



A-580-876

POR: 12/01/2017 - 11/30/2018

Public Document

E&C/OII: DJG

January 31, 2020

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

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the 2017-2018 Administrative Review of the Antidumping Duty Order on Welded Line Pipe from the Republic of Korea

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on welded line pipe (WLP) from the Republic of Korea (Korea), in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). The period of review (POR) is December 1, 2017 through November 30, 2018. The administrative review covers 32 producers/exporters of the subject merchandise. Commerce selected two respondents for individual examination, NEXTEEL Co., Ltd. (NEXTEEL), and SeAH Steel Corporation (SeAH). We preliminarily determine that sales of the subject merchandise have been made at prices below normal value (NV) during the POR.

II. BACKGROUND

In December 2015, Commerce published in the *Federal Register* an AD order on WLP from Korea.¹ On December 3, 2018, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the AD order on WLP from Korea for the period December 1, 2017 through November 30, 2018.² Pursuant to section 751(a)(1) of the Act, and 19 CFR 351.213(b)(1), the following parties submitted requests to conduct an administrative review: the Domestic Interested Parties;³ SeAH; Hyundai Steel Company (Hyundai Steel);

¹ See *Welded Line Pipe from the Republic of Korea and the Republic of Turkey: Antidumping Duty Orders*, 80 FR 75056 (December 1, 2015).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 62293 (December 3, 2018).

³ The Domestic Interested Parties are: Maverick Tube Corporation (Maverick), Stupp Bros., Inc., American Cast Iron Pipe Company, California Steel Industries, TMK IPSCO, and Welspun Tubular LLC USA.



Husteel Co., Ltd. (Husteel); and NEXTEEL.⁴ On March 14, 2019, based on these timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review on WLP from Korea.⁵

In the *Initiation Notice*, Commerce indicated that, in the event that we limit the respondents selected for individual examination, in accordance with section 777A(c)(2) of the Act, we would select mandatory respondents for individual examination based upon U.S. Customs and Border Protection (CBP) entry data.⁶ On March 14, 2019, Commerce released U.S. import data from CBP and provided an opportunity for interested parties to comment on these data.⁷ We did not receive any such comments.

In March 2019, after considering the large number of potential producers/exporters involved in this administrative review, and the resources available to Commerce, we determined that it was not practicable to examine all exporters/producers of subject merchandise for which a review was requested.⁸ As a result, pursuant to section 777A(c)(2)(B) of the Act, we determined that we could reasonably individually examine the two largest producers/exporters accounting for the largest volume of WLP from Korea during the POR (*i.e.*, NEXTEEL and SeAH).⁹ Accordingly, in April 2019 we issued the AD questionnaire to these companies.

From April to May 2019, NEXTEEL and SeAH submitted timely responses to Commerce's AD questionnaire.¹⁰ From August through November 2019, we issued supplemental questionnaires to both respondents. We received timely responses to these supplemental questionnaires from July through December 2019.¹¹

In June 2019, the Domestic Interested Parties submitted factual information alleging that Commerce should find that a particular market situation (PMS) existed in Korea during the

⁴ See Domestic Interested Parties' Letter, "Welded Line Pipe from the Republic of Korea: Request for Administrative Review," dated December 28, 2018; SeAH's, "Welded Line Pipe from Korea — Request for Administrative Review," dated December 31, 2018; Hyundai Steel' Letter, "Welded Line Pipe from the Republic of Korea - Request for Administrative Review," dated December 31, 2018; Husteel' Letter, "Welded Line Pipe from Korea, Case No. A-580-876: Request for Administrative Review," dated December 31, 2018; and NEXTEEL's Letter, "Welded Line Pipe from the Republic of Korea: Administrative Review Request," dated December 31, 2018.

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 9297 (March 14, 2019) (*Initiation Notice*).

⁶ *Id.*

⁷ See Memorandum, "Release of Customs Entry Data from U.S. Customs and Border Protection," dated March 14, 2019.

⁸ See Memorandum, "2017-2018 Antidumping Duty Administrative Review of Welded Line Pipe from the Republic of Korea: Respondent Selection," dated March 28, 2019.

⁹ *Id.*

¹⁰ See SeAH's April 29, 2019 Section A Questionnaire Response (SeAH AQR); NEXTEEL's April 29, 2019 Section A Questionnaire Response (NEXTEEL AQR); SeAH's May 21, 2019 Sections B through E Questionnaire Response (SeAH BCDEQR); and NEXTEEL's May 21, 2019 Sections C and D Questionnaire Response (NEXTEEL CDQR).

¹¹ See NEXTEEL's September 5, 2019 Supplemental Sections A, C, and D Response; SeAH's September 30, 2019 Supplemental Sections D and E Response; SeAH's October 2, 2019 Supplemental Sections A, B, and C Response (SeAH SQRBC); and NEXTEEL's December 4, 2019, Second Supplemental Section D Response.

POR.¹² On July 17, 2019, Commerce issued a letter inviting all interested parties to submit factual information and comments regarding the alleged PMS in this administrative review.¹³ On August 12, 2019, Hyundai Steel, NEXTEEL, and SeAH each submitted factual information and comments concerning the PMS allegation.¹⁴

In September 2019, we extended the preliminary results of this review to no later than January 31, 2020.¹⁵

III. SCOPE OF THE ORDER

The merchandise covered by this order is circular welded carbon and alloy steel (other than stainless steel) pipe of a kind used for oil or gas pipelines (welded line pipe), not more than 24 inches in nominal outside diameter, regardless of wall thickness, length, surface finish, end finish, or stenciling. Welded line pipe is normally produced to the American Petroleum Institute (API) specification 5L, but can be produced to comparable foreign specifications, to proprietary grades, or can be non-graded material. All pipe meeting the physical description set forth above, including multiple-stenciled pipe with an API or comparable foreign specification line pipe stencil is covered by the scope of this order.

The welded line pipe that is subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.5000, 7305.12.1030, 7305.12.5000, 7305.19.1030, 7305.19.5000, 7306.19.1010, 7306.19.1050, 7306.19.5110, and 7306.19.5150. The subject merchandise may also enter in HTSUS 7305.11.1060 and 7305.12.1060. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

IV. DISCUSSION OF THE METHODOLOGY

A. Date of Sale

Section 351.401(i) of Commerce's regulations states that, "[i]n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice,

¹² See Domestic Interested Parties' Letter, "Welded Line Pipe from the Republic of Korea: Particular Market Situation Allegation and Other Factual Information," dated June 24, 2019 (PMS Allegation). Maverick was not a party to this submission.

¹³ See Commerce's Letter to All Interested Parties, "2017-2018 Administrative Review of the Antidumping Duty Order on Welded Line Pipe from the Republic of Korea: Deadline for Submission of Factual Information Relating to Particular Market Situation Allegations," dated July 17, 2019 (PMS Letter).

¹⁴ See Hyundai Steel's Letter, Welded Line Pipe from the Republic of Korea: Rebuttal Factual Information Relating to PMS Allegation," dated August 12, 2019 (Hyundai Steel PMS Comments); NEXTEEL's, "Welded Line Pipe from the Republic of Korea: NEXTEEL's Particular Market Situation Comments and Rebuttal Factual Information," dated August 12, 2019 (NEXTEEL PMS Comments); and SeAH's Letter, "Antidumping Duty Administrative Review of Welded Line Pipe from Korea – Submission of Factual Information Rebutting, Clarifying, or Correcting Petitioners' Allegation of a Particular Market Situation," dated August 12, 2019 (SeAH PMS Comments).

¹⁵ See Memorandum, "Welded Line Pipe from the Republic of Korea: Extension of Deadline for Preliminary Results of 2017-2018 Antidumping Duty Administrative Review," dated September 6, 2019.

as recorded in the exporter or producer's records kept in the ordinary course of business." Further, the regulations provide that Commerce may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.¹⁶ Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.¹⁷

NEXTEEL reported the earlier of invoice date or factory shipment date as the date of sale for its U.S. sales.¹⁸ SeAH reported the earlier of invoice date or factory shipment date as the date of sale for all U.S. sales, and the invoice date as the date of sale for all home market sales.¹⁹ However, in our analysis of the home market sales database, we observed that, for certain of SeAH's home market sales, the reported shipment date preceded the reported invoice date.²⁰ Accordingly, we preliminarily followed Commerce's long-standing practice of basing the date of sale for all of SeAH's home market sales on the earlier of the invoice date or the shipment date.²¹

B. Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1), and (d), in order to determine whether NEXTEEL's and SeAH's sales of the subject merchandise from Korea to the United States were made at less than NV, Commerce compared the export price (EP) and constructed export price (CEP) to the NV as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average (A-A) method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value (LTFV) investigations, Commerce examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction (A-T) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative

¹⁶ See 19 CFR 351.401(i); see also *Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

¹⁷ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004) (*Shrimp from Thailand*), and accompanying Issues and Decision Memorandum (IDM) at Comment 10; and *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002) (*Steel Beams from Germany*), and accompanying IDM at Comment 2.

¹⁸ See NEXTEEL CDQR at C-13-C-14.

¹⁹ See SeAH BCDEQR at B-15 and C-12-C-13.

²⁰ See SeAH SQRBC at Appendix SB-1.

²¹ See, e.g., *Shrimp from Thailand* IDM at Comment 10; and *Steel Beams from Germany* IDM at Comment 2.

reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in LTFV investigations.²²

In numerous AD investigations and reviews, Commerce has applied a “differential pricing” analysis for determining whether application of the A-A method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.²³ Commerce finds that the differential pricing analysis used in investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the A-A method in calculating a respondent’s weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all U.S. sales by purchaser, region, and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the A-A method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the consolidated customer codes reported by the respondent. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR based upon the U.S. date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices

²² See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying IDM at Comment 1; see also *JBF RAK LLC v. United States*, 790 F. 3d 1358, 1363-65 (Fed. Cir. 2015) (“{t}he fact that the statute is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties”) (citations omitted).

²³ See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences 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.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the A-T method to all sales as an alternative to the A-A method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the A-A method and application of the A-A method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the A-A method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the A-A method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the A-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-A method cannot account for differences such as those observed in this analysis and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: (1) there is a 25 percent relative change in the weighted-average dumping margins between the A-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margins between the A-A method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may 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.

2. Results of the Differential Pricing Analysis

For NEXTEEL, based on the results of the differential pricing analysis, Commerce preliminarily finds that 89.15 percent of the value of U.S. sales pass the Cohen's *d* test,²⁴ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the A-A method cannot account for such differences because there is at least a 25 percent relative change between the weighted-average dumping margin calculated using the A-A method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the A-T method to those U.S. sales which passed the Cohen's *d* test and the A-A method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, Commerce is applying the A-T method to all U.S. sales to calculate the weighted-average dumping margin for NEXTEEL.

For SeAH, based on the results of the differential pricing analysis, Commerce preliminarily finds that 43.47 percent of the value of U.S. sales pass the Cohen's *d* test,²⁵ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the A-A method cannot account for such differences because there is at least a 25 percent relative change between the weighted-average dumping margin calculated using the A-A method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the A-T method to those U.S. sales which passed the Cohen's *d* test and the A-A method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, Commerce is applying the A-T method to those U.S. sales which passed the Cohen's *d* test and the A-A method to those sales which did not pass the Cohen's *d* test to calculate the weighted-average dumping margin for SeAH.

C. Product Comparisons

For NEXTEEL, we made product comparisons using constructed value (CV) because during the POR NEXTEEL did not have either a viable: (1) home market; or (2) third country market.

In accordance with section 771(16)(A) of the Act, we considered all products produced by SeAH covered by the description in the "Scope of the Order" section, above, and sold in the home market during the POR to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(f), we compared SeAH's U.S. sales of WLP to its sales of WLP made in the home market within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the month of the last U.S. sale.

Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(B) of the Act, we compared SeAH's U.S. sales to sales of the most similar foreign-like product or CV, as appropriate. In making the product comparisons, we matched foreign like products based on the

²⁴ See Memorandum, "Preliminary Results Margin Calculation for NEXTEEL Co., Ltd.," dated concurrently with this memorandum (NEXTEEL Preliminary Calculation Memorandum).

²⁵ See Memorandum, "Preliminary Results Margin Calculation for SeAH," dated concurrently with this memorandum (SeAH Preliminary Calculation Memorandum).

physical characteristics to the product sold in the United States. In the order of importance, these physical characteristics are as follows: epoxy finish, grade, outside diameter, wall thickness, end finish, and surface finish.

D. Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, we calculated EP for NEXTEEL's sales where the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of the record. For SeAH, we used CEP in accordance with section 772(b) of the Act, because the merchandise under consideration was sold in the United States by U.S. sellers affiliated with SeAH and EP was not otherwise warranted based on the facts of the record.

NEXTEEL

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight expenses, foreign brokerage and handling expenses, loading survey charges (offset by loading survey revenue), international freight expenses, marine insurance expenses, U.S. brokerage and handling expenses, and U.S. harbor maintenance fees. We capped loading survey revenue by the amount of loading survey expenses incurred on U.S. sales, in accordance with our practice.²⁶

SeAH

We calculated CEP based on packed prices to the first unaffiliated purchaser in the United States. We made adjustments, where appropriate, from the starting price for early payment discounts. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight expenses, foreign brokerage and handling expenses, international freight expenses, marine insurance expenses, U.S. inland freight from port to warehouse expenses, U.S. inland freight from warehouse to customer expenses (offset by U.S. inland freight revenue), U.S. brokerage and handling expenses, and U.S. harbor maintenance fees. We capped U.S. inland freight revenue by the amount of U.S. inland freight expenses incurred on U.S. sales, in accordance with our practice.²⁷ Regarding foreign inland freight expenses, SeAH used an affiliated company, SeAH L&S, to arrange for delivery of its merchandise to the port of exportation.²⁸ Because SeAH L&S did not provide the same service to unaffiliated parties, nor did SeAH use unaffiliated companies to arrange for its deliveries, we were unable to test the arm's-length nature of the fees paid by SeAH. Therefore, we based these expenses on the affiliate's costs.²⁹

²⁶ See, e.g., *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 63291 (October 16, 2012), and accompanying IDM at Comment 6.

²⁷ *Id.*

²⁸ See SeAH BCDEQR at C-30.

²⁹ See SeAH Preliminary Calculation Memorandum.

In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which include direct selling expenses (*i.e.*, imputed credit expenses, warranty expenses, and bank charges) and indirect selling expenses. Additionally, in accordance with section 772(d)(2) of the Act, we deducted further manufacturing expenses in calculating CEP. We adjusted the further manufacturing expenses incurred in the United States by SeAH's affiliates, Pusan Pipe America, Inc. (PPA) and State Pipe and Supply, Inc. (State Pipe), by applying SeAH's consolidated financial expense ratio to these costs.³⁰ Finally, we made an adjustment for CEP profit allocated to these selling expenses, in accordance with section 772(d)(3) of the Act.

E. Normal Value

1. Particular Market Situation

a. Background

In the previous administrative reviews of WLP from Korea, Commerce found that a PMS existed in Korea which distorted the cost of production (COP) of WLP, based on our consideration of the cumulative effects of: (1) subsidization of Korean hot-rolled steel products by the Korean government; (2) the distortive pricing of unfairly traded Chinese hot-rolled coil (HRC); (3) strategic alliances between Korean HRC suppliers and Korean WLP producers; and (4) distortive government control over electricity prices in Korea.³¹ As noted above, on June 24, 2019, the Domestic Interested Parties submitted factual information and a letter in which they argued that Commerce should find, based on these same four factors, that a PMS continues to exist in Korea in the instant POR, and that we should make corrective adjustments to the respondents' reported costs.³² In July 2019, we issued a letter inviting all interested parties to submit factual information to rebut, clarify, or correct the factual information in the Particular Market Situation Allegation.³³ In August 2019, Hyundai Steel, NEXTEEL, and SeAH submitted factual information and comments concerning the Particular Market Situation Allegation.³⁴

b. Interested Parties' Arguments

The Domestic Interested Parties assert that the same four factors which led Commerce to find that a PMS existed in Korea in the prior administrative reviews of WLP from Korea are still present in the instant review. According to the Domestic Interested Parties, the record demonstrates that the Korean government heavily subsidizes HRC, which NEXTEEL and SeAH purchased from Korean producers, including POSCO; overcapacity in Chinese steel production

³⁰ *Id.*

³¹ See *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016–2017*, 84 FR 27762 (June 14, 2019) (*2016-2017 Final Results*), and accompanying IDM at Comment 2; and *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015–2016*, 83 FR 33919 (July 18, 2018) (*2015-2016 Final Results*), and accompanying IDM at Comment 1, unchanged in *Welded Line Pipe From the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Review; 2015–2016*, 83 FR 39682 (August 10, 2018).

³² See PMS Allegation.

³³ See PMS Letter.

³⁴ See Hyundai Steel PMS Comments; NEXTEEL PMS Comments; and SeAH PMS Comments.

has resulted in the Korean market being flooded with cheap Chinese steel products, which exerts downward pressure on Korean domestic steel prices; Korean HRC producers and WLP producers engage in strategic alliances; and the Korean government distorts electricity prices. The Domestic Interested Parties contend that during the POR, Korean companies continued to import significant volumes of Chinese HRC, and that the average unit value (AUV) of these imports was low compared to the AUV of imports from other countries into Korea and the AUV of Chinese HRC exports to other countries. In addition, the Domestic Interested Parties claim that competition from low-priced Chinese imports has caused Korean steel producers' prices, market share, and overall profitability to fall. The Domestic Interested Parties assert that in addition to strategic alliances, Korean pipe producers participate in price-fixing schemes among themselves, citing decisions by the Korean Fair Trade Commission concerning Korean Gas Corporation bids from 2003 through 2013, steel pipe prices in 1997 and 1998, and Korea Water Resources Corporation bids in 1996.³⁵

The Domestic Interested Parties assert that, as we did in the previous administrative reviews of this order, as well as in other reviews of Korean products where Commerce found a PMS, we should continue to quantify the impact of the PMS on HRC by adjusting the respondents' costs using the countervailing duty (CVD) rates determined in *Hot-Rolled Steel from Korea*.³⁶ Further, the Domestic Interested Parties argue that we should make adjustments to account for the impact of HRC supplied by Chinese and Japanese suppliers, strategic alliances, and the Korean government's control of electricity. To account for the effect of Chinese overcapacity on the Korean steel market, the Domestic Interested Parties contend that Commerce should either: (1) average all subsidy rates from *Hot-Rolled Steel from Korea*, including POSCO's rate, to adjust the cost of all non-POSCO and non-Korean HRC purchases;³⁷ or (2) alternatively increase the respondents' reported costs for all HRC purchases from both Korean and non-Korean

³⁵ See PMS Allegation.

³⁶ *Id.* at 35 (citing 2016-2017 *Final Results* IDM at Comment 3; and *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, *Hot-Rolled Steel from Korea*). The Domestic Interested Parties also cite 2015-2016 *Final Results* IDM at Comment 3; *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 24085 (May 24, 2019), IDM at Comment 3; *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 2015-2016 Final Results*) IDM at Comment 2; *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 2014-2015 Final Results*) IDM at Comment 3; *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 83 FR 50892 (October 10, 2018), and accompanying Preliminary Decision Memorandum (PDM) at 13-14; *Large Diameter Welded Pipe from the Republic of Korea: Final Determination of Sales at Less than Fair Value and Postponement of Final Determination*, 84 FR 6374 (February 27, 2019), and accompanying IDM at Comment 1; *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), and accompanying PDM at 12-16 (*CWP Korea AD AR 16-17 Prelim IDM*); and *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 27541 (June 13, 2018), and accompanying IDM at Comment 1).

³⁷ *Id.* at 35-36.

suppliers, using a global excess capacity-based regression analysis provided on the record that quantifies the impact of global steel excess capacity on the price of HRC in Korea, and derives a corresponding percentage adjustment factor that, when applied to the respondents' costs of HRC, accounts for the distortions inherent to an overcapacity-driven PMS.³⁸

NEXTEEL contends that the Domestic Interested Parties have not provided sufficient evidence to demonstrate that a PMS existed during the instant POR that distorted the production costs of WLP. Further, according to NEXTEEL, the Domestic Interested Parties failed to acknowledge that the U.S. Court of International Trade (CIT) has reversed Commerce's PMS findings in the OCTG AD reviews and instructed Commerce to recalculate the margins there without a PMS adjustment.³⁹ With respect to the Domestic Interested Parties' PMS claims, NEXTEEL argues that the following factors do not support their argument that a PMS exists: (1) the negligible level of subsidization in the Korean HRC market, as demonstrated by Commerce's recent review of the HRC CVD order;⁴⁰ (2) overstatement of the impact of Chinese Steel imports in the Korean market;⁴¹ (3) unfounded claims regarding strategic alliance between Korean HRC and WLP producers;⁴² and (4) lack of support that the Korean government distorted electricity prices during the POR.⁴³ As a result, NEXTEEL contends that no PMS adjustments are warranted.

NEXTEEL states that, should Commerce nevertheless determine to make a PMS adjustment to the respondents' HRC costs, it should not rely on the CVD rates from *Hot-Rolled Steel from Korea*, which are outdated and include AFA. Instead, according to NEXTEEL, Commerce should use the rates from *Hot-Rolled Steel from Korea ARI*. Finally, NEXTEEL argues that the Domestic Interested Parties' regression analysis is based on faulty and self-serving assumptions. Accordingly, NEXTEEL contends that Commerce should not rely on this regression analysis for making any PMS adjustments; however, should Commerce use a regression analysis to adjust HRC costs in this AD review, it should incorporate the alternative analyses offered by Hyundai Steel.

Hyundai Steel asserts that the Domestic Interested Parties' regression model is flawed, based on a number of analytical and statistical factors, which include: (1) global regression models are antithetical to a localized PMS in Korea; (2) statistical biases in the regression model; and (3) unsupported economic statistical assumptions.⁴⁴ Hyundai Steel provided alternative regression models and analyses to show the various effects of changing the parts of the Domestic Industry Parties' model that it claims are not methodologically sound.⁴⁵

³⁸ *Id.* at 38-56 and Exhibits 55-72.

³⁹ See NEXTEEL PMS Comments at 3 and Exhibit 1 (citing *NEXTEEL Co., Ltd., et. al, v. United States*, No. 17-00091, Slip Op. at 19-1 (CIT 2019); and *NEXTEEL Co. Ltd., et. al, v. United States*, No. 18-00083, Slip Op. 19-73 (CIT 2019)).

⁴⁰ *Id.* at 4-5 and Exhibit 2 (citing *Countervailing Duty Order on Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Amended Final Results of the First Administrative Review*, 84 FR 35604 (July 24, 2019) (*Hot-Rolled Steel from Korea ARI*)).

⁴¹ *Id.* at 5-8, 13 - 17 and Exhibits 3 through 9, and Exhibits 11-A through 15.

⁴² *Id.* at 8-9 and Exhibit 10.

⁴³ *Id.* at 9-10 and 18 - 20, and Exhibits 16-18.

⁴⁴ See Hyundai Steel PMS Comments at 2-21 and Attachments A-1 through H.5B.

⁴⁵ *Id.* at 21 -30 and Attachments H.6A through H.6F.

SeAH argues that the Domestic Interested Parties link their PMS allegation in this review to the allegations made in previous OCTG from Korea AD reviews. However, in *OCTG from Korea 14-15 AR*, SeAH notes that Commerce reversed its preliminary negative PMS findings under improper political interference from the White House.⁴⁶ SeAH also notes that the CIT reversed Commerce's PMS determinations in *OCTG from Korea 14-15 AR* and *OCTG from Korea 15-16 AR*.⁴⁷ According to SeAH, regarding the subsidy rate for POSCO from *Hot-Rolled Steel from Korea*, which was based entirely on AFA and is outdated, Commerce in *Hot-Rolled Steel from Korea AR1* found subsidy rates of 0.54 to 0.58 percent, which demonstrate that the Korean subsidies for HRC do not contribute to any meaningful distortion of Korean HRC prices.⁴⁸ Finally, SeAH claims that the Domestic Interested Parties' regression analysis, while slightly different from the model Commerce expressly rejected in other cases, including *LDWP from Korea*, continues to make numerous quantitative and qualitative assumptions that render it incomplete and invalid.⁴⁹

c. Analysis

Section 504 of the Trade Preferences Extension Act of 2015⁵⁰ added the concept of the “particular market situation” to the definition of “ordinary course of trade,” found at section 771(15) of the Act. This addition expanded Commerce's consideration of the existence of a PMS not only in the circumstances of determining NV under section 773(a)(1)(A), but also for purposes of CV under section 773(e) of the Act. Through section 773(e) of the Act, “particular market situation” also applies to COP under section 773(b)(3) of the Act. Section 773(e) of the Act states that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the {COP} in the ordinary course of trade, {Commerce} may use another calculation methodology under this subtitle or any other calculation methodology.”

In the instant review, the Domestic Interested Parties alleged that a PMS exists in Korea which distorts the COP of WLP 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 WLP producers; and (4) distortive government control over electricity prices in Korea. Section 773(e) of the Act does not specify whether to consider these allegations individually or collectively. Section 504 of the TPEA does not specify whether to consider these allegations individually or based on a totality of the circumstances. In the *2016-2017 Final Results*, the Domestic Interested Parties alleged that a PMS existed in Korea based on the same four factors and, upon analyzing

⁴⁶ See SeAH PMS Comments at 2-3 (citing *OCTG from Korea 14-15 AR* IDM at Comment 3 and Attachment 13, containing Email correspondence from White House trade policy advisor Peter Navarro).

⁴⁷ *Id.* at 3 (citing *NEXTEEL Co., Ltd. v. United States*, 355 F. Supp. 3d 1336, 1351 (CIT 2019); *NEXTEEL Co., Ltd. v. United States*, No. 18-00083, Slip Op. at 11-15 (CIT 2019)).

⁴⁸ *Id.* at 3-4 (citing *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of the Countervailing Duty Administrative Review, 2016*, 84 FR 28461 (June 19, 2019) (*LDWP from Korea*); and *Hot-Rolled Steel from Korea AR1*).

⁴⁹ *Id.* at 4 and Attachments 10-16.

⁵⁰ See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA).

the four allegations as a whole, Commerce found that a PMS existed in Korea during that POR.⁵¹ For the current review, after analyzing the Domestic Interested Parties' allegation and the factual information and comments subsequently submitted by interested parties, we preliminarily determine that the circumstances present during the instant review remained largely unchanged from those in 2016-2017 POR which led to the finding of a PMS in Korea in the *2016-2017 Final Results*. Therefore, based on the record evidence in this proceeding, we preliminarily find that a PMS exists in Korea which distorts the COP of WLP. This PMS results from the collective impact of the four factors described above.

In the current administrative review, as in *2016-2017 Final Results*, we considered the four aspects underlying the PMS allegation as a whole, based on their cumulative effect on the COP for Korean WLP. Based on the existence of these conditions in the Korean market, we preliminarily find that a single PMS exists which impacts the COP for WLP during the POR. The record evidence demonstrates that the Korean government subsidized HRC, and that the mandatory respondents purchased HRC from entities receiving these subsidies, including POSCO.⁵² 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 WLP production.⁵³ Additionally, we note that HRC, as an input of WLP, constitutes a substantial portion of the cost of WLP production;⁵⁴ thus, distortions in the HRC market have a significant impact on production costs for WLP.

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.⁵⁵ This situation, along with the domestic steel production being heavily subsidized by the Korean government, distorts the Korean market prices of HRC, the main input in Korean WLP production.

With respect to the Domestic Interested Parties' contention that certain Korean HRC suppliers and Korean WLP producers attempt to compete by engaging in strategic alliances, Commerce agrees that the record evidence supports that such strategic alliances exist in Korea.⁵⁶ Because strategic alliances have led to distortions in the prices of HRC, as evidenced by this record information, we find that such strategic alliances are a contributing factor to the PMS in Korea impacting the COP of WLP.

With respect to the allegation of distortion present in the electricity market, consistent with the SAA, a PMS may exist where there is government control over prices to such an extent that

⁵¹ See *2016-2017 Final Results* IDM at Comment 2.

⁵² See, e.g., PMS Allegation at Exhibits 19 and 23; see also NEXTEEL DQR at Exhibit D-4; and SeAH DQR at 8 and Exhibit D-4-A.

⁵³ *Id.* at 17 and Exhibit 25.

⁵⁴ See NEXTEEL DQR at D-4; and SeAH DQR at Exhibit D.4.D.

⁵⁵ See, e.g., PMS Allegation at Exhibit 26.

⁵⁶ *Id.* at Exhibits 33 - 36.

home market prices cannot be considered to be competitively set.⁵⁷ Moreover, electricity in Korea functions as a tool of the government's industrial policy. Furthermore, the largest electricity supplier, KEPCO, is a government-controlled entity.⁵⁸ Accordingly, the Korean government's involvement in the electricity market in Korea is a contributing factor to the PMS in Korea impacting the COP for WLP.

These intertwined market conditions signify that the production costs of WLP, especially the acquisition prices of HRC in Korea, are distorted and, thus, demonstrate that the costs of HRC to Korean WLP producers are not in the ordinary course of trade. Thus, we preliminarily find that various market forces result in distortions which impact the COP for WLP from Korea. Considered collectively, we preliminarily determine that the allegations support a finding that a PMS existed during the POR in this administrative review.

Having preliminarily determined that a PMS exists for the respondents' production costs for WLP, we then examined whether there was sufficient record evidence to quantify the impact of the PMS in order to potentially employ an alternative calculation methodology, as contemplated by section 504 of the TPEA. In this administrative review, we preliminarily determine to apply an upward adjustment to NEXTEEL's and SeAH's reported costs for their HRC inputs on the basis that a PMS exists.⁵⁹ In addition, we have determined that there is sufficient evidence to quantify the impact of this PMS.

Our adjustment for these preliminary results is derived from the Domestic Interested Parties' submitted regression analysis. We preliminarily find that the adjustment factor resulting from this regression analysis, with certain adjustments adopted by Commerce, appropriately quantifies the impact of the PMS concerning the distortion in the cost of HRC that we find to have existed in Korea during the POR. Specifically, Commerce finds that use of the regression coefficient for uneconomic capacity as the basis for the PMS adjustment is directly related to the principal cause for a cost-based PMS in the Korean HRC market. The adjustment the Domestic Interested Parties proposed is based on calculating a counterfactual HRC import AUV, which is dependent upon changes in uneconomic capacity as well as the other independent variables which are not directly related to the alleged cost-based PMS. Therefore, in order to isolate the factors contributing to the cost-based PMS in the Korean HRC market, and in order to capture the *ceteris paribus* effect (*i.e.*, holding all other factors constant) for global uneconomic capacity in the steel industry on HRC AUVs in Korea, Commerce has relied on the regression coefficient associated with uneconomic capacity to quantify the PMS adjustment to the respondents' reported HRC costs.⁶⁰

⁵⁷ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (SAA) at 822.

⁵⁸ See PMS Allegation at Exhibits 37 and 38.

⁵⁹ For NEXTEEL, we applied the PMS adjustment to the COP used to calculate CV. See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – NEXTEEL Co., Ltd.," dated concurrently with this memorandum (NEXTEEL Preliminary COP Calculation Memorandum); and NEXTEEL Preliminary Calculation Memorandum. For SeAH, we applied the PMS adjustment to the COP. See SeAH Preliminary Calculation Memorandum.

⁶⁰ See Memorandum, "Preliminary Results Regression Analysis for Particular Market Situation Adjustment," dated concurrently with this memorandum.

Additionally, global capacity utilization rates have been no greater than 80 percent since 2007 (through the end of the POR),⁶¹ and all the steel production and capacity data included in the model are from a period where the prevailing capacity utilization rate was substantially lower than the level the Domestic Interested Parties assumed as being “healthy.” Commerce has in the past identified a capacity utilization rate of at least 80 percent as being sufficient for profitable operations of the steel industry and has used the target of at least 80 percent in its Section 232 Investigations.⁶² Therefore, for these preliminary results, Commerce has lowered the target capacity utilization rate to 80 percent. It is our preliminary determination that the regression analysis submitted by the Domestic Interested Parties, with the adjustments adopted by Commerce, sufficiently quantifies the impact of the PMS on the material cost of HRC, and derives a corresponding adjustment factor that, when applied to the costs of HRC, accounts for the distortions induced by the observed PMS.

While we acknowledge the respondents’ concern with Domestic Interested Parties’ regression analysis, Commerce believes that the modified results include a reasonable number of independent variables that account for all relevant categories of factors.

With respect to Hyundai Steel’s argument that the model should include a price for oil⁶³ or coke⁶⁴ as an input, rather than aluminum, we note that the model the Domestic Interested Parties submitted already includes prices for inputs (*i.e.*, scrap and iron ore) and that aluminum is included in order to account for the effects of the costs of steel substitutes.

Hyundai Steel’s argument that econometric problems exist with the uneconomic capacity variable is based on the assumption that the adjustment was made using a capacity utilization rate specific to Korea.⁶⁵ Commerce notes that the adjustment it proposes in the paragraphs above is based on both a *global* steel capacity utilization rate of 80 percent and the *ceteris paribus* effect of a reduction in global uneconomic capacity on import prices. Therefore, Commerce rejects Hyundai Steel’s arguments in favor of the approach it has adopted for these preliminary results.

With respect to arguments regarding the POR,⁶⁶ we note that the relationship between uneconomic capacity and import AUVs is constant over time. Although inclusion or exclusion of data for 2008-2009 (or including data from 2003-2007 and 2018) may change the magnitude of the coefficient on the uneconomic capacity variable (as Hyundai Steel’s and SeAH’s alternative regression analyses on the record indicate⁶⁷) including such data does not change the

⁶¹ See PMS Allegation at Exhibit 66 (Lukas Brun, “Overcapacity in Steel: China’s Role in a Global Problem,” Duke University Center on Globalization, Governance & Competitiveness, September 2016, at 16).

⁶² See PMS Allegation at Exhibit 19, internal Exhibit 89 (“The Effect of Imports of Steel on the National Security - An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, As Amended,” U.S. Department of Commerce, Bureau of Industry and Security Office of Technology Evaluation (January 11, 2018) (Section 232 Investigations) at 47-49).

⁶³ See Hyundai Steel PMS Comments at 29, and Attachment H.6.

⁶⁴ *Id.* at 13.

⁶⁵ *Id.* at 6-8.

⁶⁶ See NEXTEEL PMS Comments at 21.

⁶⁷ See Hyundai Steel PMS Comments at Attachments H.6A.1 - 6F.3; and SeAH PMS Comments at Appendix 15.

overall nature of the relationship. Thus, the adjustment will therefore still capture the effect of overcapacity on import AUVs. Furthermore, the event of interest in the analysis, the 2008-2009 financial crisis and the subsequent decline in global steel demand, instigated the Chinese stimulus and increased GOC investment and spending to boost the steel industry. Therefore, omitting 2008-2009 from the analysis fails to account for the volatile period and price fluctuations in the defining years of the global overcapacity crisis that still affect steel import prices today. Inclusion of these years is therefore important to fully capture the nature of the relationship.

Consequently, although Commerce will continue to assess the accuracy of the Domestic Interested Parties' regression analysis and consider arguments from interested parties in the final results, Commerce finds that the methodology described above is acceptable and reasonable for the purpose of quantifying a PMS adjustment for these preliminary results.

2. Home Market Viability and Selection of Comparison Market

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of NEXTEEL's and SeAH's home market sales of the foreign like product to the volume of their U.S. sales of subject merchandise, in accordance with section 773(a) of the Act and 19 CFR 351.404.

For NEXTEEL, based on this comparison, we determined that the aggregate volume of its respective home market sales of the foreign like product was insufficient to permit a proper comparison with U.S. sales of the subject merchandise, pursuant to 773(a)(1)(C)(ii) of the Act. We further determined that the aggregate quantity of the foreign like product sold by NEXTEEL in any third country market was less than five percent of the aggregate volume of their respective U.S. sales, and, therefore, NEXTEEL had no viable third country market.⁶⁸ Accordingly, for NEXTEEL, we used CV as the basis for calculating NV, in accordance with section 773(a)(4) of the Act.

For SeAH, based on this comparison, we determined that, pursuant to 19 CFR 351.404(b), the aggregate volume of home market sales of the foreign like product was sufficient to permit a proper comparison with U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV for SeAH, in accordance with section 773(a)(1)(B)(i) of the Act.

3. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁶⁹ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that

⁶⁸ See NEXTEEL AQR at A-2 – A-3.

⁶⁹ See 19 CFR 351.412(c)(2).

there is a difference in the stages of marketing.⁷⁰ In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),⁷¹ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁷²

When Commerce is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁷³

In this administrative review, as discussed above, we based NV on CV for NEXTEEL. When NV is based on CV, the NV LOT is that of the sales from which we derive SG&A expenses and profit.⁷⁴ In accordance with 19 CFR 351.412(d), Commerce will make its LOT determination under paragraph (d)(1) of this section on the basis of sales of the foreign like product by the producer or exporter. As discussed below in the “Calculation of NV Based on CV,” section, because we based NV on CV calculated using SeAH’s CV selling expenses and profit ratio from the present administrative review, we compared SeAH’s home market LOT to NEXTEEL’s U.S. sales LOT.

SeAH

In the home market, SeAH reported that it made sales through two channels of distribution (*i.e.*, direct sales to distributors and end users and sales that undergo additional processing before delivery to final user).⁷⁵ According to SeAH, it performed the following selling functions for

⁷⁰ *Id.*; see also *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) (*OJ from Brazil*), and accompanying IDM at Comment 7.

⁷¹ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general, and administrative (SG&A) expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

⁷² See *Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

⁷³ See, e.g., *OJ from Brazil* IDM at Comment 7.

⁷⁴ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 47081 (August 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004).

⁷⁵ See SeAH BCDEQR at 13-14.

sales to all home market customers: sales forecasting, market research, strategic/economic planning, sales/marketing support, sales negotiation, order input/processing, invoicing, receipt of customer payment, personnel training/exchange, distributor/dealer training, advertising/sales promotion, provision of cash discounts, procurement/sourcing services, inventory maintenance, warehouse operations, provision of post-sale warehousing, packing, provision of freight and delivery, provision of guarantees to customer, provision of warranty services, engineering services, and technical assistance.⁷⁶

Selling activities can be generally grouped into five selling function categories for analysis: (1) provision of sales support;⁷⁷ (2) provision of training services;⁷⁸ (3) provision of technical support;⁷⁹ (4) provision of logistical services;⁸⁰ and (5) performance of sales-related administrative activities.⁸¹ Based on the selling function categories noted above, we find that SeAH performed sales support, training services, technical support, logistical services, and sales-related administrative activities for its home market sales. Because we find that there were no differences in selling activities performed by SeAH to sell to its home market customers, we determine that there is one LOT in the home market for SeAH.

With respect to the U.S. market, SeAH reported that it made sales through four channels of distribution: (1) back-to-back sales through its U.S. affiliate, PPA, to unaffiliated U.S. customers; (2) sales from State Pipe's inventory; (3) sales of uncoated merchandise from PPA's inventory; and (4) sales of further manufactured merchandise from PPA's inventory. For all four channels of distribution, SeAH reported that it performed the following selling functions for all sales to U.S. customers: sales forecasting, market research, strategic/economic planning, sales/marketing support, sales negotiation, order input/processing, invoicing, receipt of customer payment, personnel training/exchange, advertising/sales promotion, procurement/sourcing services, inventory maintenance, packing, provision of freight and delivery, provision of guarantees to customer, provision of warranty services, engineering services, and technical assistance.⁸² Based on the selling function categories noted above, we find that SeAH performed sales support, training services, technical support, logistical services, and sales-related administrative activities for its reported sales to customers in the United States. Because SeAH performed the same selling functions at the same relative level of intensity for all of its U.S. sales, we determine that all U.S. sales are at the same LOT.

⁷⁶ See SeAH AQR at Appendix A-5-A.

⁷⁷ The provision of sales support may include sales forecasting strategic/economic planning, advertising, sales promotion, sales/marketing support, market research, and other related activities. See *Acetone from Belgium: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 84 FR 49999 (September 24, 2019), and accompanying PDM at 17.

⁷⁸ The provision of training services may include personnel training/exchange, distributor/dealer training, and other related activities. *Id.*

⁷⁹ The provision of technical support may include engineering services, technical assistance, and other related activities. *Id.*

⁸⁰ The provision of logistical services may include inventory maintenance, post-sale warehousing, repacking, freight and delivery, and other related activities. *Id.*

⁸¹ The performance of sales-related administrative activities may include order input/processing, rebate programs, warranty service, and other related activities. *Id.*

⁸² See SeAH AQR at Appendix A-5-A.

Finally, we compared SeAH's U.S. LOT to the home market LOT and found that the selling functions SeAH performed for its home market customers are at the same or similar stage of distribution as those performed by SeAH for sales to its U.S. affiliate.⁸³ Therefore, based on the totality of the facts and circumstances, we preliminarily determine that SeAH's home market LOT is at the same stage of distribution as SeAH's CEP LOT. Consequently, we preliminarily find that no LOT adjustment is warranted for SeAH.

NEXTEEL

In the U.S. market, NEXTEEL reported that it made sales through two channels of distribution: (1) EP sales to unaffiliated trading companies in Korea for export to the United States (Channel 1); and (2) EP sales made directly to unaffiliated customers in the United States (Channel 2).⁸⁴ NEXTEEL reported that it performed the following selling functions in Korea for sales to all U.S. customers: sales forecasting; strategic/economic planning; advertising; sales/marketing support; market research; personnel training/exchange; inventory maintenance; freight and delivery arrangement; packing; order input/processing; and warranty service.⁸⁵ Accordingly, based on the selling function categories noted above, we find that NEXTEEL performed sales support, training services, logistical services, and sales-related administrative activities for all of its reported U.S. sales. Because NEXTEEL performed the same selling functions at the same relative level of intensity for all of its U.S. sales, regardless of sales channel, we determine that all U.S. sales are at the same LOT.

We compared NEXTEEL's EP LOT to SeAH's home market LOT and found that the selling functions SeAH performed for its home market customers are at the same or similar stage of distribution as those performed by NEXTEEL for its U.S. customers. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that SeAH's home market LOT is at the same stage of distribution as NEXTEEL's EP LOT. Consequently, we preliminarily find that no LOT adjustment is warranted for NEXTEEL.

4. Cost of Production Analysis

Pursuant to the amendment of section 773(b)(2)(A) of the Act, Commerce required that respondents provide CV and COP information to determine if there were reasonable grounds to believe or suspect that sales of foreign like product had been made at prices that represented less than the COP of the product.

a. Calculation of the COP

NEXTEEL

As explained above, NEXTEEL had no viable home or third-country market, thus, for NEXTEEL, we used CV as the basis for calculating NV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the costs of materials and fabrication employed in

⁸³ See SeAH AQR at A-21-A-23 and Appendix A-5.

⁸⁴ See NEXTEEL AQR at A-12.

⁸⁵ *Id.* at Exhibit A-7-A.

producing the subject merchandise, plus amounts for general and administrative (G&A) expenses, interest, profit, selling expenses, and U.S. packing costs. We examined NEXTEEL's cost data and preliminarily determined that our quarterly cost methodology is not warranted. Because we did not find significant cost changes, we have continued to calculate an annual weighted-average CV.⁸⁶

We relied on the CV submitted by NEXTEEL except as follows:⁸⁷

- We adjusted NEXTEEL's reported HRC costs to reflect the PMS.
- We revised the costs reported for non-prime WLP products that were not capable of being used in the same applications as prime WLP products to reflect their lower market values and allocated the difference to prime WLP products.
- We revised the cost of goods sold (COGS) to exclude the revenue offset of the coil scrap that was not produced by NEXTEEL.
- We revised NEXTEEL's G&A and financial expense ratios to reclassify certain shutdown losses related to the company as a whole from the COGS denominators to G&A expenses.

In the absence of a comparison market, we are unable to calculate CV profit 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). When the preferred method is unavailable, we must instead rely on one of the three alternatives outlined in sections 773(e)(2)(B)(i) through (iii) of the Act. Those alternatives are: (i) the use of the actual amounts incurred and realized by the specific exporter or producer in connection with the production and sale in the foreign country of merchandise that is in the same general category of products as the subject merchandise; (ii) the use of the weighted average of the actual amounts incurred and realized by exporters or producers (other than the respondent) in connection with the production and sale of the foreign like product, in the ordinary course of trade country, for consumption in the foreign country; or (iii) based on any other reasonable method, except that the amount for profit may not exceed the amount realized by exporters or producers (other than the respondent) 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").

We preliminarily find SeAH's combined CV profit and selling expenses based on its POR home market sales made in the ordinary course of trade to be the best source for determining NEXTEEL's CV profit and selling expenses. SeAH's combined selling expense and profit reflects the profit of a Korean WLP producer, for comparison market sales of the merchandise under consideration, in the ordinary course of trade. Also, by combining the CV profit and selling expense ratios of SeAH, we are able to protect the proprietary nature of the information. Thus, we have preliminarily calculated NEXTEEL's CV profit and selling expenses under section 773(e)(2)(B)(ii) of the Act using SeAH's combined CV profit and selling expenses based on its POR home market sales made in the ordinary course of trade.⁸⁸

⁸⁶ See NEXTEEL Preliminary COP Calculation Memorandum.

⁸⁷ *Id.*

⁸⁸ See Memorandum, "Preliminary Results Constructed Value Selling Expenses and Profit Ratio for NEXTEEL Inc. (NEXTEEL)," dated concurrently with this memorandum (NEXTEEL Prelim CV Profit Memo).

SeAH

We relied on the COP and CV data submitted by SeAH except that we adjusted SeAH's reported HRC costs to reflect the PMS.⁸⁹

b. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of a respondent's home market sales of a given product are at prices less than the COP, we do not disregard any of the below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: (1) the sales were made within an extended period of time in accordance with section 773(b)(2)(B) of the Act; and (2) based on our comparison of prices to the weighted-average COPs for the POR, the sales were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

For SeAH, we found that, for certain products, more than 20 percent of SeAH's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

5. Calculation of NV Based on Comparison Market Prices

For SeAH, we calculated NV based on prices to unaffiliated customers in the home market. We made adjustments, where appropriate, from the starting price for discounts. We made a deduction from the starting price for movement expenses, in accordance with section 773(a)(6)(B)(ii) of the Act, which included, where appropriate, inland freight expenses and warehousing expenses. SeAH used its affiliate SeAH L&S to arrange for delivery and storage services of its merchandise to the customer for all home market sales.⁹⁰ In addition, SeAH L&S operated one of two warehouses through which SeAH distributed its merchandise.⁹¹ Because SeAH L&S did not provide the same services to unaffiliated parties, nor did SeAH use unaffiliated companies to arrange for its deliveries or warehousing services, we were unable to

⁸⁹ See SeAH Preliminary Calculation Memorandum.

⁹⁰ See SeAH BCDEQR at 30-31.

⁹¹ *Id.* at 28-29; and SeAH SQRBC at 24-26. SeAH operated the other warehouse it used in the home market during the POR.

test the arm's-length nature of the fees paid by SeAH. Therefore, we based these expenses on the affiliate's costs.⁹²

For comparisons to CEP sales, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we deducted from NV direct selling expenses (*i.e.*, imputed credit expenses).

Furthermore, when comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise. We also deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

6. Calculation of NV Based on CV

As explained above, NEXTEEL did not have a viable home or third country market; thus, for NEXTEEL, we used CV as the basis for calculating NV.⁹³ For SeAH, where we were unable to find a comparison market match of identical or similar merchandise, we based NV on CV in accordance with section 773(a)(4) of the Act. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

On July 12, 2019, we sent a letter to all interested parties providing an opportunity to comment and submit new factual information on CV profit and selling expenses.⁹⁴ We received comments and factual information from the Domestic Interested Parties on July 26, 2019, and from NEXTEEL and Hyundai Steel Company on August 2, 2019.⁹⁵ On August 16, 2019, NEXTEEL and Domestic Interested Parties submitted rebuttal comments and information.⁹⁶ Interested parties placed the financial statements of the following entities on the record as potential sources for CV profit: Welspun Corp. (Welspun), Ltd; PAO TMK (TMK); and Borusan Mannesmann Boru Sanayi ve Ticaret A.S (Borusan). Interested parties also submitted the following information: NEXTEEL's calculated profits on the production of line pipe and standard pipe in Korea during the POR; the final calculated profit from the first administrative WLP review

⁹² See SeAH Preliminary Calculation Memorandum.

⁹³ See NEXTEEL Preliminary Cost Calculation Memorandum.

⁹⁴ See Commerce's Letter to All Interested Parties, "2017-2018 Antidumping Duty Administrative Review of Welded Line Pipe from the Republic of Korea: Request for Constructed Value Profit and Selling Expense Comments and Information," dated July 12, 2019.

⁹⁵ See Domestic Interested Parties' Letter, "Welded Line Pipe from Korea: Constructed Value Profit and Selling Expense Comments and Information", dated July 26, 2019; NEXTEEL's Letter, "Welded Line Pipe from the Republic of Korea: NEXTEEL's Submission of Factual Information and Comments for CV Profit and Selling Expenses," dated August 2, 2019 (NEXTEEL CV Profit Submission); and Hyundai Steel Company's Letter, "Welded Line Pipe from the Republic of Korea: Submission of Factual Information and Comments Concerning CV Profit and Selling Expenses," dated August 2, 2019.

⁹⁶ See NEXTEEL's Letter, "Welded Line Pipe from the Republic of Korea: NEXTEEL Rebuttal Comments and Information for CV Profit and Selling Expenses," dated August 16, 2019; and Domestic Interested Parties' Letter, "Welded Line Pipe from Korea: Constructed Value Profit and Selling Expense Rebuttal Comments," dated August 16, 2019.

(POR1) of the AD order for Hyundai Steel; and Hyundai Steel's own selling and profit on its home market sales of WLP for this review period (POR3).

We reviewed and considered the options advocated by interested parties for CV profit in this administrative review. We have not used NEXTEEL's Korean market line pipe data because NEXTEEL's Korean market is not viable, as discussed above. We have not used NEXTEEL's home market sales of standard pipe in Korea because the calculations result in a loss for the period.⁹⁷

As discussed below, we find that it would be more appropriate to use the information available under section 773(e)(2)(B)(ii) of the Act. We considered the CV profit data from Hyundai Steel POR1, Hyundai Steel POR3, and SeAH's home market sales for the current administrative review under section 773(e)(2)(B)(ii) of the Act. We preliminarily find SeAH's combined CV profit and selling expenses derived from its reported home market sales data to be the best source for determining NEXTEEL's CV profit and selling expenses. SeAH's combined selling expense and profit reflects the profit of a Korean WLP producer, for comparison market sales of the merchandise under consideration, in the ordinary course of trade. Because it is not possible to perform a sales-below-cost test on the Hyundai Steel POR3 data, we cannot determine whether such sales are in the ordinary course of trade. We have not used Hyundai Steel's POR1 information because it is less contemporaneous than SeAH's POR3 sales data. Further, by combining the CV profit and selling expense ratios derived from SeAH's home market sales, we are able to protect the proprietary nature of the information. Thus, we have preliminarily calculated NEXTEEL's CV profit and selling expenses under section 773(e)(2)(B)(ii) of the Act using SeAH's combined CV profit and selling expenses based on its home market sales made during this POR in the ordinary course of trade.⁹⁸

Finally, we made adjustments to CV for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For NEXTEEL, where commissions were granted on its U.S. sales, we made a commission offset for SeAH's home market indirect selling expenses, in accordance with 19 CFR 351.410(e).

F. Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

⁹⁷ See NEXTEEL CV Profit Submission at Exhibit 1.

⁹⁸ See NEXTEEL Prelim CV Profit Memo.

V. RECOMMENDATION

We recommend applying the above methodology for these preliminary results of review.



Agree



Disagree

1/31/2020

X



Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance