "Verification of the Cost Response of NEXTEEL Co. Ltd. in the Antidumping Duty Administrative Review of Oil Country Tubular Goods from the Republic of Korea," dated December 20, 2018 (NEXTEEL's Cost Verification Report), at 2 and 13.

<sup>600</sup> See *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 17148 (April 9, 1997) (*Cement from Mexico*) and accompanying Issues and Decision Memorandum, at Comment 9.

<sup>601</sup> See NEXTEEL's Cost Verification Report, at Cost Verification Exhibit 6.

<sup>602</sup> See *OCTG from Korea POR 1* and accompanying Issues and Decision Memorandum, at Comment 34.

the associated costs to be related to the general operations of the company as a whole, and not specific to products associated with the production lines. Therefore, for the final results, we have continued to reclassify the suspended loss to G&A expenses. In addition, we have continued to exclude from the COGS denominator the reclassified suspended loss.

### **Comment 16: Coil Scrap Offset**

#### *U.S. Steel's Comments:*

- In the *Preliminary Results*, Commerce denied NEXTEEL's coil scrap offset because the coil scrap was not generated during the production of OCTG.<sup>603</sup>
- Commerce's established practice is to offset the NV calculation for a respondent whose manufacturing process generates a byproduct that it either sells or reuses in the production of the subject merchandise.<sup>604</sup>
- For the final results, Commerce should continue to deny the offset for coil scrap because NEXTEEL's coil scrap is not generated during the production of OCTG.

*No other parties commented on this issue.*

**Commerce Position:** We agree with U.S. Steel that Commerce's established practice is to offset the NV calculation for a respondent whose manufacturing process generates a byproduct that it either sells or reuses in the production of the subject merchandise.<sup>605</sup> As discussed in NEXTEEL's Cost Verification Report, NEXTEEL reduced its reported costs by scrap revenue which includes coil scrap, side scrap, and pipe scrap. However, the coil scrap was not generated during the production of OCTG (*i.e.*, during the slitting, forming, quenching or tempering processes).<sup>606</sup> Because the coil scrap NEXTEEL used to offset the reported costs was not generated during the production of OCTG, for the final results, we have continued to exclude the offset taken for coil scrap.

### **Comment 17: Pipe Scrap Offset**

#### *U.S. Steel's Comments:*

- NEXTEEL's pipe scrap offset is an estimated amount (*i.e.*, the difference between the total HRC input and finished OCTG output volumes) because NEXTEEL normally does not track actual scrap production.<sup>607</sup>
- NEXTEEL's generated pipe scrap amount, used to offset COM, exceeds its pipe scrap sales.
- NEXTEEL does not record journal entries for scrap production or scrap COGS and only tracks the quantity and value of the scrap sold.<sup>608</sup>

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<sup>603</sup> See U.S. Steel's Case Brief, at 2 (citing NEXTEEL's Preliminary Cost Calculation Memorandum, at 2).

<sup>604</sup> See U.S. Steel's Case Brief, at 2-3 (citing *Tianjin Magnesium Int'l Co. v. United States*, 722 F. Supp. 2d 1322, 1334 (CIT 2010)).

<sup>605</sup> See *Tianjin Magnesium Int'l Co. v. United States*, 722 F. Supp. 2d 1322, 1334 (CIT 2010).

<sup>606</sup> See NEXTEEL's Cost Verification Report, at 2 and 11.

<sup>607</sup> See U.S. Steel's Case Brief, at 5 (citing NEXTEEL's Cost Verification Report, at 7 and 21).

<sup>608</sup> See U.S. Steel's Case Brief, at 6 (citing NEXTEEL's Second Supplemental Section D Questionnaire Response, at 8 and 9).



- In the scrap inventory, NEXTEEL adjusts its scrap sales, relying on theoretical “transfer-in” and “transfer-out” amounts, to arrive at a theoretical pipe scrap generated amount.
- Commerce should not allow NEXTEEL to use an unsupported pipe scrap offset amount to offset its reported costs.
- For the final results, Commerce should adjust NEXTEEL’s reported pipe scrap offset based on the value of pipe scrap that NEXTEEL actually sold.

*NEXTEEL’s Rebuttal Comments:*

- Contrary to U.S. Steel’s claims, NEXTEEL tracks scrap quantities in its normal books and records. The record shows that NEXTEEL measures yield loss and allocates all manufacturing costs to net production quantities.
- NEXTEEL accounts for differences between the inventory values of scrap generated and scrap sold (*e.g.*, weight, timing, *etc.*) through in and out transfers. In addition, NEXTEEL’s pipe scrap can be sold as side scrap.<sup>609</sup>
- If Commerce determines that NEXTEEL’s scrap offset should be reduced to the amount sold, its analysis must combine side and pipe scrap.

**Commerce Position:** NEXTEEL reported scrap offsets based on amounts for two types of scrap (*i.e.*, side scrap and pipe scrap), both valued at their respective sold values. The quantity of side scrap sold was greater than the amount calculated as side scrap generated, and pipe scrap sold was less than the amount calculated as pipe scrap generated. We agree with NEXTEEL that in its normal books and records the company tracks scrap quantities and measures yield loss. However, the scrap quantities tracked by NEXTEEL are not based on the actual weight of the generated scrap but, instead, are calculated quantities, in part based on yields. As discussed in NEXTEEL’s cost verification report, company officials explained that NEXTEEL does not record an accounting entry for scrap generation. Instead, NEXTEEL assumes that the scrap produced and the scrap sold are the same every month. Scrap is only weighed at the time of the sale and an accounting entry is then recorded.<sup>610</sup>

Further, as detailed in NEXTEEL’s cost verification report, amounts are transferred between the two types of scrap. For example, the record shows that “transfer in” includes pipe reclassified as scrap and the “transfer out” includes pipe scrap reclassified as miscellaneous scrap due to its shape.<sup>611</sup> In short, the two accounts are comingled. Therefore, we agree with NEXTEEL that the analysis of the scrap offset must combine “side” and “pipe” scrap. Commerce’s practice with respect to by-product offsets is to allow such offsets based on the amount of by-product generated, once the by-product has been shown to have commercial value, through evidence of sales or reintroduction into the production process.<sup>612</sup>

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<sup>609</sup> See NEXTEEL’s Rebuttal Brief, at 2-3 (citing, *e.g.*, NEXTEEL’s Second Supplemental Section D Questionnaire Response, at 8 and Exhibit SD2-16; NEXTEEL’s Cost Verification Report, at 21).

<sup>610</sup> See NEXTEEL’s Cost Verification Report, at 21.

<sup>611</sup> *Id.*

<sup>612</sup> See, *e.g.*, *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany: Final Determination of Sales at Less Than Fair Value*, 82 FR 16360 (April 4, 2017) and accompanying Issues and Decision Memorandum, at Comment 14.

The record of this investigation demonstrates that NEXTEEL tracks scrap quantities and measures yield loss. However, the scrap NEXTEEL generates is only weighed at the time of the sale and the entire amount is sold every month. Therefore, because NEXTEEL has indicated that the total monthly scrap amount is sold every month, for the final determination, we have revised NEXTEEL's reported costs to reflect a scrap offset based on the value of the combined side and pipe scrap sold during the POR as the combined sold quantity was less than the reported combined generated quantity.

## VII. RECOMMENDATION

We recommend following the above methodology for these final results.



\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

5/17/2019

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

## Appendix

### List of Companies Not Individually Examined

AJU Besteel Co., Ltd.  
BDP International  
Daewoo International Corporation  
Daewoo America  
Dong-A Steel Co. Ltd.  
Dong Yang Steel Pipe  
Dongbu Incheon Steel  
DSEC  
Erndtebruecker Eisenwerk and Company  
Hansol Metal  
Husteel Co., Ltd.  
HYSCO  
Hyundai RB  
Hyundai Steel Co., Ltd.  
Hyundai Steel Company<sup>613</sup>  
ILJIN Steel Corporation  
Jim And Freight Co., Ltd.  
Kia Steel Co. Ltd.  
KSP Steel Company  
Kukje Steel  
Kurvers  
POSCO Daewoo Corporation  
POSCO Daewoo America  
Steel Canada  
Sumitomo Corporation  
TGS Pipe  
Yonghyun Base Materials  
ZEECO Asia

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<sup>613</sup> On September 21, 2016, Commerce published the final results of a changed circumstances review with respect to OCTG from Korea, finding that Hyundai Steel Corporation is the successor-in-interest to Hyundai HYSCO for purposes of determining antidumping duty cash deposits and liabilities. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Oil Country Tubular Goods from the Republic of Korea*, 81 FR 64873 (September 21, 2016). Hyundai Steel Corporation is also known as Hyundai Steel Company and Hyundai Steel Co. Ltd.