



A-580-876

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

Public Document

E&C/OII DJG

November 20, 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: Issues and Decision Memorandum for the Final Results of the
2017-2018 Administrative Review of the Antidumping Duty Order
on Welded Line Pipe from Korea

I. SUMMARY

We analyzed the comments of the interested parties in the 2017-2018 administrative review of the antidumping duty (AD) order covering welded line pipe (WLP) from the Republic of Korea (Korea). As a result of our analysis, we made changes to the margin calculations for the mandatory respondents NEXTEEL Co., Ltd. (NEXTEEL) and SeAH Steel Corporation (SeAH). We recommend that you approve the positions described in the “Discussion of Issues” section of this memorandum. Below is the complete list of issues in this administrative review for which we received comments from the interested parties:

General Issues:

- Comment 1: Lawfulness of Commerce’s Interpretation of the Particular Market Situation (PMS) Provision
- Comment 2: Evidence of a PMS
- Comment 3: PMS Adjustment
- Comment 4: Differential Pricing

NEXTEEL-Specific Issues:

- Comment 5: Non-Prime Costs for NEXTEEL
- Comment 6: Suspended Production Loss for NEXTEEL

SeAH-Specific Issues:

- Comment 7: Capping of Freight Revenue for SeAH



Comment 8: General and Administrative (G&A) Expense Adjustment for SeAH's U.S. Affiliates

Comment 9: SeAH's Constructed Export Price (CEP) Offset Claim

II. BACKGROUND

On February 7, 2020, the Department of Commerce (Commerce) published the *Preliminary Results* of this administrative review.¹ This review covers 32 producers or exporters. Commerce selected NEXTEEL and SeAH for individual examination.² The period of review (POR) is December 1, 2017 through November 30, 2018.

We invited parties to comment on the *Preliminary Results*.³ On March 11, 2020, we received case briefs from NEXTEEL, SeAH, Hyundai Steel Company (Hyundai Steel), Husteel Co. Ltd. (Husteel), the Domestic Producers,⁴ and Domestic Interested Parties.^{5,6} On March 18, 2020, we received rebuttal briefs from NEXTEEL, SeAH, Hyundai Steel, Husteel, Domestic Producers, and Domestic Interested Parties.⁷ On July 8, 2020, Commerce placed additional information on the record of this administrative review.⁸ On July 15, 2020, we received rebuttal information

¹ See *Welded Line Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 7268 (February 7, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² See Memorandum, "2017-2018 Antidumping Duty Administrative Review of Welded Line Pipe from the Republic of Korea: Respondent Selection," dated March 28, 2019.

³ See *Preliminary Results*, 83 FR at 1024.

⁴ The Domestic Producers are California Steel Industries (CSI); Welspun Tubular LLC USA (Welspun); Stupp Corporation, a Division of Stupp Bros., Inc. (Stupp); and American Cast Iron Pipe Company (American).

⁵ The Domestic Interested Parties are CSI; Welspun; Stupp; American; Maverick Tube Corporation (Maverick); and TMK IPSCO.

⁶ See NEXTEEL's Letter, "Welded Line Pipe from the Republic of Korea: NEXTEEL's Case Brief," dated March 11, 2020 (NEXTEEL Case Brief); see also SeAH's Letter, "Case Brief of SeAH Steel Corporation," dated March 11, 2020 (SeAH Case Brief); Hyundai Steel's Letter, "Welded Line Pipe from the Republic of Korea: Case Brief," dated March 11, 2020 (Hyundai Steel Case Brief); Husteel's Letter, "Welded Line Pipe from South Korea, Case No. A-580-876; Husteel Case Brief," dated March 11, 2020 (Husteel Case Brief); Domestic Producers' Letter, "Welded Line Pipe from the Republic of Korea: Case Brief of California Steel Industries (CSI), Welspun Tubular LLC USA, Stupp Corporation, A Division Of Stupp Bros., Inc. and American Cast Iron Pipe Company," dated March 11, 2020 (Domestic Producers Case Brief), and Domestic Interested Parties' Letter, "Welded Line Pipe from the Republic of Korea: Case Brief of the Domestic Interested Parties," dated March 11, 2020 (Domestic Interested Parties Case Brief).

⁷ See NEXTEEL's Letter, "Welded Line Pipe from the Republic of Korea: NEXTEEL's Rebuttal Brief," dated March 18, 2020 (NEXTEEL Rebuttal Brief); see also SeAH's Letter, "Rebuttal Brief of SeAH Steel Corporation," dated March 18, 2020 (SeAH Rebuttal Brief); Hyundai Steel's Letter, "Welded Line Pipe from the Republic of Korea: Rebuttal Brief," dated March 18, 2020 (Hyundai Steel Rebuttal Brief); Husteel's Letter, "Welded Line Pipe from South Korea, Case No. A-580-876; Husteel Rebuttal Brief," dated March 18, 2020 (Husteel Rebuttal Brief); Domestic Producers Letter, "Welded Line Pipe from the Republic of Korea: Rebuttal Brief Of California Steel Industries, Welspun Tubular LLC USA, Stupp Corporation, A Division Of Stupp Bros., Inc., and American Cast Iron Pipe Company," dated March 18, 2020 (Domestic Producers Rebuttal Brief); and Domestic Interested Parties' Rebuttal Brief, "Welded Line Pipe from the Republic of Korea: Rebuttal Brief of the Domestic Interested Parties," dated March 18, 2020 (Domestic Interested Parties Rebuttal Brief).

⁸ See Memorandum, "2017-2018 Antidumping Duty Administrative Review of Welded Line Pipe from the Republic of Korea: Placing New Factual Information on the Record," dated July 8, 2020 (NFI Memo).

from NEXTEEL.⁹ After analyzing the comments received, we changed the weighted-average dumping margins from those presented in the *Preliminary Results*.

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.¹⁰ On July 6, 2020, we extended the final results of this review to no later than September 24, 2020.¹¹ On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.¹² Therefore, the deadline for the final results of this review is now November 23, 2020.

III. MARGIN CALCULATIONS

For NEXTEEL and SeAH, we calculated export price (EP), CEP, and normal value (NV) using the same methodology stated in the *Preliminary Results*, except as follows:¹³

- We revised the PMS adjustment for NEXTEEL's and SeAH's reported hot-rolled coil (HRC) costs. *See* Comment 3 below for further discussion.
- We revised our treatment of the G&A expenses of SeAH's U.S. affiliate Pusan Pipe America (PPA) to include these expenses as part of PPA's indirect selling expenses. *See* Comment 8 below for further discussion.

IV. DISCUSSION OF ISSUES

Comment 1: Lawfulness of Commerce's Interpretation of the PMS Provision

In the *Preliminary Results*, Commerce determined that a PMS existed in Korea which distorted the cost of production (COP) of WLP, based on the cumulative effect of: (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.¹⁴ In the

⁹ *See* NEXTEEL's Letter, "Welded Line Pipe from the Republic of Korea: Factual Information in Response to the Department's July 8, 2020 Memorandum Placing New Factual Information on the Record," dated July 15, 2020 (NEXTEEL NFI Rebuttal Submission).

¹⁰ *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

¹¹ *See* Memorandum, "Welded Line Pipe from the Republic of Korea: Extension of Time Limit for Final Results of 2017-2018 Antidumping Duty Administrative Review," dated July 6, 2020.

¹² *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

¹³ *See* Memoranda, "Final Results Margin Calculation for NEXTEEL," dated concurrently with this memorandum (NEXTEEL Final Calculation Memo); and "Final Results Margin Calculation for SeAH," dated concurrently with this memorandum (SeAH Final Calculation Memo).

¹⁴ *See* PDM at 12-14.

Preliminary Results, we quantified the impact of the PMS in Korea by calculating an adjustment factor derived from the regression analysis in the PMS Allegation,¹⁵ as adjusted.¹⁶

SeAH's Case Brief

- The TPEA¹⁷ made two changes to the existing antidumping statute to modify the: (1) definition of “ordinary course of trade” in section 771(15) of the Tariff Act of 1930, as amended (Act) to permit Commerce to consider whether a PMS prevents a proper comparison with EP and CEP; and (2) calculation of constructed value (CV) in section 773(e) of the Act. Because the TPEA did not change the calculation of COP for purposes of the sales-below-COP test, under section 773(b)(3) of the Act, Commerce had no statutory authority to make that adjustment in the *Preliminary Results*.¹⁸
- In *Saha Thai*, the U.S. Court of International Trade (CIT) held that Commerce’s position that “[s]ection 504 authorized Commerce’s comparison of U.S. prices to home market sales instead of constructed value is an interpretation that is unsupported in the law.”¹⁹ Accordingly, Commerce must apply the sales-below-COP test to SeAH’s home market sales without any adjustment for an alleged PMS.

Hyundai Steel's Case Brief

- The TPEA permits a PMS adjustment to a producer’s actual COP only for purposes of calculating CV under section 773(e) of the Act. The TPEA did not change the statutory provisions for calculating COP in applying the sales-below-COP test under section 773(b) of the Act. Therefore, Commerce’s application of a PMS finding to adjust SeAH’s COP for the below-COP test was contrary to the statute.²⁰
- The TPEA made changes to sections 771(15) and 773(e) of the Act, but did not change how COP is calculated under 773(b) of the Act. Thus, Commerce has no authority to fill an alleged gap in the law by applying the amendment to section 773(e) of the Act to section 773(b) of the Act.
- The CIT has held in three recent decisions that Commerce may not act beyond its statutory authority with respect to applying a PMS adjustment in contravention of the statute.²¹

¹⁵ See CSI, IPSCO, and Welspun’s Letter, “Welded Line Pipe from the Republic of Korea: Particular Market Situation Allegation and Other Factual Information,” dated June 24, 2019 (PMS Allegation) at Exhibits 55-72. Although only three parties filed the PMS Allegation, all of the Domestic Interested Parties support it. Accordingly, hereafter we attribute the PMS Allegation to the Domestic Interested Parties.

¹⁶ *Id.* at 14; see also Memorandum, “Preliminary Results Regression Analysis for Particular Market Situation Adjustment,” dated January 31, 2020 (Regression Analysis Memo).

¹⁷ See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA).

¹⁸ See SeAH Case Brief at 1-4 (citing PDM at 14).

¹⁹ *Id.* at 4 (citing *Saha Thai Steel Pipe Public Company Limited v. United States*, 422 F. Supp. 3d 1363, 1369-1370 (CIT December 18, 2019) (*Saha Thai*)).

²⁰ See Hyundai Steel Case Brief at 3-6 (citing PDM at 12 and section 771(15) of the Act).

²¹ *Id.* at 9-11 (citing *Saha Thai*, 422 F. Supp. 3d at 1368-1370; *Husteel Co., Ltd. et al. v. United States*, 426 F. Supp. 3d 1376 (CIT January 3, 2020) (*Husteel*); and *Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. v. United States*, 426 F. Supp. 3d 1395, 1411-1412 (CIT January 7, 2020) (*Borusan*)).

Husteel's Case Brief

- The Domestic Interested Parties' PMS allegation is based on changes to sections 771(15) and 773(e) of the Act in the TPEA. However, the TPEA made no changes to the existing statutory language for calculating COP in applying the sales-below-COP test under section 773(b) of the Act. Therefore, Commerce lacks legal authority to make any cost-based PMS adjustment to SeAH's reported COP for purposes of the sales-below-COP test.
- The CIT has issued three decisions holding that the statute does not permit Commerce to make a cost-based PMS adjustment to COP for purposes of the sales-below-COP test. Thus, Commerce's application of a PMS adjustment to COP for performing the sales-below-COP test is neither permitted by, nor consistent with, the statute.²²

Domestic Producers' Rebuttal Brief

- Commerce has the authority under the TPEA to adjust the COP to account for the PMS that distorted respondents' costs during the POR. The TPEA expanded Commerce's authority with the intent of granting Commerce "flexibility in calculating a duty that is not based on distorted pricing or costs."²³
- The rationale underlying the PMS provisions in the TPEA is that Commerce must make fair comparisons, and that, where a PMS exists, sales and transactions are outside the ordinary course of trade. The language of the TPEA recognizes that Commerce makes adjustments to costs in a variety of situations not expressly provided for in the statute. The statute does not limit Commerce's ability to make adjustments to cost and, therefore, it is permitted to use the same approach to calculate COP for the sales-below-COP test as it does with CV.²⁴
- The CIT decisions cited by the respondents are not final and are subject to appeal. Accordingly, Commerce is not bound by these decisions and should continue to use its statutory authority to make PMS adjustments to COP.²⁵
- The TPEA amended section 773(e) of the Act to authorize Commerce to use "any other calculation methodology" in the event that "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." After a PMS is found to render costs unreflective of costs in the ordinary course of trade, Commerce has the statutory authority to use "any other" calculation methodology.
- In *Vicentin*, the CIT recognized that Commerce is not limited to a particular calculation methodology once a PMS is found, acknowledging the "broad ambit" of the "any other calculation methodology" language in the statute.²⁶

²² See *Husteel Case Brief* at 4-5 (citing *Saha Thai*, 422 F. Supp. 3d at 1368-1370; *Husteel*, 426 F. Supp. 3d at 1380-1383; and *Borusan*, 426 F. Supp. 3d at 1411-1412).

²³ See *Domestic Producers Rebuttal Brief* at 2-3 (citing sections 771(15) and 773(e) of the Act, and S. Rep. No. 114-45 (2015), at 37).

²⁴ *Id.* at 3-4 (citing section 773(a)(1)(B)(iii) of the Act, S. Rep. No. 114-45, and PDM at 12).

²⁵ *Id.* at 4-5 (citing *Saha Thai*, *Husteel*, and *Borusan*).

²⁶ *Id.* at 5-6 (citing *Vicentin S.A.I.C. v. United States*, 404 F. Supp. 3d 1323, 1335 (CIT 2019) (*Vicentin*)).

- The TPEA also amended section 771(15) of the Act to define sales and transactions to be “outside the ordinary course of trade” in situations where the PMS “prevents a proper comparison with the export price or constructed export price.” The TPEA revisions clearly authorized Commerce to adjust COP to account for PMS, regardless of the method of calculating NV.
- The respondents’ argument ignores the amendment to section 771(15) of the Act regarding “ordinary course of trade.” If there is any ambiguity in the statutory revisions as to whether a PMS adjustment applies to a sales-below-COP test, Commerce has reasonably resolved that ambiguity by confirming that it has the ability to make that adjustment for the below-COP test.
- Congress explicitly expanded the concept of ordinary course of trade to include PMS situations in the TPEA, and to provide Commerce with the flexibility to calculate duties that are not based on distorted pricing or costs.²⁷ Commerce reasonably interpreted “ordinary course of business”²⁸ to be equivalent with “ordinary course of trade.”²⁹ Similarly, it is reasonable for Commerce to conclude that the methodology to calculate COP for use as CV should also be applied to COP for use in the sales-below-COP test.³⁰ To do otherwise would be in conflict with the congressional intent to harmonize the calculation of costs for CV and for the sales-below-COP test.³¹
- The statute is silent with respect to instructing Commerce as to when to run the sales-below-COP test and when it should make a PMS adjustment. Thus, it is reasonable for Commerce to make a PMS adjustment first and then apply the sales-below-COP test.
- The application of the PMS adjustment to the COP for the sales-below-COP test is also consistent with the broader statutory mandate to calculate NV in order to “achieve a fair comparison with the export price or constructed export price.”³² To use costs distorted by a PMS and outside the ordinary course of trade to calculate the COP for the sales-below-COP test, would yield NVs that would not result in fair and proper comparisons with U.S. prices.³³

Commerce’s Position: We disagree with the respondents’ interpretation of the Act. Section 504 of the TPEA added the concept of “particular market situation” in the definition of the term “ordinary course of trade” for purposes of CV under section 773(e) of the Act, and for purposes of the COP under section 773(b)(3) of the Act, added the concept of the term “particular market situation” to the definition of “ordinary course of trade,” under section 771(15) 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, the administering authority may use another calculation methodology under this 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

²⁷ *Id.* at 9 (citing S. Rep. No. 114-45 (2015) at 37).

²⁸ *Id.* (citing section 773(b)(3)(A) of the Act).

²⁹ *Id.* at 8 (citing section 771(15) of the Act).

³⁰ *Id.* at 9-11 (citing sections 773(b)(3) and (e) of the Act).

³¹ *Id.* at 11-12 (citing H.R. Rep. No. 103-316, vol. 1 at 834).

³² *Id.* at 12 (citing section 773(b) of the Act).

³³ *Id.* at 12-13 (citing section 773(a) of the Act).

whether the cost of materials, fabrication, or processing of such merchandise fail to accurately reflect the COP in the ordinary course of trade.³⁴

The respondents argue that section 504(b) of the TPEA does not apply to the calculation of COP when determining whether home market sales are below cost, but applies only when CV is used for determining NV. In other words, the respondents contend that, because Congress did not modify the specific statutory provision governing the sales-below-cost analysis for determining which sales to exclude from the calculation of NV, Commerce has no statutory authority to adjust COP when not using CV as NV.

We find the respondents' interpretation of the Act to be impermissibly narrow and contrary to the intent of the statute. Contrary to the respondents' claim, the Act permits Commerce to address distortions in reported costs through various calculation methodologies, including cost adjustments for purposes of the sales-below-cost test.³⁵ Nonetheless, in applying a cost adjustment, Commerce must achieve a "fair comparison" between NV and U.S. price, regardless of how NV is calculated.³⁶ Further, in stipulating the manner in which NV is to be calculated, the Act also requires that NV reflect home market prices that are in the "ordinary course of trade."³⁷

We further note that the TPEA generally expanded the meaning of "ordinary course of trade" to include "situations in which the administering authority determines that the particular market situation prevents a proper comparison {of NV} with the export price or constructed export price."³⁸ Thus, where a PMS affects the COP for the foreign like product through distortions to the cost of inputs, it is reasonable to conclude that such a situation may prevent a proper comparison of the EP or CEP with NV based on home market prices just as with NV based on CV. The respondents' claim that an examination of a PMS for purposes of the sales-below-cost test goes beyond the plain language of the Act and fails to consider part of section 773(e) of the Act that specifically includes the term "ordinary course of trade." Thus, the definition of that term, found in section 771(15) of the Act, is integral to the PMS provisions in the Act.

Similarly, section 773(e) of the Act discusses the CV and provides Commerce with broad authority to use "any other calculation methodology" if it determines that a "particular market situation exists such that the cost of materials . . . does not accurately reflect the cost of production in the ordinary course of trade."³⁹ Although section 773(e) of the Act is applicable to

³⁴ See section 773(e) of the Act.

³⁵ *Id.*; see also *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 10784 (March 22, 2019), and accompanying Issues and Decision Memorandum (IDM) at Comment 1; and *Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 15114 (March 17, 2020) (*CORE from Korea*), and accompanying IDM at Comment 1. While we acknowledge that in *Saha Thai*, the CIT held that Commerce was not permitted to apply a cost-based PMS adjustment to a respondent's COP when applying the sales-below-cost test under section 773(b)(3) of the Act, *Saha Thai*, as well as *Borusan* and *Husteel*, are not final and conclusive and remain subject to appeal. Furthermore, the CIT's conclusions in those cases do not bind our analysis in this administrative review.

³⁶ See section 773(a) of the Act.

³⁷ See section 773(a)(1)(B)(i) of the Act.

³⁸ See section 771(15)(C) of the Act (Commerce "shall consider" such transactions outside ordinary course of trade).

³⁹ *Id.* (emphasis added).

CV, it is unreasonable to conclude that, while Congress intended for Commerce not to rely on costs distorted by a PMS for CV, it would have intended for Commerce to rely on those same distorted costs for purposes of the COP used in the sales-below-cost test. Thus, the respondents' arguments in support of their statutory interpretation are unpersuasive, given the language of the statute and its context, which support the conclusion that Congress intended for Commerce to have flexibility in this area.⁴⁰

Further, the relevant legislative history indicates that the TPEA permits Commerce to adjust the respondents' costs based upon the PMS. The Senate Report indicated that the amendments ultimately enacted in the TPEA "provide that where a particular market situation exists that *distorts pricing or cost in a foreign producer's home market*, {Commerce} has *flexibility* in calculating a duty that is not based on distorted pricing or costs."⁴¹

Based on the statutory language and evidence of legislative intent, Commerce has consistently found that Section 504 of the TPEA added the concept of PMS in the definition of the term "ordinary course of trade," for purposes of CV, "and through these provisions for purposes of the cost of production under {section 773(b)(3) of the Act}."⁴² Thus, where a PMS affects the COP of the foreign like product, it is reasonable to conclude that such a PMS may prevent an accurate evaluation of the sales-below-cost test.

Comment 2: Evidence of a PMS

NEXTEEL's Case Brief

- Commerce evaluated PMS allegations in other proceedings in the sales pricing context under section 773(a)(1)(B)(ii)(III) of the Act, and recognized that a PMS finding relies on a high threshold with strong substantial evidence to establish that a respondent's actual data is unusually and extensively distorted. Commerce should apply the same standard under section 773(e) of the Act, reserving PMS findings for limited and unique circumstances rather than having them be the norm. In this manner, Commerce will find that there is no PMS with respect to NEXTEEL's purchases of HRC in the instant administrative review.⁴³

⁴⁰ See *Norfolk & W. Ry. Co. v. American Train Dispatchers' Ass'n*, 499 U.S. 117, 129 (1991) (declining to resort to a canon of construction that supported a particular interpretation of a statute when the "whole context," including the statute's plain language, "dictate a different conclusion" process).

⁴¹ See S. Rep. No. 114-45, at 37 (2015) (emphasis added); see also *NEXTEEL Co., Ltd. v. United States*, 355 F. Supp. 3d 1336, 1349 (CIT 2019) (*NEXTEEL I*) (quoting same).

⁴² See, e.g., *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*), and accompanying IDM at Comment 3; see also *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.

⁴³ See NEXTEEL Case Brief at 4-6 (citing Statement of Administrative Action accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. No. 103-316 (1994) (SAA), at 822; *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*); *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 68 FR 52741 (September 5, 2003) (*Wheat from Canada*), and accompanying IDM at Comment 1; *Certain Cold-Rolled and Corrosion-*

- The CIT concluded in *Husteel* that Commerce’s finding of the existence of PMS in the 2015-2016 *Final Results*⁴⁴ was unsupported by substantial evidence.⁴⁵ Commerce relied on the same logic and evidence in both its PMS finding for the 2016-2017 *Final Results*⁴⁶ and in the *Preliminary Results*. In *Husteel*, as well as in rulings on the PMS findings in the oil country tubular goods (OCTG) reviews, the CIT ruled that Commerce’s analysis of the record evidence in each underlying proceeding failed to support the PMS finding.⁴⁷
- Commerce has made PMS determinations with respect to the HRC input in WLP and other pipe products covering reviews from July 2014 through November 2018. If Commerce affirms its *Preliminary Results* PMS finding, it will conclude that the alleged PMS existed for over four years, thus reflecting a situation that is effectively the “ordinary course of trade” in Korea.⁴⁸
- The record fails to support the Domestic Interested Parties’ claims that significant global steel overcapacity, particularly in China and Korea, caused a PMS in Korea during the POR. Moreover, NEXTEEL provided information demonstrating that the Chinese industry reduced capacity during the POR.⁴⁹
- Nothing on the record of this review indicates that the Korean market for HRC in particular is distorted. Global steel overcapacity affects many countries, not just Korea. Further, record information shows that the global steel overcapacity eased at the beginning of the POR, undermining the Domestic Interested Parties’ PMS claim.⁵⁰
- The Korean HRC market functions as a result of global supply and demand trends. The record evidence shows that WLP input prices track finished product prices. Specifically, NEXTEEL demonstrated that the prices it paid for HRC during the POR reflect market conditions, and not a PMS.⁵¹
- In the *Wind Towers Preliminary Determination*, Commerce preliminarily found no PMS existed for the input, cut-to-length (CTL) plate, noting that “prior to and during the {period of investigation}, the price of CTL plate inputs in Korea was rising, steel imports to Korea were decreasing, and the Chinese share of Korean steel imports was decreasing.”⁵² During this POR, HRC prices were increasing in Korea, imports into

Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18404 (April 15, 1997) (*Cold-Rolled and CORE from Korea*) at Comment 1; and *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 76 FR 40881 (July 12, 2011) (*Shrimp from Thailand 2009-2010*), and accompanying IDM at Comment 3).

⁴⁴ See *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.

⁴⁵ See NEXTEEL Case Brief at 7 (citing *Husteel*, 426 F. Supp. 3d at 1391-1392).

⁴⁶ 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.

⁴⁷ See NEXTEEL Case Brief at 7-10 (citing *Husteel*; *NEXTEEL I*, 355 F. Supp. 3d at 1343-1347, and 1350-1351; *NEXTEEL Co., Ltd. v. United States*, 392 F. Supp. 3d 1276, 1287-1288 (CIT 2019) (*NEXTEEL II*); and *Hyundai Steel Company v. United States*, 415 F. Supp. 3d 1293 1301 (CIT 2019) (*Hyundai Steel*)).

⁴⁸ *Id.* at 10-11 (citing section 771(15) of the Act).

⁴⁹ *Id.* at 11-12 (citing PMS Allegation at 16, PDM at 13, and NEXTEEL’s PMS Rebuttal Comments at Exhibit 8).

⁵⁰ *Id.* at 12-15 (citing NEXTEEL PMS Comments at 5-8 and Exhibit 8; and PMS Allegation at 16).

⁵¹ *Id.* at 15-19 (citing NEXTEEL PMS Comments at 18 and Exhibits 9, 12, and 13).

⁵² *Id.* at 19 (citing *Utility Scale Wind Towers from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances*, 85 FR 8560 (February 14, 2020) (*Wind Towers Preliminary Determination*), and accompanying PDM at 14).

Korea were falling, and Chinese imports were declining. Applying the *Wind Towers Preliminary Determination* analysis to this review shows that a PMS does not exist with respect to NEXTEEL's HRC purchases during the POR because the HRC prices are reflective of true market values and conditions.⁵³

- The evidence for the strategic alliance element of the PMS finding includes a 2013 affidavit and a Korean Fair Trade Commission decision from ten years ago.⁵⁴ This information is not contemporaneous with this POR and does not support the alleged alliance between HRC suppliers and pipe producers. Further, the CIT, in both *Husteel* and a related OCTG proceeding, rejected the notion of such strategic alliances.⁵⁵
- The claim of Korean government subsidization or intervention in the Korean steel market was based on the adverse facts available (AFA) finding in *Hot-Rolled Steel Final Determination*.⁵⁶ Commerce subsequently found rates of 0.58 percent or lower in *Hot-Rolled Steel 2016 Final Results* and *Hot-Rolled Steel 2017 Preliminary Results*.⁵⁷ These findings show a negligible amount of HRC subsidization and thus fail to support the PMS claim.
- The record fails to support the claim that Korean domestic electricity costs are not market based. Commerce has not found countervailable subsidies with respect to electricity provided to Korean steel producers in prior CVD proceedings, including *WLP CVD Final*.⁵⁸ In light of these determinations, Commerce cannot point to the Korean electricity market as a PMS factor.

⁵³ *Id.* at 20; *see also* NEXTEEL PMS Comments at Exhibits 9 and 12-14.

⁵⁴ *Id.* (citing PMS Allegation at 13 and Exhibits 33 and 34; and PDM at 13).

⁵⁵ *Id.* at 21 (citing *Husteel*, 426 F. Supp. 3d at 1390-1391; and *Husteel v. United States*, 98 F. Supp. 3d 1315, 1359 (CIT 2015)).

⁵⁶ *Id.* (citing *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016) (*Hot-Rolled Steel Final Determination*)).

⁵⁷ *Id.* at 21-22 (citing PDM at 13; *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 2016*, 84 FR 28461 (June 19, 2019) (*Hot-Rolled Steel 2016 Final Results*); and *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, 2017*, 84 FR 67927 (December 12, 2019) (*Hot-Rolled Steel 2017 Preliminary Results*)).

⁵⁸ *Id.* at 23-24 (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), and accompanying IDM at Comment 2; *Hot-Rolled Steel Final Determination* IDM at Comment 2; *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015) (*WLP CVD Final*); *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), and accompanying IDM at Comment 2; *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review and Rescission of Countervailing Duty Administrative Review, in Part*, 82 FR 39410 (August 18, 2017), and accompanying IDM at Comment 2; *POSCO v. United States*, 353 F. Supp. 3d 1357 (CIT 2018); *POSCO v. United States*, 296 F. Supp. 3d 1320, 1350 (CIT 2018); *Nucor Corp. v. United States*, 286 F. Supp. 3d 1364 (CIT 2018), *appeal docketed*, No. 18-1787 (Fed. Cir. 2018); and *Maverick Tube Corporation v. United States*, 273 F. Supp. 3d 1293, 1303-08 (CIT 2017) (*Maverick Tube*), *appeal docketed*, No. 18-1351 (Fed. Cir. 2017)).

SeAH's Case Brief

- Whether the factors alleged for a PMS are considered separately or as the “totality of the circumstances,” the evidence does not support the Domestic Interested Parties’ claim that HRC prices were distorted by a PMS.
- The evidence that the prices SeAH paid for HRC were affected by subsidies was based on *Hot-Rolled Steel from Korea Final Determination*, which examined subsidies in 2014 and applied an AFA rate of 58.68 percent to POSCO. That determination has been superseded by *Hot-Rolled Steel 2016 Final Results*, where Commerce found POSCO’s rate to be 0.54 percent. This level of subsidization does not support the Domestic Interested Parties’ claim that the Korean HRC market was significantly distorted by subsidies.⁵⁹
- There is no evidence of anticompetitive behavior among Korean steel producers affecting prices for HRC in Korea. Commerce noted claims of price fixing among Korean pipe producers; however, these claims are either misconstrued or ended well before the POR. Further, Commerce has failed to identify any evidence of collusion among Korean pipe producers to force HRC producers to lower their prices.⁶⁰
- There is no basis on the record for the claim that Korean HRC producers benefitted from uneconomically low electricity prices.⁶¹
- There is no record evidence that imports from China depressed Korean market prices for HRC during the POR. The Domestic Interested Parties base their PMS allegation on second-hand accounts, while the data shows that prices of HRC sold by POSCO rose during the POR.⁶² In addition, POSCO reported increasing gross profits during the 2014-2018 period, despite the fluctuations in Chinese and global capacity utilization during that period.⁶³
- Commerce’s PMS finding in the *Preliminary Results* failed to demonstrate that the prices SeAH paid for HRC did not accurately reflect the COP in the ordinary course of trade, as required by the statute. In fact, the financial results and HRC prices of SeAH’s main HRC supplier, POSCO, showed that the prices SeAH paid for HRC accurately reflected the COP in the ordinary course of trade. Thus, there is no statutory basis to make a PMS adjustment to SeAH’s HRC costs.⁶⁴

⁵⁹ See SeAH Case Brief at 7-8 (citing *SKF USA v. United States*, 675 F. Supp. 2d 1264, 1276 (2009)).

⁶⁰ *Id.* at 8-9 (citing PDM at 10, and PMS Allegation at Exhibits 33-36).

⁶¹ *Id.* at 10 -11. We note that the information SeAH cites in its brief to support this argument appears to be from the record of the 2017-2018 administrative review of OCTG from Korea; this information is not on the record of the instant review.

⁶² *Id.* at 11 (citing PMS Allegation at 17 and Exhibits 26, 29, 30, and 42).

⁶³ *Id.* (citing 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) at Appendix 6; and PMS Allegation at Exhibits 42 and 66).

⁶⁴ *Id.* at 16-17 (citing PMS Allegation at Exhibits 30 and 42; and SeAH PMS Comments at Appendix 6).

- The CIT has rejected Commerce's PMS findings in multiple Korean steel pipe cases on the basis that Commerce's PMS determinations were not supported by substantial evidence on the record.⁶⁵ In particular, the CIT rejected arguments that the Korean government instituted policies that would distort the cost of HRC, and that the trend of Chinese imports was unique to Korea.⁶⁶ As Commerce's *Preliminary Results* PMS finding relied on the same information as in the litigated cases, Commerce's PMS determination is incomplete, unsubstantiated, and inconsistent with the CIT's clear and reasoned holdings on similar facts in other proceedings.
- Commerce has made PMS determinations with respect to the HRC input in WLP and other pipe products covering reviews starting in July 2014 and continuing through November 2018. As a result, Commerce determined that, for over four years, the market situation in Korea is a normal situation existing for a reasonable time prior to the exportation of the subject merchandise. Accordingly, Commerce cannot consider the prevailing Korean market conditions to be outside the ordinary course of trade.
- A PMS finding should be reserved for the most unusual circumstances when the record contains substantial evidence of distortions in a respondent's cost of manufacturing (COM). Commerce considered PMS allegations in other proceedings under section 773(a)(1)(B)(ii)(III) of the Act and established that a PMS finding relies on a high threshold with strong substantial evidence to establish that a respondent's actual data is unusually and extensively distorted.⁶⁷
- In making PMS determinations in Korean steel pipe cases, Commerce has turned from its prior reasoned analysis to findings unsupported by substantial evidence that have not withstood judicial review. To support its PMS finding for the HRC input, Commerce must explain why the market situation in Korea during the POR related to the manufacture of WLP is necessarily distinct from the manufacture of other steel products in Korea during the same time period. Otherwise, the PMS finding cannot stand.
- Commerce must quantitatively analyze the PMS allegation with respect to a respondent's actual COPs, using a data-driven methodology for benchmarking the relevant COPs, as it has in other recent cases. Commerce failed to perform this level of analysis in the *Preliminary Results* and thus it must either reverse its finding or, at a minimum, perform this type analysis in the final results.⁶⁸
- Commerce's application of a PMS adjustment to respondents' costs, is inconsistent with the United States' World Trade Organization (WTO) obligations because it disregards

⁶⁵ See Hyundai Steel Case Brief at 12-13 (citing *NEXTEEL I*, 355 F. Supp. 3d at 1351; and *NEXTEEL II*, 392 F. Supp. 3d at 1288).

⁶⁶ *Id.* (citing *NEXTEEL I*, 355 F. Supp. 3d at 1349-50).

⁶⁷ *Id.* at 15-18 (citing SAA at 822; *Preamble*, 62 FR at 27323; *Wheat from Canada* IDM at Comment 1; *Cold-Rolled and CORE from Korea* at Comment 1; and *Shrimp from Thailand 2009-2010* IDM at Comment 3).

⁶⁸ *Id.* at 19-21 (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 IDM at Comment 1; *Biodiesel from Argentina: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 50394 (October 31, 2017), and accompanying PDM at 23; *Biodiesel from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 50379 (October 31, 2017), and accompanying PDM at 23; and *Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018), and accompanying IDM at Comment 3).

a company's actual costs by applying an adjustment determined from external sources. The Korean respondents negotiated and paid fair market prices for their HRC purchases, and their reported costs reflect the actual costs that these companies incurred. Thus, under WTO rules, there is no basis for Commerce to exercise its discretion to disregard actual costs in this manner.⁶⁹

Husteel's Case Brief

- Commerce's finding in the *Preliminary Results* of alleged "distortions" in the Korean HRC market was insufficient to satisfy the statutory requirement under section 773 of the Act, as amended by the TPEA, for making a PMS adjustment. Specifically, Commerce failed to make a finding under that provision 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" as a result of the PMS. Thus, there is no basis for Commerce to depart from its longstanding practice to rely on a company's books and records for calculating costs.⁷⁰
- The *Preliminary Results* PMS finding is based on the same "evidentiary void" cited by the CIT in overturning the PMS findings in other Korean pipe cases.⁷¹ Even with a small amount of additional evidence on this record concerning a PMS, the PMS determination continues to be unsupported by substantial evidence.
- In *Husteel*, the CIT explained that Commerce relied on its past analysis to find a PMS based on the "collective impact" of four factors. The CIT found that the PMS determination in the *2015-2016 Final Results*⁷² was unsupported by substantial evidence, and that "Commerce must demonstrate both that there are distortions present in the market and that those distortions prevent a proper comparison of NV with export price or constructed export price."⁷³
- While the CIT found in *Husteel* that the cumulative effect of the four factors warranted a PMS finding, Commerce could only quantify the impact of one of them. The CIT further held that Commerce could not simply refer to the totality of the alleged distortions to avoid supporting each one with substantial evidence.⁷⁴ This same situation applies to the PMS finding in the *Preliminary Results*.
- In addition, the CIT held in *Husteel* that, not only must Commerce substantiate each alleged distortion, it must also demonstrate "that those distortions prevent a proper comparison of NV with export price or constructed export price."⁷⁵ Commerce failed to do so in the *Preliminary Results*.
- The CIT in *NEXTEEL I* and *NEXTEEL II* found that Korean government subsidies on HRC do not contribute to a PMS in Korea. Commerce's previous findings in this regard

⁶⁹ *Id.* at 22-23 (citing WTO Antidumping Agreement, at Article 2.2).

⁷⁰ See *Husteel Case Brief* at 5-6 (citing *Certain Tapered Roller Bearings from the Republic of Korea; Preliminary Affirmative Determination of Sales at Less-Than-Fair-Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 4901 (February 2, 2018), and accompanying IDM at 2).

⁷¹ *Id.* at 6-7 (citing *Hyundai Steel*, 415 F. Supp. 3d at 1301; *NEXTEEL I*, 355 F. Supp. 3d at 1349-1351; *NEXTEEL II*, 392 F. Supp. 3d at 1287-1288; and *Husteel*, 426 F. Supp. 3d at 1388 - 1392).

⁷² *Id.* at 7 (citing *Husteel*, 426 F. Supp. 3d at 1388, n.14; and *2015-2016 Final Results* IDM at Comment 2).

⁷³ *Id.* at 7-8 (citing *Husteel*, 426 F. Supp. 3d at 1389- 1392; and sections 773(a)(1)(B)(ii)(III) and 773(a)(1)(C)(iii) of the Act)).

⁷⁴ *Id.* at 8 (citing *Husteel*, 426 F. Supp. 3d at 1391).

⁷⁵ *Id.* (citing *Husteel*, 426 F. Supp. 3d at 1391-1392).

were based on outdated information, and Commerce in its more recent examination of HRC subsidies in *Hot-Rolled Steel 2016 Final Results* found negligible subsidy rates.⁷⁶

- In both *NEXTEEL I* and *Husteel*, the CIT found that Chinese steel imports do not contribute to a PMS in Korea. In particular, the CIT explained that, while a PMS determination need not be particular to one market, evidence that is not particular to the Korean market is insufficient.⁷⁷ Therefore, Commerce's PMS finding in the *Preliminary Results*, based on the same logic, is also insufficient.⁷⁸
- There is no record evidence that strategic alliances contribute to a PMS in Korea. Not only did the CIT find the evidence in other proceedings to be insufficient, but also the information on this record is not relevant to the instant POR. Further, this review includes no record evidence that the HRC input prices resulting from the alleged strategic alliances were distorted below market value and not in the ordinary course of trade.⁷⁹
- There is no record information that any Korean government intervention in the electricity market distorts electricity prices. Further, Commerce consistently has not found any countervailable subsidies associated with electricity provided to Korean steel producers.⁸⁰

Domestic Producers' Rebuttal Brief

- Commerce based its PMS finding in this review on substantial record evidence demonstrating the combined impact of a variety of distortions present in the Korean HRC market. Contrary to the respondents' assertions, Commerce's PMS finding in this review is amply supported by record evidence.⁸¹
- The respondents' arguments that the CIT decisions preclude Commerce from finding a PMS in this review are incorrect because none of the cited decisions are final and do not control the outcome of this review. Further, the CIT decisions are based on records that differ from this review.
- In addition, the CIT decisions are flawed and subject to appeal.⁸² In particular, the Court in *Husteel* found that, even if Commerce's findings were supported by substantial evidence, Commerce is required to explain why distortions to the COP caused by a PMS prevented a proper comparison between home market prices and export prices. However, the statute includes no such requirement.⁸³
- The CIT's suggestion in *Husteel* that Commerce consider whether a PMS may affect both the NV and the U.S. price sides of the price comparison is inconsistent with the statute.

⁷⁶ *Id.* at 9-10 (citing PDM at 13, *NEXTEEL I*, F. Supp. 3d at 1350-51; *NEXTEEL II*, 392 F. Supp. 3d at 1287-88; and *Hot-Rolled Steel 2016 Final Results*).

⁷⁷ *Id.* at 10 (citing *Husteel*, 426 F. Supp. 3d at 1391).

⁷⁸ *Id.* at 10-11 (citing PDM at 13).

⁷⁹ *Id.* at 11 (citing PDM at 13; *NEXTEEL I*, F. Supp. 3d at 1351; and *NEXTEEL II*, 392 F. Supp. 3d at 1288).

⁸⁰ *Id.* at 11-12 (citing section 773(e) of the Act; *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review*, 62 FR 18404, 18412 (April 15, 1997); *Hot-Rolled Steel Final Determination* IDM at Comment 2; and *Maverick Tube*, 273 F. Supp. at 1312).

⁸¹ See Domestic Producers Rebuttal Brief at 13-14 (citing PDM at 12-16; and PMS Allegation).

⁸² *Id.* at 14-18 (citing *NEXTEEL I*, 355 F. Supp. 3d at 1343-1351; *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 620 (1966); *Catfish Farmers of Am. v. United States*, 641 F. Supp. 2d 1362, 1366 (CIT 2009); 19 CFR 351.301(c); 19 CFR 351.309(b); *NEXTEEL II*, 392 F. Supp. 3d at 1287 – 1344; and *Hyundai Steel*, 415 F. Supp. 3d at 1300-1301).

⁸³ *Id.* at 18-19 (citing *Husteel*, 426 F. Supp. 3d at 1390-1392; *2015-2016 Final Results* IDM at Comment 2; and sections 771(15), 773(b)(1), and 773(e) of the Act).

Further, the concepts of PMS and ordinary course of trade do not apply to the U.S. price calculation.⁸⁴

- Commerce's *Preliminary Results* explained that the evidence on the record supported a PMS finding based on the following four factors that distorted the cost of the HRC input into WLP during the POR: (1) subsidization of Korean HRC; (2) the distortive pricing of Chinese HRC exports; (3) strategic alliances between Korean HRC suppliers and Korean WLP producers; and (4) distortive government control over electricity prices in Korea.⁸⁵
- Unlike the prior Korean pipe reviews examined by the CIT, this review includes a detailed and robust regression analysis that demonstrates the quantitative impact of global steel overcapacity on the Korean HRC market.⁸⁶
- Although the respondents claim that lower subsidy rates found in *Hot-Rolled Steel 2016 Final Results* undermines the subsidization factor of the PMS finding, Commerce nonetheless found that Korean HRC was subsidized by the Korean government. Because the Korean government continues to subsidize Korean HRC producers, this is sufficient evidence that the subsidies contribute to the existence of PMS that distorts HRC costs.
- With respect to strategic alliances, the respondents provided no evidence to detract from Commerce's PMS finding. Rather, the record evidence shows a history of manipulative pricing in Korea, particularly with respect to pipe products. Thus, this continued collusion among the producers is a contributing factor supporting the PMS finding.⁸⁷
- With respect to electricity, a finding of a countervailable subsidy is different from a finding of the distortive impact on pricing for a PMS determination. Commerce properly considered that the Korean government's control over electricity pricing contributed to the distorted pricing of HRC, contributing to the PMS finding.⁸⁸
- With respect to overcapacity, Commerce continues to find that global steel overcapacity and its effects continued in the 2016-2018 period. The respondents' claims that Korea's HRC prices are at or above world levels fails to account for the fact that the global steel overcapacity crisis necessarily affects global prices, even though the impacts are felt differently in each country. The regression analysis model supports the impact of steel overcapacity contributing to the PMS because it quantifies the effect of overcapacity on steel prices.⁸⁹
- Commerce has rejected the argument that overcapacity cannot be the basis for a PMS finding because the overcapacity crisis is global in nature.⁹⁰ While overcapacity is

⁸⁴ *Id.* at 19 (citing *Husteel* 426 F. Supp. 3d at 1388-1389; and sections 771(15), 772, and 773 of the Act).

⁸⁵ *Id.* at 21 (citing PDM at 13-14).

⁸⁶ *Id.* at 22 (citing PMS Allegation at 38-57).

⁸⁷ *Id.* at 22-23 (citing PMS Allegation at 22-24; and PDM at 12-16).

⁸⁸ *Id.* at 23-24 (citing *Maverick Tube*, 273 F. Supp. 3d at 1306; *Nucor Corp. v. United States*, 927 F.3d 1243 (Fed. Cir. 2019); and PMS Allegation at 24-27).

⁸⁹ *Id.* at 25-26 (citing *Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2715 (January 16, 2020) (*Standard Pipe from India*), and accompanying IDM at Comment 1; and PMS Allegation).

⁹⁰ *Id.* at 26 (citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 57583 (December 6, 2017), and accompanying PDM at 14, unchanged in *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).

global, the impact is specific to each country. In addition, the regression analysis demonstrates how excess capacity can impact each country.⁹¹

- NEXTEEL mischaracterizes Commerce's negative PMS finding in *Wind Towers Preliminary Determination* that a PMS no longer exists during this POR. The PMS allegation in that case related to CTL plate, not HRC. Further, Commerce's finding noted the persistence of global excess steel capacity.⁹²
- Commerce's PMS findings are not limited to extraordinary or highly unusual circumstances, as the respondents claim. There is no such limitation in the statute, and the PMS provisions in the TPEA were added to provide Commerce with more flexibility in accounting for distorted pricing or costs.⁹³
- Although global steel overcapacity has existed for a number of years and impacts steel pricing in various countries, that situation does not preclude a PMS finding regarding Korean HRC price distortions for this POR. Commerce has previously rejected arguments challenging the PMS findings based on the global nature of steel overcapacity over time and should do the same for the final results.⁹⁴
- Commerce previously rejected the respondents' arguments that Commerce must rely on a respondent's own cost data as part of the PMS analysis. When a country's market is distorted, the costs of materials, fabrication, or other processing for companies that operate within that market are also distorted. Because all of the respondents compete for HRC in the same market, they are all affected by market-wide distortions to HRC prices.⁹⁵
- The statute does not require Commerce to quantify one or more factors to reach a qualitative determination that a PMS exists. Rather, the statute only requires that Commerce determine that the sales or costs do not reflect fair market pricing in the ordinary course of trade.⁹⁶
- Contrary to Hyundai Steel's assertion regarding an inconsistency between the WTO's rules and Commerce's application of the PMS adjustment, because the PMS adjustment was applied to the respondent's actual costs, it is consistent with both WTO obligations and the statute. In any event, Hyundai Steel failed to cite any WTO decision to support its position. Further, Commerce may not fail to enforce the PMS provisions of the statute based on an interpretation of WTO agreements that have not been incorporated into U.S. law.⁹⁷

⁹¹ *Id.* at 27 (citing PMS Allegation at Exhibit 56).

⁹² *Id.* at 27-28 (citing NEXTEEL Case Brief at 19-20; and *Wind Towers Preliminary Determination* PDM at 13-15).

⁹³ *Id.* at 28 (citing S. Rep. No. 114-45 (2015) at 37; and section 771(15)(c) of the Act).

⁹⁴ *Id.* at 28-29 (citing *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 IDM at Comment 2; and *CWP from Korea 2015-2016 Preliminary Results* PDM at 14).

⁹⁵ *Id.* at 30-31 (citing NEXTEEL Case Brief at 18-19; Hyundai Steel Case Brief at 19-21; Husteel Case Brief at 6; *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 24471 (May 28, 2019), and accompanying IDM at Comment 1; *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) (*OCTG 2016-2017 Final Results*), and accompanying IDM at Comment 1).

⁹⁶ *Id.* at 31-32 (citing *Vicentin*, 404 F. Supp. 3d 1323, at 27, n.27; and sections 771(18)(A) and 773(b) of the Act).

⁹⁷ *Id.* at 32-33 (citing Hyundai Steel Case Brief at 22-23; and *Timken Co. v. United States*, 354 F. 3d 1334, 1344 (Fed. Cir. 2004)).

Commerce's Position: We continue to find that a PMS exists in Korea that distorts the COP of WLP. This PMS results from the collective impact of the four factors described below.

In the instant review, the Domestic Interested Parties alleged that a PMS existed during the POR in Korea which distorts the WLP COP 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. In the previous administrative review of this order, Commerce considered, as a whole, the four facets of the PMS allegations based on their cumulative effect on the Korean production costs of WLP through the COP for WLP and its inputs and found that a PMS existed in Korea during that POR.⁹⁸

Commerce has found a PMS to exist in previous administrative reviews of this proceeding and the fact that Commerce has found a PMS in Korea since the first administrative review of this order does not somehow render this market situation to be no longer particular. That is, in each segment of this proceeding, Commerce has undertaken an extensive analysis of information on the individual record of each segment to determine whether distortions exist within Korea that may impact the cost of producing merchandise sold to the United States. The TPEA intended for Commerce to have the flexibility to conduct such an analysis wherever the cost of producing subject merchandise is outside the ordinary course of trade. In this regard, it is fully within Commerce's discretion to determine whether a PMS exists in Korea by conducting such an extensive analysis, as envisioned by the SAA.

We disagree with the respondents' argument that the CIT's rejection of Commerce's PMS finding in the first administrative review of this proceeding as unsupported by substantial evidence is applicable to this review. Our examination of the existence of a PMS in the instant proceeding is based on an extensive amount of information, both qualitative and quantitative, placed on the record of this review, thus satisfying any concern of the substantial evidence and reasonableness behind Commerce's PMS methodology and our final PMS determination in this review.

While Husteel questions Commerce's continued reliance upon factors that it claims the CIT found to be unreasonable in *Husteel*, we find Husteel's argument to hold little merit. First, in *Husteel*, the administrative record on which the Court opined was wholly different from the record in this segment of this proceeding. For instance, in the *2015-2016 Final Results*, Commerce's support for the strategic alliance factor in support of its PMS determination rested on only a declaration from an outside party.⁹⁹ In this case, the record contains a number of supporting documents to show the existence of strategic alliances in Korea.¹⁰⁰ The same holds true with respect to the other PMS factors, such as overcapacity, as discussed below. Thus, the administrative record in the *2015-2016 Final Results* cannot supplant the administrative record in this segment of this proceeding. In addition, there is little question that the CIT has upheld

⁹⁸ See *2016-2017 Final Results* IDM at Comment 2.

⁹⁹ See *2015-2016 Final Results* IDM at Comment 1.

¹⁰⁰ *Id.* at Exhibits 33 - 36.

Commerce's PMS methodology with respect to the totality of the circumstances where substantial support exists, as demonstrated by the Court's holdings in *NEXTEEL I* and *NEXTEEL II*.¹⁰¹ Similar to the Court's decisions in both *NEXTEEL I* and *NEXTEEL II*, we have evaluated the totality of the circumstances in this administrative review and we find that the record is replete with evidence with respect to the PMS factors alleged by the Domestic Interested Parties and fully evaluated by Commerce.

Moreover, we agree with Husteel that Commerce must support each element that it relied upon in its PMS determination. The record contains substantial evidence associated with each of the four factors that we relied upon in our preliminary PMS determination and which we continue to find support our affirmative final PMS determination. We discuss these factors below.

In the current administrative review, we considered the four aspects underlying the PMS allegation as a whole, based on their cumulative effect on the COP for Korean WLP.¹⁰² Based on the existence of these conditions in the Korean market, we continue to find that a single PMS exists which impacts the COP for WLP during the POR. The record evidence shows that the Korean government subsidized HRC, the primary input into WLP production, and that the mandatory respondents purchased HRC from entities receiving these subsidies, including POSCO.¹⁰³ Further, record evidence shows that HRC constitutes a substantial proportion of the cost of WLP production; thus, distortions in the HRC market have a significant impact on the COP for WLP.¹⁰⁴

Additionally, as a result of the 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 sharply impacted by imports of cheap Chinese steel products, placing downward pressure on Korean domestic steel prices.¹⁰⁵ Specifically, there is evidence on the record of this proceeding that Korea is one of the top two destinations of Chinese exports of hot-rolled steel, and import prices of HRC from China have generally been significantly lower than they are from the rest of the world.¹⁰⁶ This situation distorts the Korean market prices of HRC, the main input in Korean WLP production.

During the POR, China continued to be the largest manufacturer and exporter of steel globally, with estimates indicating that its capacity for steel production continues to grow.¹⁰⁷ Although record evidence indicates that steel overcapacity did decrease for the second year in a row in

¹⁰¹ See *NEXTEEL I*, 355 F. Supp. 3d at 1349 ("The statute's language and legislative history permit Commerce's chosen methodology in this investigation, which was to consider allegations of a particular market situation based on the cumulative effect and the totality of the conditions in the foreign market."); and *NEXTEEL II*, 392 F. Supp. 3d at 1287 ("The statute's language and legislative history permit Commerce's chosen methodology in this investigation, which was to consider allegations of a particular market situation based on the cumulative effect and the totality of the conditions in the foreign market.")

¹⁰² See PDM at 12-14.

¹⁰³ See, e.g., PMS Allegation at Exhibits 19 and 23; see also *NEXTEEL*'s May 21, 2019 Section D Questionnaire Response (*NEXTEEL DQR*) at Exhibit D-4; and SeAH's May 21, 2019 Section D Questionnaire Response (SeAH *DQR*) at 8 and Exhibit D-4-A.

¹⁰⁴ See *NEXTEEL DQR* at D-4; and SeAH *DQR* at Exhibit D.4.D.

¹⁰⁵ See PMS Allegation at Exhibits 26 - 30.

¹⁰⁶ *Id.* at Exhibit 30.

¹⁰⁷ *Id.* at Exhibit 42.

2017, the Organization for Economic Cooperation and Development (OECD) stated that this “modest reduction...still falls short of alleviating global excess capacity.”¹⁰⁸ Accordingly, we find that while there may have been a modest reduction in steel overcapacity in 2017, as the OECD stated, it fell short of alleviating the excess capacity problem. Moreover, to the extent that there was some reduction in the steel overcapacity, our methodology for determining the amount of the PMS adjustment is designed to capture and account for any such reduction.

Further, the average unit value (AUV) for HRC imported from China into Korea was lower than the AUV of China’s exports to other countries, with AUVs for HRC imported from China into Korea in the bottom 15 percent of all 160 Chinese export destinations in 2017 and 2018.¹⁰⁹ In addition, imports from China have constituted at least 12 percent of Korean domestic production of HRC from 2013 through 2017.¹¹⁰ Thus, contrary to the respondents’ claims, the data strongly support a determination that imports into Korea of low-priced HRC from China contributed to the existence of a PMS during the POR.

We disagree with NEXTEEL that Commerce’s negative PMS finding in *Wind Towers Preliminary Determination* with respect to CTL plate supports a negative PMS finding in this review. Commerce’s analysis in that investigation applied to CTL plate, not the HRC input for WLP. Further, Commerce disagreed with the respondent’s claim in that proceeding concerning any general recovery in the global steel market, stating:

To the contrary, while economic indicators of an increasing global capacity crisis may have leveled off in the period prior to the POI, this does not demonstrate that the effects of two decades of price suppression have been ameliorated. Although there was a relatively small decrease in excess capacity from 2016-2018, current estimates of excess capacity are still above 400 million metric tons.¹¹¹

SeAH argues that Commerce failed to demonstrate that SeAH’s specific purchases of HRC were outside the ordinary course of trade, and thus there is no basis to make an adjustment to SeAH’s HRC costs. We believe that no such analysis is necessary. We disagree with the notion that such company-specific analysis is necessary and appropriate in a situation where, as here, there is sufficient evidence demonstrating that the market as a whole is distorted and a PMS 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. 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 agree with the Domestic Interested Parties that the record evidence supports that strategic alliances exist in Korea.¹¹² Because strategic alliances have led to prices of HRC significantly

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 20 and 29, and Exhibits 30 and 42.

¹¹⁰ *Id.*

¹¹¹ See *Wind Towers Preliminary Determination* PDM at 15 (internal cite omitted), unchanged in *Utility Scale Wind Towers from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 85 FR 40243 (July 6, 2020).

¹¹² See PMS Allegation at Exhibit 33.

below prevailing market value, as evidenced by the record information,¹¹³ we find that such strategic alliances are a contributing factor to the PMS in Korea, impacting the COP for WLP. Such evidence supports the allegation that these strategic alliances may have affected prices in the period covered by the prior administrative review, up to and including this POR. For example, in December 2017, the Korea Fair Trade Commission (KFTC) fined Hyundai Steel along with five other Korean steel producers 92.1 billion won for rigging bids for pipe sold to a Korean gas company over a period of ten years.¹¹⁴ Hyundai Steel and five other Korean steel producers received the largest fines among the group of steelmakers and the practice was referred to by a KFTC official as a “long-term chronic practice.”¹¹⁵ Moreover, the KFTC has not made any findings that Hyundai Steel and SeAH have discontinued their anticompetitive practices by the end of 2017, when the KFTC report was issued. This is consistent with our conclusion that strategic alliances and price fixing schemes 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. While this factor of non-competitive behavior by Korean companies alone is not dispositive, it is part of Commerce’s consideration of the totality of circumstances in Korea, including the prior anticompetitive arrangements and practices that involved the respondents in evaluating the full effect of all these elements on the Korean HRC market.

With respect to the allegation of distortion present in the electricity market, consistent with the SAA accompanying the URAA, 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.¹¹⁶ 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.¹¹⁷ 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. Considering the government control over KEPCO, it is notable that KEPCO reported its first operating loss in six years for 2018.¹¹⁸ It is implausible that losses of this magnitude, associated with KEPCO’s pricing, would have occurred without government control, particularly when KEPCO explicitly states that its costs are submitted to the Korean government to establish the electricity rate.

We find the argument that Commerce has consistently found that Korean electricity prices do not confer any subsidy benefit to be unavailing. Whether we found a specific program used by a respondent in a countervailing duty proceeding to be countervailable has no bearing on our analysis of whether or not a PMS existed in Korea during the POR.

These intertwined market conditions signify that the production costs of WLP, especially the acquisition prices of HRC in Korea, are distorted and are not in the ordinary course of trade. Thus, we continue to find that various market forces result in distortions which impact the COP

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ See H.R. Doc. 103-316, vol 1 (1994) at 822.

¹¹⁷ See 2015-2016 *Final Results* IDM at Comment 1; see also *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*), and accompanying IDM at Comment 1.

¹¹⁸ See PMS Allegation at Exhibit 38.

for WLP. Considered collectively, we continue to find that the allegations support a finding that a PMS existed during the POR in this administrative review.

Further, while we agree with Hyundai Steel that, under the TPEA, Congress did not provide an exhaustive definition of the term “PMS,” we disagree that it must be applied only in extraordinary circumstances. The statute, the SAA, and Commerce’s regulations do not define what constitutes a “particular market situation.” However, the SAA provides a non-exhaustive list of examples of what might be considered a PMS. For instance, a PMS might exist where the home market consists of a single sale, where there is government control over pricing to such an extent that home market prices cannot be considered to be competitively set, or where the demand patterns in the foreign market are different from those in the United States (*e.g.*, where substantial price changes are closely correlated with holidays occurring at different times of the year in the two markets).¹¹⁹ Even prior to the TPEA, the list was not exhaustive, which suggests that Congress intended to preserve Commerce’s flexibility in addressing on a case-by-case basis the various circumstances that could potentially result in a PMS. By enacting the TPEA, Congress expanded Commerce’s authority to apply the concept of a PMS. There is no indication in the TPEA or in the legislative history that Congress intended to limit Commerce’s ability to find a PMS with respect to costs to some unspoken extraordinary circumstances. In fact, even some of the examples of a PMS that the SAA provides, such as different holiday seasons in different countries, are neither rare nor extraordinary circumstances.

Moreover, we are not persuaded by Hyundai Steel’s argument that the passage of time normalized the PMS in Korea and made it so that the distorted costs accurately reflect the COP within the ordinary course of trade.¹²⁰ Section 771(15) of the Act defines “ordinary course of trade” as “the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal...with respect to merchandise of the same class or kind.” As a matter of grammar and logic, when interpreting this provision, it is clear that conditions must have been “normal” for a reasonable time prior to the exportation. Normalcy and passage of time are two separate requirements and the passage of time alone does not transform a market with significant distortions into a normal market. For example, if the government controls the prices of certain inputs to such an extent that they cannot be considered to be competitively set (such as mandating that all inputs be sold at a particular price), the passage of time alone does not render such pricing practices consistent with normal market conditions and practices.

We disagree with Hyundai Steel’s claim that Commerce must explain why the market situation for manufacturing WLP is distinct from that of other steel products during the POR in order to determine a PMS. Commerce’s PMS finding is with respect to the distortive cost of the HRC input that is consumed in the production of WLP, which, in turn, impacts the COM of any product for which HRC is the major input. Thus, there is no basis for distinguishing the HRC used to produce WLP from the HRC used to produce other steel products in Korea during the POR.

¹¹⁹ See SAA at 822.

¹²⁰ See Hyundai Steel Case Brief at 15.

We also disagree with Husteel’s contention that Commerce must demonstrate that the distortions in the market due to the PMS prevent a proper comparison of NV with EP or CEP. As we explained above in Comment 1, under the TPEA, where a PMS affects the COP for the foreign like product through distortions to the cost of inputs, it is reasonable to conclude that such a situation may prevent a proper comparison of the EP or CEP with NV based on home market prices just as with NV based on CV.

We disagree with Hyundai Steel’s argument that Commerce is not complying with its WTO obligations in calculating the respondents’ COP. Commerce used NEXTEEL’s and SeAH’s costs in calculating individual AD margins for both companies. However, because of our finding that a PMS existed in Korea during the POR, we have adjusted the respondents’ costs to account for the PMS in our calculations. That adjustment is consistent with the TPEA and is not inconsistent with the United States’ WTO obligations.

While Hyundai Steel points to *Rebar from Taiwan*, in which Commerce made a negative PMS determination using a “benchmarking analysis,” we disagree with Hyundai Steel’s contention that a benchmarking analysis is required in each case.¹²¹ Each case has its own facts and arguments and the PMS determinations are inherently case specific. Depending on the facts and arguments raised, the benchmarking analysis could be appropriate for one case, but not necessary or required for other cases. We note that the benchmarking analysis is not mentioned, let alone mandated, in the PMS provisions of the statute or the legislative history, nor does Commerce have a practice of employing benchmarking in every case where it employs a PMS analysis. In *NEXTEEL I* and *NEXTEEL II*, the CIT upheld Commerce’s methodology of considering the totality of circumstances.¹²² In this review, we have performed an analysis of the evidence on the record of this administrative review, including evidence that was not on the record of prior administrative reviews.¹²³ Accordingly, the CIT’s decisions in *NEXTEEL I* and *NEXTEEL II*, evaluating evidence on the record of prior reviews of a different order have not examined the totality of the evidence on the record of this review. Moreover, because *NEXTEEL II* is still ongoing and the decisions are not final and conclusive, the impact of that litigation is not yet known, and in any event, it is not binding on the agency. Therefore, we continue to rely upon this same methodology in making a PMS determination in this administrative review, supported by the record information noted above.

Comment 3: PMS Adjustment

NEXTEEL’s Case Brief

- The PMS adjustment, based on the Domestic Producers’ regression analysis,¹²⁴ is flawed because the model and methodology do not yield meaningful results. For example, the model includes data from the 2008-2009 global financial crisis. Removing these years

¹²¹ *Id.* at 19-12.

¹²² See *NEXTEEL I*, 355 F. Supp. 3d at 1349; and *NEXTEEL II*, 392 F. Supp. 3d at 1287.

¹²³ See generally, PMS Allegation.

¹²⁴ While CSI, IPSCO, and Welspun submitted the regression analysis, the Domestic Producers (*i.e.*, CSI, Welspun, Stupp, and American) submitted comments in support of it. Therefore, for purposes of addressing the comments we received on this topic, we attribute the regression analysis to the Domestic Producers.

from the model significantly impacts the adjustment factor such that the result loses statistical significance.¹²⁵

- The Domestic Producers' regression analysis purportedly accounts for various demand and supply side variables such as iron ore and scrap, but: 1) excludes coking coal, an essential input into steel production; and 2) includes aluminum, which is not a material input into HRC production.
- The respondents provided alternative analyses using different scenarios, many of which show insignificant or negative adjustment factors, including the "beta" coefficient factors. Their analyses also demonstrate various deficiencies in the Domestic Producers' regression analysis.¹²⁶
- The regression analysis model is based on incorrect world steel capacity and production data. The model assumed a 75 percent capacity utilization level in 2017, while the World Steel Association's (WSA's) revised 2017 figures show a 77 percent utilization level. Using the revised 2017 data would reduce the PMS adjustment factor.¹²⁷
- The regression analysis is based on a broader level of HRC products (*i.e.*, 4-digit level Harmonized Tariff Schedule (HTS) input and AUV data) than what would be used to produce subject merchandise. Commerce previously stressed the importance of relying on input-specific data in considering PMS adjustments; thus, the use of a broader range of inputs in the regression analysis reduces the validity of its results.¹²⁸
- The regression analysis lacks certain variables, such as energy inputs, distorting the results in the Domestic Producers' favor.¹²⁹
- If Commerce nevertheless continues to rely on the Domestic Producers' regression analysis model and its "beta" uneconomic capacity coefficient to derive a PMS adjustment for the final results, Commerce should revise the analysis to use the updated and POR-specific data on the record.
- Using updated 2017 capacity utilization data results in a significant impact on both the 2017 capacity utilization rate and the PMS adjustment. Moreover, using 2018 capacity utilization data shows a rate of approximately 81 percent, at or above the 80 percent target. Accordingly, no overall PMS adjustment is warranted.¹³⁰

¹²⁵ See NEXTEEL Case Brief at 26 and 30-31 (citing 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) at 23-24 and Exhibit H).

¹²⁶ *Id.* at 26-28 (citing Hyundai Steel PMS Comments at 25-26 and Attachment H; and PMS Allegation at Exhibit 62).

¹²⁷ *Id.* at 29-30 (citing NEXTEEL's Letter, "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) at Exhibit 8; Hyundai Steel PMS Comments at Attachment D.2; and PMS Allegation at Exhibit 42).

¹²⁸ *Id.* at 31-32 (citing *2016-2017 Final Results* IDM at Comment 3).

¹²⁹ *Id.* at 32 (citing PMS Allegation at Exhibit 67).

¹³⁰ *Id.* at 33-35 (citing Hyundai Steel PMS Comments at Exhibit H.2; and NEXTEEL DQR at Exhibit D-4).

- The PMS adjustment based on the Domestic Producers' regression analysis is mathematically and statistically flawed.
- The formula used in the regression analysis results in a meaningless AUV figure based on “multiplying the iron ore price by the scrap price and then multiplying that result by a constant, and then dividing the result by a figure calculated by multiplying uneconomic capacity by the average exchange rate, multiplying that result by a gross fixed capital formation figure, and then multiplying that result by the aluminum price.”¹³¹
- The regression analysis fails to account for intertemporal endogeneity in the explanatory variables. In other words, if the dependent variable (*i.e.*, the AUV) affects any past, present, or future values of the explanatory variables (*i.e.*, uneconomic capacity, iron ore, scrap, exchange rates, gross fixed capital formation, and aluminum), the regression output is invalid. For example, there are a number of explanatory variables that are affected by the past, present, and future values of HRC prices. In addition, present-day production capacity depends on past investment decisions, and past investment decisions are affected by price levels at the time of the investment decision.¹³²
- The regression analysis fails to account for multicollinearity among the explanatory variables. Because the regression analysis does not address multicollinearity among the independent variables of global fixed capital formation, iron ore prices, scrap prices, and aluminum prices, the regression analysis is mathematically invalid.¹³³
- The regression analysis fails to account for autocorrelation in the AUV data. Variables in the regression analysis are said to be autocorrelated if the value in one time period is affected by the value of the same variable in a prior time period. The Domestic Interested Parties have not undertaken statistical measures to address that correlation.¹³⁴
- The regression analysis fails to account for heteroskedasticity (unequal variances) in the data, which also makes it mathematically invalid.¹³⁵
- The regression analysis considers only the interactions between the explanatory variables and does not consider their direct effects. The Domestic Interested Parties' model effectively multiplies all of the explanatory variables together, in effect assuming that AUVs are affected only by the interaction among the variables considered. As a result, because the model does not include the independent “main” effect of each explanatory variable, it is contrary to common statistical practice.¹³⁶
- The regression analysis cannot properly be used to extrapolate results beyond the scope of the data. Specifically, the Domestic Producers' model uses data from time periods when global capacity utilization was less than 85 percent, but then estimates the AUV for

¹³¹ See SeAH case brief at 19-20 (citing PMS Allegation at Exhibit 67).

¹³² *Id.* at 20-22 (citing SeAH PMS Comments at Appendix 12-A).

¹³³ *Id.* at 22-23 and Attachment 1.

¹³⁴ *Id.* at 23-25 (citing SeAH PMS Comments at Appendix 12-A. The additional information SeAH cites in its case brief to support this argument appears to be on the record of the 2017-2018 administrative review of OCTG from Korea; however, it is not on the record of the instant review).

¹³⁵ *Id.* at 25 (citing SeAH PMS Comments at Appendix 11 and Appendix 12-A).

¹³⁶ *Id.* at 26-27 (citing SeAH PMS Comments at Appendix 12-C, Appendix 12-D, and Appendix 12-E).

HRC imports under a counter-factual assumption that the global capacity utilization had been 85 percent. Thus, the resulting analysis is flawed.¹³⁷

- The regression analysis model also fails validation under standard statistical tests.¹³⁸
- If Commerce nevertheless continues to rely on the Domestic Producers' regression analysis model in the final results, it should apply the results that have the best fit with the data. For example, the Domestic Interested Parties assert that coefficients from the 2008-2017 period should be used because that analysis covers the most data. However, because of the large fluctuations in the data during the period, an analysis covering a more recent time period is more likely to correspond to present data relationships.¹³⁹
- The PMS adjustment applied in the *Preliminary Results* was based on a comparison of the actual AUVs for 2017 to the AUVs predicted for 2017. Because the current POR falls mostly within 2018, Commerce should base the PMS adjustment on the 2018 data on the record.¹⁴⁰

Hyundai Steel's Case Brief

- If Commerce continues to make a PMS adjustment using the Domestic Producers' regression analysis model for the final results, it should use 2018 utilization capacity data on the record. Using this data and the capacity utilization formula applied in the *Preliminary Results* results in a negative PMS adjustment rate; therefore, no PMS adjustment is warranted.¹⁴¹
- Commerce should rely on the 2018 data, rather than the 2017 data used in the *Preliminary Results*, because the data conforms to most of the POR.
- If Commerce continues to use 2017 data for calculating capacity utilization, then it must use the updated production and capacity data on the record. Using this information results in a PMS adjustment of 8.03 percent, which is nevertheless overstated.¹⁴²
- The *Preliminary Results* regression analysis relied on HRC import data to calculate a coefficient for uneconomic capacity used to make a PMS adjustment. However, in *Standard Pipe from India*, Commerce determined that a coefficient based on domestic HRC prices was more accurate because the level of HRC import penetration was not high.¹⁴³ Similarly, the record in this review demonstrates that the import penetration of foreign-produced HRC is relatively small.¹⁴⁴ Thus, Commerce should use the uneconomic capacity variable applied in *Standard Pipe from India*, the POR of which overlaps with five months of this POR, as the estimated regression coefficient for uneconomic capacity in the final results.

¹³⁷ *Id.* at 27-31 (citing PMS Allegation at Exhibit 66; and SeAH PMS Comments at Appendix 12-H, and Appendix 12-I).

¹³⁸ *Id.* at 31-32 (citing SeAH PMS Comments at Appendix 11 and Appendix 12-G).

¹³⁹ *Id.* at 32-35 and Attachment 2 (citing PMS Allegation at Exhibits 67 and 68; and SeAH PMS Comments at Appendix 11).

¹⁴⁰ *Id.* at 35-36 (citing Hyundai Steel PMS Comments at Exhibit H).

¹⁴¹ See Hyundai Steel Case Brief at 24-25 (citing Hyundai Steel PMS Comments at Attachment H.1B).

¹⁴² *Id.* at 26-27 (citing Hyundai Steel PMS Comments at Attachment H.1B).

¹⁴³ *Id.* at 27-29 (citing *Standard Pipe from India* IDM at Comment 7).

¹⁴⁴ *Id.* at 29 (citing NEXTEEL's PMS Comments at 5-8, 13-18 and Exhibit 11).

Husteel's Case Brief

- If Commerce continues to make a PMS adjustment using the Domestic Producers' regression analysis model for the final results, it should use 2018 capacity utilization data. Most of the POR is in 2018 and Commerce's practice is to use contemporaneous data or data from the fiscal year in which the majority of the POR falls.¹⁴⁵
- If Commerce continues to use 2017 data in the regression analysis for the final results, it should use the revised and updated 2017 production and capacity data, consistent with Commerce's obligation to calculate margins as accurately as possible.¹⁴⁶

Domestic Producer's Case Brief

- Commerce should use the 85 percent counterfactual capacity utilization rate to calculate the regression analysis-based PMS adjustment, rather than the 80 percent rate used in the *Preliminary Results*.¹⁴⁷
- The evidence does not support the finding in the *Preliminary Results* that an 80 percent capacity utilization rate is indicative of a healthy global steel industry. While global capacity utilization was not higher than 85 percent during 2008 to 2017, an 85 percent rate is not unrealistic. Rather, it demonstrates the length of the overcapacity crisis in the steel industry, particularly as the global steel industry reached approximately 85 percent capacity utilization in the 2004-2007 period.¹⁴⁸
- China's actions to stimulate its steel production, beginning in 2008, impacted the world steel industry; thus it is appropriate to include the 2008-2009 period in the regression analysis.¹⁴⁹ Commerce noted in *CWP from Turkey* that 2008 and 2009 were "the defining years of the global overcapacity crisis that still affect steel import prices today,"¹⁵⁰ and Commerce further observed that the global steel overcapacity crisis continued through the POR of this review.¹⁵¹
- Commerce used the 80 percent capacity utilization rate because that rate was the target in the Section 232 Investigations.¹⁵² However, in the Section 232 Investigations, the 80 percent rate was a benchmark for minimum operational efficiency; a higher rate of 85 percent or more is necessary for the industry to sustain itself.¹⁵³

¹⁴⁵ See *Husteel Case Brief* at 13 (citing PDM at 14-15 and Hyundai Steel Rebuttal PMS Comments at Attachment H.1B).

¹⁴⁶ *Id.* at 14 (citing Hyundai Steel Rebuttal PMS Comments at Attachment H.1B, and *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir 1990)).

¹⁴⁷ See Domestic Producers Case Brief at 2 (citing PDM at 15).

¹⁴⁸ *Id.* at 3 (citing PMS Allegation at Exhibit 63).

¹⁴⁹ *Id.* at 4 (citing PMS Allegation at Exhibit 9; and PDM at 16).

¹⁵⁰ *Id.* at 4 (citing *Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 3616 (January 22, 2020) (*CWP from Turkey*), and accompanying IDM at Comment 2).

¹⁵¹ *Id.* at 4-5 (citing *CWP from Turkey* IDM at Comment 2; *Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2715 (January 16, 2020), and accompanying IDM at Comment 1; and *Wind Towers Preliminary Determination* PDM at 15).

¹⁵² *Id.* at 6 (citing U.S. Department of Commerce, *The Effect of Imports of Steel on The National Security* (January 11, 2018) (Section 232 Investigations), submitted in PMS Allegation at Exhibit 19).

¹⁵³ *Id.* at 5-7 (citing PMS Allegation at Exhibit 19).

- The 80 percent rate from the Section 232 Investigations may represent an acceptable benchmark for the U.S. steel industry, which relies more heavily on electric arc furnaces (EAF) than basic oxygen furnaces (BOF) in the rest of the world. EAF mills can operate efficiently at lower capacity utilization rates than BOF mills. Accordingly, an 85 percent capacity utilization rate would be more accurate for the global steel industry.¹⁵⁴
- The PMS adjustment in the *Preliminary Results* was calculated by multiplying the regression coefficient for uneconomic capacity (*i.e.*, the elasticity) by the percent change required to bring the actual 2017 uneconomic capacity to the counterfactual uneconomic capacity. For the final results, Commerce should revise the PMS adjustment by applying the regression coefficient in a logarithmic manner.¹⁵⁵

NEXTEEL's Rebuttal Brief

- The 85 percent counterfactual capacity utilization rate is unrealistic for purposes of the PMS adjustment. There is no evidence that a minimum 85 percent capacity utilization rate is necessary for global steel producers to achieve sustained profitability. Further, the Domestic Producers have failed to demonstrate that anything less than an 85 percent capacity utilization rate is indicative of a PMS. In fact, the Domestic Producers' own data indicates that an 85 percent capacity utilization rate is far from reasonable.¹⁵⁶
- The Domestic Producers failed to demonstrate that the 80 percent capacity utilization rate Commerce applied in the *Preliminary Results* was unreasonable. They base their 85 percent argument on the global steel utilization rates from 2004 through 2007, but their regression analysis covers 2007 through 2017. Thus, the Domestic Producers are applying the results of one analysis to a different set of circumstances. Commerce found in the Section 232 Investigations that an 80 percent capacity utilization rate was appropriate.¹⁵⁷
- Additional record information supports the use of the 80 percent capacity utilization rate, including statistics from the American Iron and Steel Institute, showing U.S. capacity utilization rates had reached above 80 percent by February 2019, a level that that would "make the industry viable over the long term."¹⁵⁸ Further, the Domestic Producers failed to address other factors affecting profitability besides capacity utilization, as reflected in a 2017 OECD report.¹⁵⁹
- Record evidence also demonstrates that U.S. producers have achieved sustained profitability at capacity utilization rates lower than 80 percent. Based on this information, it is unrealistic to presume that the long-term sustainability and profitability in the steel industry requires a minimum capacity utilization rate of 85 percent and a regression analysis based on this figure is not reasonable.¹⁶⁰

¹⁵⁴ *Id.* at 7-11 (citing PMS Allegation at Exhibits 19 (Section 232 Investigations), 26, 42, 63, and 66).

¹⁵⁵ *Id.* at 11-12 (citing PDM at 14).

¹⁵⁶ See NEXTEEL Rebuttal Brief at 4-5 (citing NEXTEEL PMS Comments; Hyundai Steel PMS Comments at Attachment B; and PMS Allegation at Exhibit 63).

¹⁵⁷ *Id.* at 5-6 (citing Hyundai Steel PMS Comments at Attachment C).

¹⁵⁸ *Id.* at 6-7 (citing Hyundai Steel PMS Comments at Attachment D.1).

¹⁵⁹ *Id.* at 7 (citing Hyundai Steel PMS Comments at Attachment D.2).

¹⁶⁰ *Id.* at 7-8 (citing Hyundai Steel PMS Comments at Attachments E and F.1).

- Commerce properly concluded that a level of 80 percent capacity utilization is one at which the market is operating at reasonable levels, even if a higher level might be “optimal” or achievable.¹⁶¹
- The Domestic Producers’ position regarding the application of the regression coefficient in a logarithmic manner amounts to an argument that the regression coefficient is calculated by relating variables that have been noted in natural logs, and that Commerce applied the coefficient to a regular percentage change, instead of calculating all values in natural logs. However, Commerce’s application of the PMS adjustment in the *Preliminary Results* was consistent with the Domestic Producer’s regression analysis model, with the revision of the 80 percent capacity utilization rate.¹⁶²

SeAH’s Rebuttal Brief

- Contrary to the Domestic Producers’ claims, there is no basis to apply an 85 percent capacity utilization rate in the regression analysis. Capacity utilization was under 85 percent in each time period in the Domestic Producers’ model; therefore, the model cannot properly be used to extrapolate what the AUVs would have been if an 85 percent capacity utilization had been achieved. Further, Commerce has found the 80 percent capacity figure to be reasonable in using the regression analysis to calculate the PMS adjustment.¹⁶³
- While the Domestic Producers’ proposed change to the calculation of the PMS adjustment may be consistent with their formula, their regression analysis model still makes no mathematical sense and cannot be used to calculate the effect of changing uneconomic capacity in isolation.
- The Domestic Producers’ proposed change fails to account for changes between the variables and the AUVs. For example, rising AUVs would tend to increase production and decrease uneconomic capacity, but at the same time end to increase investments in steel capacity, which would increase uneconomic capacity. The assumption in the Domestic Producers’ model that all variables other than uneconomic capacity will remain constant is illogical and highlights the flaws in the model.

Hyundai Steel’s Rebuttal Brief

- The Domestic Producers fail to demonstrate that an 85 percent capacity utilization rate is necessary for global steel producers to achieve sustained profitability. Rather, record evidence shows that global steel producers, including Korean steel producers, have been profitable at capacity utilization rates lower than 80 percent. Commerce confirmed this

¹⁶¹ *Id.* at 9-10 (citing *CORE from Korea* IDM at Comment 3).

¹⁶² *Id.* at 10 (citing PMS Allegation at Exhibit 62; and Regression Analysis Memo).

¹⁶³ See SeAH Rebuttal Brief at 6-7 (citing PMS Allegation at Exhibit 66; and *CORE from Korea* IDM at Comment 3).

assessment in applying regression analysis-based PMS adjustments in several proceedings earlier this year.¹⁶⁴

- Commerce recognized the 80 percent capacity utilization rate as appropriate in the Section 232 Investigations.¹⁶⁵ The American Iron and Steel Institute also indicated that an 80 percent rate is a benchmark for minimum operational efficiency.¹⁶⁶ Given this evidence, it is unreasonable to presume that long-term sustainability and profitability in the steel industry requires an 85 percent capacity utilization rate.
- While the Domestic Producers complain that Commerce's use of the 80 percent rate did not consider global steel capacity utilization prior to 2008, the Domestic Producers regression analysis model also did not consider production, capacity, and pricing prior to 2008.¹⁶⁷
- Major global steel producers, including Korean respondents, also use EAF mills, like the U.S. steel industry. Moreover, other steel producing countries have higher percentages of EAF mills than assumed by the Domestic Producers, further undermining the Domestic Producers' argument.¹⁶⁸
- The Domestic Producers' arguments to revise the PMS adjustment in the *Preliminary Results* fail to show that Commerce's PMS adjustment was incorrect. Commerce's PMS adjustment factor calculation is reasonable, although Hyundai Steel does not agree with the data used in it.¹⁶⁹

Husteel's Rebuttal Brief

- The Domestic Producers' argument that an 85 percent capacity utilization rate should be used in calculating the PMS adjustment is without merit. Commerce determined in the *Preliminary Results* and other contemporaneous cases that an 80 percent rate is sufficient for profitable operations.¹⁷⁰
- While the Domestic Producers refer to the 85 percent level reached in 2004-2007 to support their claim that the 85 percent rate is realistic, the average capacity utilization rate over the last 35 years was 76 percent.¹⁷¹ Accordingly, Commerce's use of the 80 percent rate is more accurate.
- The Domestic Producers claim that the 80 percent rate may be more applicable to the United States, which relies more on EAF mills, than other countries which rely on BOF

¹⁶⁴ See Hyundai Steel Rebuttal Brief at 3-4 (citing Hyundai Steel PMS Comments at 14 and Attachment B; PDM at 14-15; *CORE from Korea* IDM at Comment 3; *CWP from Turkey* IDM at Comment 2; *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2719 (January 16, 2020) (*CWP from Korea 2017-2018 Preliminary Results*), and accompanying PDM at 14; and *Standard Pipe from India* IDM at Comment 7).

¹⁶⁵ *Id.* at 4-5 (citing PMS Allegation at 52).

¹⁶⁶ *Id.* at 5 (citing Hyundai Steel PMS Comments at 15 and Attachment C).

¹⁶⁷ *Id.* at 5-6 (citing PMS Allegation at Exhibit 61-63; and Hyundai Steel PMS Comments at Attachment H).

¹⁶⁸ *Id.* at 6-7 (citing PMS Allegation at Exhibits 26 and 30).

¹⁶⁹ *Id.* at 7-8 (citing Domestic Producers Case Brief at 11; and PMS Allegation at Exhibit 62).

¹⁷⁰ See Husteel Rebuttal Brief at 2 (citing PDM at 15; *CWP from Turkey* IDM at Comment 2; and *Standard Pipe from India* IDM at Comment 7).

¹⁷¹ *Id.* at 1-2 (citing PMS Allegation at Exhibit 66).

mills; however, there is no information on the record to support a correlation between steelmaking technology and capacity utilization rates.¹⁷²

- With respect to the Domestic Producers' proposal to modify the PMS adjustment calculation to calculate all values in logarithmic form, the Domestic Producers failed to demonstrate that this methodology more correct than that Commerce used in the *Preliminary Results*. Thus, Commerce's PMS adjustment factor calculation formula is reasonable.¹⁷³

Domestic Producers' Rebuttal Brief

- The use of the 4-digit level HTS data in the regression analysis is reasonable. Commerce rejected the argument in other cases that 4-digit level HTS data is not specific enough for the HRC inputs in the regression analysis and should do the same for the final results. The regression analysis is not designed to evaluate whether and to what extent any individual producer's costs are distorted by a PMS, which may be reflected by more specific HTS data, but whether and to what extent the overall Korean HRC market has been distorted by a PMS.¹⁷⁴
- The respondents argue that the regression analysis should include energy prices. However, it is not possible to include every conceivable variable that could be potentially related to the dependent variable, and the regression analysis model already includes direct inputs, such as iron ore and scrap, which reflect energy prices. Further, the Domestic Producers tested the regression analysis model against a model that included oil prices and found that both models return consistent results.¹⁷⁵
- The years 2008-2009 are essential for the regression analysis because of the implementation of the Chinese policy leading to the global steelmaking overcapacity. By excluding the 2008-2009 data, the model's predictive power to account for the two years of data before the global overcapacity crisis began would be compromised.¹⁷⁶
- Moreover, a time series analysis is not invalid or lacking in robustness because a model generates a different result using different time periods. Further, excluding time periods from the model reduces the sample size of the model, which is particularly significant in this case because data such as crude steelmaking capacity is available only on an annual basis. While the respondents claim that inclusion of the 2008-2009 period makes the regression analysis temporarily unstable and invalid, excluding this period would generate unstable econometric results.¹⁷⁷
- The respondent's alternative analyses are misleading. For example, while SeAH contends that its 2013-2017 model fits the data better than the Domestic Producers' 2008-2017 model, it severely restricts the analysis and excludes the only period where HRC

¹⁷² *Id.* at 3-5 (citing Hyundai Steel PMS Comments at Attachments C and D-1; and PMS Allegation at Exhibits 26 and 66).

¹⁷³ *Id.* at 5-6 (citing PMS Allegation at 52-53 and Exhibit 62).

¹⁷⁴ See Domestic Producers Rebuttal Brief at 34 (citing *Standard Pipe from India* IDM at Comment 7).

¹⁷⁵ *Id.* at 35 (citing PMS Allegation at 32 and Exhibits 57 and 67).

¹⁷⁶ *Id.* at 35-37 (citing *CWP from Turkey* IDM at Comment 2).

¹⁷⁷ *Id.* at 37-38 (citing PMS Allegation at Exhibits 56-72).

prices were relatively high. Thus, SeAH's model is not more predictive because it ignores relevant data.¹⁷⁸

- Contrary to the respondents' claim, revising the regression analysis to include 2018 data does not make it more accurate for the POR. The entire underlying dataset in the regression analysis is consistent for all time-variant variables in order to ensure meaningful results. The record does not contain complete 2018 data that would allow the regression analysis model to provide reliable and valid results.¹⁷⁹
- Commerce should not rely on the updated 2017 data cited by the respondents to revise the regression analysis. The Domestic Producers' regression analysis relies on the most recent annual figures for crude steel production and capacity for 2017 based on WSA's World Steel Statistical Yearbook, while the updated 2017 data from the "World Steel in Figures" publications includes only estimates from several countries.¹⁸⁰
- Commerce should reject the respondents' claims regarding the variable for uneconomic capacity based on domestic HRC prices. Although Commerce applied that adjustment in *Standard Pipe from India*, it determined not to do so in the *Preliminary Results* and *CWP from Korea 2017-2018 Preliminary Results*, signaling that this approach is not warranted for to Korea.¹⁸¹
- Contrary to SeAH's claims, the Domestic Producers regression analysis is econometrically sound. SeAH comments on various alleged statistical flaws, but the objections are based on theoretical assumptions, without the context of a real-world multivariate regression model.
- SeAH claims that the Domestic Producers' regression analysis multiplies the explanatory variables by each other, rather than considering their separate impact on AUVs, and because it does not consider the effect of the interaction between the variables, the model allegedly fails to apply the "hierarchical principle." However, SeAH is incorrect because the AUV in the regression analysis model is not the product of explanatory variables, but rather the sum product of each explanatory variable (in log form) and its coefficient, and the model is additive in each explanatory variable's effect on the dependent variable.¹⁸²
- The regression analysis is specified and overcapacity is operationalized specifically to avoid endogeneity bias, reverse causation, and circularity. The Domestic Producers ran additional analyses to ensure endogeneity is not driving the results of the inquiry and found that the degree of endogeneity bias was statistically insignificant.¹⁸³
- Contrary to SeAH's claims, the regression analysis model has addressed multicollinearity in detail. Multicollinearity is not relevant to the proper identification of the effect of uneconomic capacity and the statistical significance of that effect. SeAH has not demonstrated, and there is no record evidence to suggest, that the regression model's uneconomic capacity variable is impacted by multicollinearity.¹⁸⁴

¹⁷⁸ *Id.* at 39 (citing SeAH Case Brief at 33-34).

¹⁷⁹ *Id.* at 40-41.

¹⁸⁰ *Id.* at 41 (citing Hyundai Steel PMS Comments at Attachment D.2).

¹⁸¹ *Id.* at 42 (citing *Standard Pipe from India* PDM; and *CWP from Korea 2017-2018 Preliminary Results* PDM at 14).

¹⁸² *Id.* at 43-44 (citing *Standard Pipe from India* IDM at Comment 1).

¹⁸³ *Id.* at 44 (citing PMS Allegation at 41-47).

¹⁸⁴ *Id.* at 45-46 (citing PMS Allegation at Exhibit 67).

- While SeAH claims that autocorrelation in the dependent variable (*i.e.*, the AUVs) likely leads to bias in the coefficient estimates and predictions, autocorrelation and other temporal issues have no impact on the regression analysis model's estimated effect of uneconomic capacity.¹⁸⁵
- SeAH's claims of heteroskedasticity in the regression analysis model are misplaced. Heteroskedasticity relates to statistical significance but has no bearing on the magnitude of a model's estimated effect; thus, it has no impact on the regression analysis' coefficients or PMS adjustment.

Commerce's Position: As an initial matter, we note that neither section 773(e), section 771(15), nor any other provision of the Act mandates either what constitutes a cost-based PMS nor how Commerce may "use another calculation methodology" to establish the "cost of materials and fabrication" of the merchandise covered by the scope of an order. As a result, Commerce has established "another calculation methodology" where it has adjusted the respondent's reported COP to account for distortions in input costs based on a determination of a cost-based PMS.

In the *Preliminary Results*, we quantified the impact of the PMS in Korea by making an upward adjustment to the respondents' reported costs, basing that adjustment on the Domestic Producers' regression analysis.¹⁸⁶ We continue to find that the regression analysis submitted by the Domestic Producers is a reasonable method to quantify the relationship between global uneconomic capacity and the cost of HRC. For these final results, we continue to find that the adjustment factor resulting from the regression analysis, with certain adjustments adopted by Commerce, appropriately quantifies the impact of the PMS concerning the distortion in the average unit value of HRC that we find to have existed in Korea during the POR.¹⁸⁷

Product Specification for Regression Model

With respect to NEXTEEL's argument that the import AUV data in the dependent variable should be disaggregated, we disagree and find that an analysis based on import AUVs at the four-digit level on this record will better reflect the extent to which the overall Korean HRC market has been distorted. The purpose of the regression analysis is to determine the relationship between the dependent variable, *i.e.*, the Korean import AUV of HRC, and the independent variables, including uneconomic capacity. The import AUVs should reflect as closely as possible the market for the material input to produce in-scope merchandise, the market for which Commerce has found that a PMS existed during the POR. While the range of products encompassed by the four-digit HTS subchapter may be overinclusive of the products used to produce cold rolled steel, the individual six-digit subheading product groups proposed by respondent exclude many products that may be used in the production process.

Additionally, OECD data on steel capacity and WSA data on steel production are only provided at the broader four-digit HTS level,¹⁸⁸ and combining these data at the four-digit HTS level with regression data at the six-digit HTS level prevents an accurate quantification of the PMS.

¹⁸⁵ *Id.* at 46-47 (citing PMS Allegation at 41-47).

¹⁸⁶ *See* PDM at 4.

¹⁸⁷ *See* Regression Analysis Memo.

¹⁸⁸ *See* Domestic Producers Rebuttal Brief at 34 (citing *Standard Pipe from India* IDM at Comment 7).

Capacity Utilization Rate

Commerce recognizes that global capacity utilization rates have been no greater than 80 percent since 2007¹⁸⁹ and that 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 assumed by the Domestic Producers as being “healthy.” Commerce has in the past also endorsed an 80 percent capacity utilization rate as being sufficient for profitable operations of the steel industry and has used the 80 percent target in its Section 232 Investigations.¹⁹⁰ The Domestic Producers also cite to the Section 232 Investigations, claiming that the 80 percent capacity utilization rate espoused there is meant to be a minimum. Further, the Domestic Producers claim that, according to a recent study by McKinsey & Company (McKinsey) about excess capacity in the global steel industry, a global capacity utilization rate of 90 percent is necessary for the long-term sustainability of the global steel industry.¹⁹¹ Finally, the Domestic Producers contend that the target capacity utilization rate in the United States is necessarily lower than the global rate, as the U.S. industry runs primarily on EAFs, which are more efficient and less capital-intensive than the BOFs which are used in most of the rest of the world.¹⁹²

Concerning the Section 232 Investigations, Commerce notes that in this report, the conclusion is that an 80 percent capacity utilization rate, sustained over a number of years, is one at which the steel market would be healthy. The report from McKinsey notes that capacity utilization rates peaked at 83 percent before the recession of 2008, indicating that a target of 85 percent may be unrealistic. We also note that several countries other than the United States utilize EAFs, including Turkey, Mexico, and Korea. Therefore, we have determined for these final results to continue to rely on a target capacity utilization rate of 80 percent.

Use of a Five-Year Average of Global Production to Calculate Counterfactual Global Capacity

In addition to our decision to apply an 80 percent capacity utilization rate as a reasonable counterfactual global production capacity rate for these final results, in light of the many arguments provided to Commerce on this issue, we revisited the period of time which we analyze for purposes of determining counterfactual global production capacity. As a result of our reconsideration of that period, we have determined that there are legitimate concerns with a methodology that measures the economic health of the entire steel industry using the experience of the industry during a single year.

Upon consideration of the arguments of the parties, we concluded that it was important to place certain steel reports and other information on the record which we believe provide additional guidance regarding the factors which the steel industry normally uses in analyzing sales and

¹⁸⁹ See Hyundai Steel PMS Comments at 16.

¹⁹⁰ See PMS Allegation at Exhibit 19.

¹⁹¹ *Id.*; see also PMS Allegation at 52 footnote 61 (noting that McKinsey calculates overcapacity as crude steel nominal capacity x 90% - production. Because McKinsey’s estimated global production capacity is somewhat lower than estimated by the OECD, Domestic Producers conclude that excess capacity consistent with a lower capacity utilization rate of 85 percent (using OECD capacities) is a reasonable baseline for the analysis).

¹⁹² See PMS Allegation at Exhibits 19, 26, and 42.

production trends, and we asked for parties to provide comments and rebuttal information on that information.¹⁹³

After a further consideration of those sources, as well as the submissions of the parties, we have concluded that the 80 percent target should be based on an average rate calculated over a number of years, and not just a single year. We do not believe that data indicating that an 80 percent target has been reached for a single year necessarily implies that more than a decade of price suppression in the steel industry has suddenly been ameliorated. The global crisis in steel excess capacity has been severe, and we agree with the Domestic Producers' assertion that its effects cannot be undone by a one-off increase in global production.¹⁹⁴

Looking to the record information, we conclude that a more rational, industry-specific period to consider for purposes of determining the economic health of the steel industry is one that takes into account five years' worth of data. A five-year average represents a rational, medium-term perspective for assessing the economic health of the industry, which takes into consideration some fluctuation in the market and provides a reasonable basis on which to assess future prospects. A five-year average is frequently relied upon in the steel industry for statistical reporting to show trends in production and capacity.¹⁹⁵ Five years is a typical timeframe for strategic planning to outline the operational and financial objectives of an enterprise, including in the steel industry.¹⁹⁶ In addition, a five-year average for capacity utilization has been used in other steel policy initiatives of the U.S. Department of Treasury (Treasury).¹⁹⁷

Thus, we find that a counterfactual global production capacity based on a longer, five-year time frame is more consistent with steel industry planning and considerations, the capital-intensive nature of the steel industry, and susceptibilities to market fluctuations that accompany steel production, purchases, and sales. Accordingly, the counterfactual global production capacity we are relying on in our determination is based on the average of global production during a five-year period, including the contemporaneous year, rather than just on the production of steel during the contemporaneous year alone.

Reliance on the Information Placed on the Record on July 8

As explained in prior proceedings that sought to quantify a PMS adjustment, Commerce has, and will continue to, refine and adapt its methodology for quantifying the impact of a cost-based PMS.¹⁹⁸ In this case, as well as prior cases, in which the regression analysis has been challenged

¹⁹³ See NFI Memo at Attachments 1 – 5.

¹⁹⁴ See Domestic Interested Parties Rebuttal Brief at 49.

¹⁹⁵ For example, five-year averages are used to show trends by the Korean Iron and Steel Institute, the Japan Iron and Steel Federation, and ALACERO, the Latin American Steel Association. See NFI Memo at Attachments 2 – 4.

¹⁹⁶ A recently released strategic plan presented by EUROFER, the European Steel Association, uses a five-year period. See NFI Memo at Attachment 5.

¹⁹⁷ Treasury looked at five-year averages when establishing a minimum “fair” import price as part of the Trigger Price Mechanism (e.g., *Imported Steel Mill Products Trigger Price Mechanism: First Quarter 1980 Revision of Trigger Prices*, 44 FR 67748 (November 27, 1979)).

¹⁹⁸ See *CORE from Korea* IDM at 32-33 (explaining that Commerce intends to continue refining and adapting its methodology to quantify the impact of a cost-based PMS); *Large Diameter Welded Pipe from the Republic of*

by multiple parties, one of the primary challenges has been selecting the appropriate factors to determine the level of capacity utilization considered by Commerce in that analysis.¹⁹⁹ Thus, as we have explained in response to those expressed concerns, Commerce placed information on the record and invited comments and rebuttal information.²⁰⁰

We disagree with NEXTEEL's arguments that it needs to know the context in which the material placed on the record will be used by Commerce in its final determination and that it must be given an opportunity to respond to any comments that are placed on the record by other parties in response to the new factual information.²⁰¹ Commerce has fully complied with its regulations at 19 CFR 351.301(c)(4), which state that Commerce "may place factual information on the record of {a} proceeding at any time" and provide that "an interested party is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information placed on the record of the proceeding" by Commerce. Commerce acted in accordance with its regulations in placing the steel reports and excerpts from a statistical analysis textbook on the record, and in inviting comments and rebuttal information.

Furthermore, Commerce acted consistently with its past practice when Commerce realized, upon consideration of arguments made by the parties later in a proceeding, that supplemental data might be beneficial.²⁰² Commerce's regulations and practice both are in accordance with Commerce's procedural requirements under the Act. Finally, section 782(g) of the Act provides parties with an opportunity to "comment on the information obtained by {Commerce} upon which the parties have not previously had an opportunity to comment." We have satisfied the requirements of that provision by allowing interested parties to respond to the NFI Memo. For the foregoing reasons, Commerce finds that its determination to place the information in the NFI Memo on the record was lawful and consistent with the Act, regulations, and practice, has considered that data in light of the comments and factual information placed on the record by NEXTEEL in response.

Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination 83 FR 43651 (August 27, 2018) (*LDWP from Korea Preliminary Determination*), and accompanying PDM at 16-17 (explaining that Commerce will continue to develop its analysis necessary to address PMS allegations) (unchanged in *LDWP from Korea*).

¹⁹⁹ Specifically, interested parties have raised numerous arguments about the appropriate level of global steel capacity utilization to be relied on in calculating an adjustment; see also *Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty 2017-2018 Administrative Review* (January 9, 2020), and accompanying IDM at 2-3 and Comment 7; and *CWP from Turkey* IDM at Comment 2.

²⁰⁰ See NFI Memo.

²⁰¹ See NEXTEEL NFI Rebuttal Submission at 2.

²⁰² See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Rescission of New Shipper Review; 2015-2016*, 83 FR 1238 (January 10, 2018), and accompanying IDM at 2 (Commerce placed factual information in the form of customs entry documents on the record on September 7, 2017, when the preliminary results were issued on July 6, 2017); and *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2013-2014*, 80 FR 55328 (September 15, 2015), and accompanying IDM at 1-2 (Commerce placed factual information in the form of import statistics on August 6, 2015, when the preliminary results were issued on March 9, 2015), unchanged in *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Notice of Court Decision Not In Harmony With Final Results of Administrative Review and Notice of Amended Final Results*, 82 FR 39565 (August 21, 2017).

Arguments Based on Factual Information Rebutting the July 8 Information

NEXTEEL presents two arguments based on Commerce's decision in *CORE from Korea*, which published shortly before the NFI Memo was placed on the record. First, NEXTEEL argues that, in considering the use of a five-year average of production figures to calculate the target capacity utilization rate, Commerce must choose whether to include 2013 or 2018 in the five-year period. NEXTEEL contends that 2018 should be included because it includes much of the POR.²⁰³ However, because 2018 also includes data that is subsequent to the POR, we have determined that it is inappropriate to use data subsequent to the POR because future production will not have any impact on prices during the POR.

Second, NEXTEEL argues that the relationship between steel capacity and prices in a given year divided by production over a five-year average is not what the model is designed to capture. Rather, NEXTEEL contends that, if Commerce calculates the adjustment using production over a five-year average, then the regression model itself should also be based on five-year trailing averages.²⁰⁴ NEXTEEL's argument conflates the two parts of Commerce's PMS adjustment methodology. First, the regression analysis provides an estimate of the impact of overcapacity on prices based on annual data. Second, we use the coefficients established in the regression model to determine how much prices would rise if overcapacity were eliminated and the steel industry were healthy, *i.e.*, if production levels were sustained at an average of 80 percent of capacity over a five-year period. Therefore, there is no need for the regression analysis itself to be based on five-year averages.

In response to the factual information we placed on the record in the NFI Memo, NEXTEEL placed rebuttal factual information on the record.²⁰⁵ However, none of the information submitted on the record undermines the validity or value of that information. Based on our analysis of that information, we determined that five years represents a reasonable period of time to assess the economic health of the steel industry.

NEXTEEL's submission included several items intended to illustrate trends in the steel market and statistical reporting, such as a chart summarizing data from the WSA and the OECD, the OECD's "Latest Developments in Steelmaking Capacity," the 2019 Steel Statistical Yearbook from the WSA, and the OECD's fourth quarter 2019 report "Steel Market Developments."²⁰⁶ NEXTEEL also provided a list of steel products by HTS category and an article from the Global Steel Trade Monitor discussing conditions in the Korean market. In addition, NEXTEEL provided excerpts from the PMS allegation submitted in the 2018-19 administrative review of OCTG from Korea, providing an overview of the global steel market and the potential impact of supply and demand trends.²⁰⁷ Finally, NEXTEEL submitted excerpts from a PMS rebuttal submission from *CORE from Korea*, which discusses some of the econometric topics included in the NFI Memo.²⁰⁸

²⁰³ See NEXTEEL Rebuttal NFI Submission at Attachment 8.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.* at Attachments 2 - 6.

²⁰⁷ *Id.* at Attachment 7.

²⁰⁸ *Id.* at Attachment 8.

None of these items undermines the decision to use a five-year average.

Appropriate Beginning and End of Annual Time Series Data

The respondents argue that data from 2008 and 2009 should not be included in the analysis because they correspond to the global financial crisis.²⁰⁹ Commerce notes that all of the regressions it has accepted in past determinations have been based on ten years of data, and for this review, Commerce continues to find that ten years of data represent an appropriate period for quantification of the effect of overcapacity on steel prices. Commerce notes that a period of ten years allows for an adequate amount of data and ensures consistency of the regression analysis from once proceeding to another. Furthermore, it is an appropriate length of time for quantification of the effect of the overcapacity on steel prices. Moreover, Commerce finds that the financial crisis of 2008-2009 is the main event of interest in the analysis, because the subsequent decline in global steel demand resulting from the crisis instigated the Chinese stimulus, and increased investment by the Government of China and spending to boost the steel industry. Therefore, in addition to the fact that the financial crisis falls within the ten-year period preceding and including the POR, data from 2008-2009 should be included in the regression because they account for the volatile period and price fluctuations in the defining years of the global overcapacity crisis that still affect steel import prices today.

Hyundai Steel also argues that the regression should include 2018, which covers eleven months of the POR.²¹⁰ However, using data from all of 2018 would clearly reflect costs associated with production beyond the POR, and even some of the production in 2018 would likely relate to sales occurring outside the POR. Since the POR ended on November 30, 2018, the 2018 data includes information that falls beyond the POR and thus does not reflect the cost of goods that were sold during the POR. Therefore, we have accepted the model using data up to and including 2017.

Concerning using updated 2017 data for global production and capacity,²¹¹ the updated production figures for 2017 (1,729 metric tons (MT)) were published in the 2019 World Steel in Figures Report in June 2019, at about the same time the PMS allegation by the Domestic Producers was filed on June 25, 2019.²¹² Hyundai Steel acknowledges that the updated global steel capacity figures for 2017 were published by the OECD in its “Capacity Developments in the World Steel Industry” report in July 2019, after the allegation was filed.²¹³ Therefore, neither the updated 2017 capacity nor the updated 2017 production totals were available to the Domestic Producers at the time the allegation was filed; therefore, Commerce disagrees with the respondents that the PMS regression and adjustment calculated by the Domestic Producers should have included updated 2017 capacity and production data, since it included the most up-to-date data at the time the allegation was filed.

²⁰⁹ See NEXTEEL Case Brief at 26 and 30-31 (citing Hyundai Steel PMS Comments at 23-24 and Exhibit H).

²¹⁰ See Hyundai Steel Case Brief at 24-25 (citing Hyundai Steel PMS Comments at Attachment H.1B).

²¹¹ See Husteel Case Brief at 13 (citing PDM at 14-15 and Hyundai Steel PMS Comments at Attachment H.1B) at 14.

²¹² See PMS Allegation.

²¹³ *Id.* at 20 (citing Attachment H.1A).

Choice of Independent Variables

Commerce believes that the regression used by the Domestic Producers to make the PMS adjustment, although imperfect, includes a reasonable number of independent variables that include acceptable categories (*e.g.*, supply and demand side) for factors affecting steel prices. With respect to the respondents' argument that the model should include a price for coking coal as an input, rather than aluminum,²¹⁴ we note that the model submitted does include prices for inputs (scrap and iron ore), and that aluminum is included in order to account for the effects of the costs of steel substitutes. We acknowledge that accounting for energy as a cost variable in the regression might be appropriate. However, it is not clear, based on the record, which of the energy sources in Hyundai Steel's alternative regressions that include an energy cost variable is the most appropriate to consider when analyzing the costs of producing HRC.²¹⁵ Therefore, making such an adjustment absent such information could in fact result in an overall less representative calculation. As a result, for the above reasons, in these final results we reject the argument for use of energy costs as an explanatory variable in the regression used to quantify the PMS.

Potential Bias of Independent Variables

Concerning SeAH's claim that the model results are invalidated due to endogeneity,²¹⁶ Commerce notes that none of the variables in the Domestic Producers' model is lagged or directly dependent on another lagged variable in the model. To ensure that the model minimizes endogeneity bias, the Domestic Producers define Uneconomic Capacity as current capacity minus the largest production of crude steel in the ten years prior to the current year.²¹⁷ Moreover, Commerce's PMS calculation methodology now considers the average production of the past five years (*i.e.*, 2013-2017) instead of only 2017, which also reduces the probability of endogeneity in the model. Furthermore, we note that common treatments for endogeneity include a first-difference or fixed-effect model, as well as instrumental variables estimation through 2SLS.²¹⁸ The 2SLS alternative model put on the record by the Domestic Producers produces coefficients similar to the ones produced by the Ordinary Least Squares (OLS) model, indicating that any endogeneity in the OLS model is not significant enough to invalidate its results.²¹⁹ Moreover, Commerce acknowledges that the strict exogeneity assumption is not realistic and that in real world scenarios, time series and/or panel data mostly violate this assumption.²²⁰

Concerning multicollinearity, autocorrelation, and heteroskedasticity,²²¹ Commerce agrees with the Domestic Producers that multicollinearity does not bias or invalidate estimated coefficients, but rather impacts the variance of the estimators and that virtually all-time series data contain a

²¹⁴ See NEXTEEL Case Brief at 26 and 30-31 (citing Hyundai Steel PMS Comments, at 25-26 and Attachment H; and PMS Allegation at Exhibit 62).

²¹⁵ See Hyundai Steel PMS Comments at Attachment H.6.

²¹⁶ See SeAH Case Brief at 20-22 (citing SeAH PMS Comments at Appendix 12-A).

²¹⁷ See PMS Allegation at Exhibit 67.

²¹⁸ See SeAH PMS Comments at Attachment 12.A.

²¹⁹ See PMS Allegation at Exhibit 56.

²²⁰ See SeAH PMS Comments at Attachment 12.A.

²²¹ See SeAH Case Brief at 20-22 (citing SeAH PMS Comments at Appendix 12-A).

degree of multicollinearity.²²² As such, the presence of multicollinearity in the model and the absence of perfect exogeneity does not necessarily invalidate the model results, as the respondents claim. With regards to autocorrelation, in Commerce's view, a Durbin-Watson test is more appropriate for time-series models as opposed to a regression based on panel data such as the one put on the record by the Domestic Producers in this review.²²³ Furthermore, Wooldridge explains that in cases where variables are not strictly exogenous, as is the case in this review, neither a t test nor Durbin-Watson statistic are valid.²²⁴ Finally, although the Domestic Producers' model may include some level of heteroskedasticity (as expected to some extent in all models that include time series data), the evidence on the record does not suggest that the level is high enough for the model output to be considered invalid.

For the reasons described above, we have determined that the regression analysis submitted by the Domestic Producers is a reasonable method to quantify the relationship between global uneconomic capacity and the price of steel inputs, and using the methodology described below to calculate an adjustment for the average unit value of HRC to reflect the distortions in the HRC market that we found to exist during the POR.

Beta Coefficient on the Uneconomic Capacity Variable

Commerce finds that the 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 proposed by the Domestic Producers is based on calculating a counterfactual HRC import AUV, which is dependent upon changes in the 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 effect of global uneconomic capacity in the steel industry on the cost of imported HRC in Korea, Commerce has relied on the regression coefficient associated with the uneconomic capacity to quantify the PMS adjustment to the reported HRC cost.

Calculation of the PMS Adjustment

The regression model used by the Domestic Producers to quantify the PMS is based on the following equation:

$$\ln(y_{i,t}) = \beta_0 + \sum_{k=1}^n [\beta_k \times \ln(x_{k,i,t})] + \alpha_i + \varepsilon_{i,t}$$

where y is the dependent variable, $x_1 \dots x_n$ is the set of independent variables, i is the country, t is the time period, and k is an index for the n number of independent variables. The results of the regression analysis provide the following values: a y-intercept (β_0), regression coefficients

²²² See PMS Allegation at Exhibit 67.

²²³ *Id.*

²²⁴ See SeAH PMS Comments at Attachment 12.A.

$(\beta_1 \dots \beta_n)$, a country-specific, fixed-effects coefficient (α_i),²²⁵ and the error term (ε_i).²²⁶ Each of the regression coefficients (*i.e.*, the slope coefficient or “beta”) measures the relationship between the dependent variable and the respective independent variable where all other variables are held constant. For the regression model used in this review, the dependent variable is the import AUV, and the set of independent variables are global uneconomic capacity, global aluminum prices, global iron ore prices, global scrap prices, the country-specific U.S. dollar exchange rate, and the country-specific gross fixed capital formation.²²⁷

In the regression model used here, both the dependent variable and the independent variables are log-transformed. With all other variables held constant, a 2017 counterfactual (cf) of uneconomic capacity is used to reflect the desired 80 percent capacity utilization rate. The following equality exists based on the regression model defined above:

$$\begin{aligned} \ln(AUV_{cf}) - \ln(AUV_{2017}) \\ = \beta_{UneconCap} \times \ln(UneconCap_{cf}) - \beta_{UneconCap} \times \ln(UneconCap_{2017}) \end{aligned}$$

which simplifies to

$$\ln\left(\frac{AUV_{cf}}{AUV_{2017}}\right) = \beta_{UneconCap} \times \ln\left(\frac{UneconCap_{cf}}{UneconCap_{2017}}\right)$$

$$\ln\left(\frac{AUV_{cf}}{AUV_{2017}}\right) = \ln\left(\left(\frac{UneconCap_{cf}}{UneconCap_{2017}}\right)^{\beta_{UneconCap}}\right)$$

$$\frac{AUV_{cf}}{AUV_{2017}} = \left(\frac{UneconCap_{cf}}{UneconCap_{2017}}\right)^{\beta_{UneconCap}}$$

When 1 (one) is subtracted from each side of the equation, then the relative change in the AUV is determined:

$$\frac{AUV_{cf} - AUV_{2017}}{AUV_{2017}} = \left(\frac{UneconCap_{cf}}{UneconCap_{2017}}\right)^{\beta_{UneconCap}} - 1$$

The Uneconomic Capacity in year t in the regression model is defined as:

$$UneconCap_t = GlobalCap_t - GlobalProd_{max}$$

²²⁵ The country-specific, fixed-effects coefficient captures the time-invariant variables affecting the dependent variable.

²²⁶ The error term captures the unobserved factors affecting the dependent variable that are uncorrelated with the independent variables.

²²⁷ See PMS Allegation at Exhibit 25.

where $GlobalCap_t$ is the Global Production Capacity in year t and $GlobalProd_{max}$ is the maximum level of Global Production during the years before the current year.

The counterfactual Uneconomic Capacity is calculated for the most contemporaneous year which does not extend beyond the end of the period under examination and is defined based on a counterfactual Global Capacity for the same year. As mentioned above, the counterfactual Global Capacity is based on a specified Capacity Utilization Rate (CUR) and the average of annual Global Production in the contemporaneous year and the previous four years:

$$GlobalCap_{cf} = GlobalProd_{5YearAvg} \div CUR$$

In the instant review, the most contemporaneous year is 2017. The figures on the record needed for the adjustment are as follows:

$GlobalCap_{2017}$	2,251.20
$GlobalProd_{2017}$	1,690.48
$GlobalProd_{2016}$	1,626.95
$GlobalProd_{2015}$	1,620.00
$GlobalProd_{2014}$	1,669.45
$GlobalProd_{2013}$	1,650.35
$GlobalProd_{max}$	1,669.45
GlobalPro5-YAve	1,659.34
$CapUtilRate$	0.80
$\beta_{UneconCap}$	- 0.5886 ²²⁸

Using the equations defined above (and units in MT):

$$GlobalCap_{cf} = 1,651.45 \div 0.80 = 2,064.31$$

$$UneconCap_{cf} = 2,064.31 - 1,669.45 = 394.86$$

$$UneconCap_{2017} = 2,251.20 - 1,669.45 = 581.75$$

$$change\ in\ AUV = \left(\frac{394.86}{581.75} \right)^{-.5886} - 1 = .2562$$

Thus, for the final results, Commerce adjusted upward the respondents' cost of HRC inputs by a rate of 25.62 percent.

²²⁸ See PMS Allegation at Exhibit 56a, regression model 3.

Comment 4: Differential Pricing

Husteel's Case Brief

- In its *Preliminary Results*, Commerce applied a differential pricing methodology, which is contrary to the United States' WTO obligations and must be revised for the final results.
- The WTO Appellate Body has ruled that Commerce's differential pricing methodology violates Article 2.4.2 of the Antidumping Agreement, as such.²²⁹ Specifically, the Appellate Body has found that the differential pricing methodology impermissibly identifies a pattern across purchasers, regions, and time periods rather than "among purchasers, or time periods" because it is impossible to discern a "regular and intelligible form or sequence" across these factors.²³⁰
- Further, the WTO Appellate Body held that, if Commerce does find such a pattern, it may apply an average-to-transaction (A-T) methodology only to those sales identified as part of the pattern, and that "zeroing" of negative dumping margins is not permitted even when the A-T methodology is justified.²³¹
- The WTO Appellate Body also held that Commerce must provide a qualitative explanation that examines the circumstances which render an average-to-average (A-A) or A-T comparison insufficient for taking into account the differences in the EPs that form the pattern, which Commerce failed to do in the *Preliminary Results*.
- Because a WTO compliance panel has ordered that the United States had until December 26, 2017, to implement the ruling, Commerce's continued application of the differential pricing methodology in this case was flatly inconsistent with the United States' WTO obligations.

Domestic Interested Parties' Rebuttal Brief

- Commerce should continue to apply its differential pricing methodology in the final results without any change from the *Preliminary Results*.
- While Husteel contends that Commerce's differential pricing methodology is inconsistent with the United States' WTO obligations, the CIT has held that "WTO decisions are not 'binding on the United States, much less this court.'"²³²

²²⁹ See Husteel Case Brief at 14 (citing *United States – Antidumping and Countervailing Measures on Large Residential Washers from Korea*, WT/DS464/AB/R (Sept. 26, 2016) (Appellate Body Report)).

²³⁰ *Id.* at 14-15 (citing Appellate Body Report).

²³¹ *Id.*

²³² See Domestic Interested Parties Rebuttal Brief at 17 and 18 (citing *Corus Staal BV v. U.S. Department of Commerce*, 395 F.3d 1343, 1348 (Fed. Cir. 2005) (*Corus Staal*) (citing *Timken Co. v. United States*, 354 F.3d 1334, 1344 (Fed. Cir. 2004)); and *NSK Ltd. v. United States*, 358 F. Supp. 2d 1276, 1288 (CIT 2005) (citing, e.g., URAA, SAA, H.R. Rep. No. 103-316, vol. I (1994), reprinted in U.S.C.C.A.N. 4040)).

- Moreover, the CIT and the Court of Appeals for the Federal Circuit (CAFC) have repeatedly upheld Commerce’s application of the differential pricing methodology as lawful and reasonable.²³³

Commerce’s Position: As we noted in *Nails from China*,²³⁴ we disagree that Commerce’s differential pricing methodology violates the WTO Antidumping Agreement. As a general matter, the CAFC has held that WTO findings are without effect under U.S. law “unless and until such {a report} has been adopted pursuant to the specified statutory scheme.”²³⁵ Indeed, the SAA notes that “WTO dispute settlement panels will have no power to change U.S. law or order such a change. Only Congress and the Administration can decide whether to implement a WTO panel recommendation and, if so, how to implement it.”²³⁶ Thus, Husteel’s reliance on *Washers from Korea*²³⁷ is unfounded because, to date, the WTO’s findings in that case have not been implemented under U.S. law. Commerce has not revised or changed its use of the differential pricing methodology, nor has the United States adopted changes to its methodology pursuant to the URAA’s implementation procedure. Accordingly, Husteel’s citation to the Appellate Body report in *Washers from Korea* is of no consequence to the differential pricing methodology applied in this review.

Moreover, we disagree with Husteel that we did not provide an explanation of why the A-to-A methodology cannot account for pricing differences with respect to the margin calculations for NEXTEEL and SeAH.²³⁸ As explained in the *Preliminary Results*, if the difference in the weighted-average dumping margins calculated using the A-to-A method and an appropriate alternative comparison method is meaningful, this demonstrates that the A-to-A method cannot account for such differences and, therefore, an alternative comparison method would be appropriate.²³⁹ In the *Preliminary Results*, Commerce determined that a difference in the weighted-average dumping margin is considered meaningful if there is a 25 percent relative change in the weighted-average dumping margin between the A-to-A method and the appropriate alternative method.²⁴⁰ This method is reasonable because comparing the weighted-average dumping margins calculated using the two comparison methods allows Commerce to quantify the extent to which the A-to-A method cannot take into account different pricing behaviors exhibited by the exporter in the U.S. market. However, after incorporating the changes for the final results identified above, we determined that, for both NEXTEEL and SeAH, there is no

²³³ *Id.* at 18-19 (citing *NEXTEEL I*, 355 F. Supp. 3d at 1354-57; *NEXTEEL II*, 392 F. Supp. 3d at 1294-97; *Apex Frozen Foods Private Ltd. v. United States*, 144 F. Supp. 3d 1308, 1314-37 (CIT 2016); *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1337, 1344-51 (Fed. Cir. 2017).)

²³⁴ *See Certain Steel Nails from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 11683 (March 16, 2018) (*Nails from China*).

²³⁵ *See, e.g., Corus Staal*, 395 F.3d at 1349.

²³⁶ *See SAA* at 659.

²³⁷ *See Large Residential Washers from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2014-2015*, 81 FR 62715 (September 12, 2016) (*Washers from Korea*).

²³⁸ *See Husteel Case Brief* at 15.

²³⁹ *See PDM* at 7.

²⁴⁰ *Id.*; *see also* Memorandum, “Welded Line Pipe from the Republic of Korea: 2017-2018 Antidumping Duty Administrative Review – Preliminary Results Margin Calculation for SeAH,” dated February 4, 2020 (SeAH Preliminary Calculation Memorandum) at 3-4; and Memorandum, “Welded Line Pipe from the Republic of Korea: 2017-2018 Antidumping Duty Administrative Review – Preliminary Results Margin Calculation for NEXTEEL Co., Ltd.,” dated January 31, 2020 at 2.

meaningful difference between the weighted-average dumping margin calculated using the A-A method, and the appropriate alternative comparison method.²⁴¹ Therefore, for these final results, we used the A-to-A method for all U.S. sales to calculate the weighted-average margins calculated for both NEXTEEL and SeAH.

Comment 5: Non-Prime Costs for NEXTEEL

NEXTEEL's Case Brief

- In the *Preliminary Results*, Commerce reallocated costs for non-prime WLP based on the premise that non-prime WLP cannot be used for the same application as prime products.²⁴²
- Commerce held under similar circumstances in *OCTG from Ukraine* that non-prime line pipe is in fact subject merchandise. In particular, the description of the products subject to this order does not indicate that the product must be used as line pipe, but rather is “of a kind” used for oil and gas pipe. Therefore, no adjustment to NEXTEEL’s costs is justified.²⁴³
- However, even if Commerce continues to make an adjustment to reallocate the costs of non-prime product, Commerce made a clerical error in the *Preliminary Results* that Commerce should correct in the final results. Specifically, Commerce compared a single overall weighted-average COM derived from all products reported in the COP database (prime and non-prime) to the AUV of non-prime products to derive an average per-unit loss, which Commerce then multiplied by the non-prime quantity to derive the total difference to allocate to prime products.²⁴⁴
- The appropriate quantification of the per-unit loss is the difference between the revenue on non-prime products and the cost of non-prime products. Thus, this amount should be derived from the average COM of only non-prime products, rather than the combined average COM of all products.

Domestic Interested Parties' Rebuttal Brief

- NEXTEEL’s focus on whether WLP is “subject merchandise” in *OCTG from Ukraine* is misplaced. The question presented here is whether non-prime WLP can be used in the same applications as prime WLP. Commerce’ adjustment is in accordance with its practice on this issue.²⁴⁵

²⁴¹ See NEXTEEL Final Calculation Memorandum at 2; and SeAH Final Calculation Memorandum at 2-3.

²⁴² See NEXTEEL Case Brief at 35 (citing PDM at 20; and Memorandum, “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – NEXTEEL Co., Ltd.,” dated January 31, 2020 (NEXTEEL Preliminary COP Calculation Memorandum), at 1-2).

²⁴³ *Id.* (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 IDM at Comment 2).

²⁴⁴ *Id.* at 35-36 (citing NEXTEEL’s Preliminary COP Calculation Memorandum at Exhibits 4A and 4B).

²⁴⁵ See Domestic Interested Parties Rebuttal Brief at 12 (citing NEXTEEL Case Brief at 35; *OCTG from Ukraine* IDM at Comment 2; and *Steel Concrete Reinforcing Bar from Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 79 FR 54965 (September 15, 2014) (*Rebar from Turkey*), and accompanying IDM at Comment 15).

- Commerce's adjustments to NEXTEEL's costs of non-prime WLP products in the *Preliminary Results* contained no clerical errors. Rather the adjustments were reasonable according to NEXTEEL's cost reporting methodology. Therefore, Commerce should not revise its cost adjustments for NEXTEEL in the final results.

Commerce's Position: Commerce's practice with respect to non-prime products is to analyze the products sold as non-prime on a case-by-case basis to determine how such products are treated in the respondent's normal books and records, whether they remain in scope, and whether they can be used in the same applications as the prime product.²⁴⁶ We consider these factors because non-prime products cover a wide spectrum of products and situations. By considering the different criteria, we are able to better analyze the case-specific facts and come to a reasoned decision. For example, sometimes the downgrading is minor and the product remains within a product group, so that it is reported as in-scope merchandise, and can still be used in the intended applications. Other times the downgraded product differs so significantly that it no longer belongs to the same group and cannot be used for the same applications as the prime product (which likely means it was originally intended to be in-scope product but no longer remains so). Yet other times the product is not capable of being used for the same applications, the product's market value is typically significantly impaired, often to a point where its full cost cannot be recovered and assigning full costs to that product would not be reasonable.²⁴⁷ Instead of attempting to judge the relative values and qualities between grades, we adopted the reasonable practice of looking at whether the downgraded product can still be used in the same general applications as its prime counterparts.²⁴⁸

With this distinction in mind, we reviewed the information on the record of this review with regard to the non-prime merchandise.²⁴⁹ When evaluating a company's reported costs, Commerce's primary guidance is outlined in section 773(f)(1)(A) of the Act, which directs that the reported costs should be calculated based on a respondent's normal books and records if such records are kept in accordance with home country GAAP and reasonably reflect the costs associated with the production and sale of the merchandise. In this regard, Commerce first looks to how the respondent normally treats the product in its normal books and records because we would depart from those records if that treatment was found not to fairly reflect costs. For example, a respondent may value the non-prime products at the original full cost, or it may write-down the product costs to net realizable value. In NEXTEEL's normal books and records, the costs of the non-prime products are calculated in the same way as the costs of the prime products.²⁵⁰

Whether a product can be used for its originally-intended applications is an important distinction because, if a product cannot be used in the same applications, the product's market value is

²⁴⁶ See *Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 27233 (June 14, 2017), and accompanying IDM at Comment 3; see also *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) (WLP from Korea LTFV Final), and accompanying IDM at Comment 9; and *Rebar from Turkey* IDM at Comment 15.

²⁴⁷ See *WLP from Korea LTFV Final* IDM at Comment 9.

²⁴⁸ See *Rebar from Turkey* IDM at Comment 15.

²⁴⁹ See NEXTEEL DQR at Exhibit D-9.

²⁵⁰ *Id.* at Exhibit D-4.

usually significantly impaired and may not be sufficient to recover production costs.²⁵¹ In such cases, we need to consider the proper valuation and allocation of costs to the downgraded merchandise.²⁵² As explained above, in NEXTEEL's normal books and records, the costs of the non-prime products are calculated in the same way as the costs of the prime products.²⁵³ The products determined to be non-prime during the forming stage cannot be sold at the same price as the prime products. These downgraded products cannot be used for applications defined under API 5L because non-prime products do not satisfy this API standard.²⁵⁴ Instead, non-prime products are generally used for structural purposes, such as a piling. Customers do not attempt to use non-prime line pipe in line pipe applications because of the potential liabilities and cost in the event of a pipe failure.²⁵⁵

Further, we find NEXTEEL's reliance on *OCTG from Ukraine* to be misplaced because the issue in the OCTG case is different from the instant case. Specifically, in *OCTG from Ukraine*, the rejected OCTG merchandise was within the scope of the investigation, entered the United States as OCTG and, upon inspection in the United States, was deemed to be damaged or otherwise non-compliant with API standards and could not be repaired in a way to meet these standards.²⁵⁶ The plain language of the scope in *OCTG from Ukraine* indicates that a failure to meet the requirements for OCTG applications does not render merchandise outside the scope, provided that merchandise meets the physical characteristics described in the scope. The scope specifically states that certain OCTG is included "whether or not conforming to . . . API or non-API specifications. . . ."²⁵⁷ The scope language covers a variety of goods produced as OCTG which may not currently meet established OCTG specifications for use in OCTG-specific applications. On this basis, whether or not the merchandise failed inspection and therefore did not meet API specifications, it entered the United States as OCTG and was still OCTG, even if it was identified as damaged.²⁵⁸

According to NEXTEEL, the scope of this order does not indicate that the product must be used as line pipe, but rather is "of a kind" used for oil and gas pipe. However, in the instant case, NEXTEEL's WLP was downgraded to non-prime at the end of the production process and was never certified to be sold as WLP to be used for oil and gas pipe. NEXTEEL explained that non-prime WLP products do not meet specification API 5L, which governs WLP. NEXTEEL's non-prime WLP products do not have the same certifications as prime products and cannot be used for applications defined under API 5L because non-prime products do not satisfy this API standard. As a result, NEXTEEL does not issue a mill certificate for non-prime products.²⁵⁹

²⁵¹ See, e.g., *Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014), and accompanying IDM at Comment 18; see also *Rebar from Turkey* IDM at Comment 15.

²⁵² *Id.*

²⁵³ See NEXTEEL Section D Supplemental Response dated April 1, 2019 at D-4.

²⁵⁴ See NEXTEEL's September 5, 2019 Supplemental Sections A, C, and D Response (NEXTEEL ACDSQR) at S-21.

²⁵⁵ *Id.*

²⁵⁶ See *OCTG from Ukraine* IDM at Comment 2.

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ See NEXTEEL ACDSQR at S-21.

Prime products are used in pipeline transportation systems in the petroleum and natural gas industries, as permitted by API 5L usage. In contrast, Non-prime WLP products, like OCTG, are generally used for structural purposes such as a piling. As a practical matter, customers do not attempt to use non-prime line pipe in line pipe applications because of the potential liabilities and cost in the event of a pipe failure.²⁶⁰ While NEXTEEL's normal treatment in its books and records is to assign the full cost to these non-prime products, the record shows that the market value for these products were significantly below the assigned cost, which is not reasonable.²⁶¹ Further, the impairment, or excess cost over net realizable value, should be burdened onto the prime merchandise, as is normal when producing a product for a certain percentage of output to be defective or impaired.

Accordingly, we find there is no evidence that NEXTEEL's non-prime merchandise can be used in the same general applications as its prime counterparts. Such non-prime merchandise is physically not equivalent to those kinds used in the oil and gas industry for transport of oil and gas, which renders it outside the scope of this order, and means that it commands a price that is significantly less than the cost assigned to such products. Consequently, assigning full costs to these 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 apply our methodology from the *Preliminary Results* 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 WLP.²⁶²

Finally, we disagree with NEXTEEL that Commerce's calculation in the *Preliminary Results* contained a clerical error that should be corrected in the final results. NEXTEEL incorrectly described how Commerce calculated the adjustment in the *Preliminary Results*. Specifically, NEXTEEL claimed that Commerce compared a single overall weighted-average COM derived from all products reported in the cost database (both prime and non-prime) to the average unit sales value of non-prime products to derive the total difference to allocate to prime products. However, we derived the weighted-average COM from the average COM of non-prime products only, not the combined average COM of all products. In the *Preliminary Results*, we compared the weighted-average COM derived from non-prime products only reported in the cost database to the average per unit sales value of non-prime products to derive the total difference to allocate to prime products.²⁶³ Therefore, we made no changes to our calculation of this adjustment in the final results.

Comment 6: Suspended Production Loss for NEXTEEL

NEXTEEL's Case Brief

- During the POR, NEXTEEL suspended production on certain OCTG threading lines in one of its facilities. In the *Preliminary Results*, Commerce determined that the costs relate to the company as a whole because the shutdowns were for an "extended period of

²⁶⁰ *Id.*

²⁶¹ See NEXTEEL DQR at Exhibit D-9.

²⁶² See NEXTEEL Preliminary COP Calculation Memorandum at 1-2.

²⁶³ *Id.* at 1-2 and Attachments 1A and 1B.

time.” Consequently, Commerce revised NEXTEEL’s G&A expense ratio to include the suspended loss amount in the numerator, and at the same time deducted the suspended loss amount from the cost of goods sold (COGS) denominator.²⁶⁴

- The suspended loss was not included in NEXTEEL’s reported costs because it was not recognized as COM, but rather as COGS, in accordance with K-IFRS.²⁶⁵ Section 773(f)(1)(A) of the Act directs Commerce to rely upon a company’s normal books and records when they are prepared in accordance with the home country generally accepted accounting principles (GAAP) and reasonably reflect the COP.²⁶⁶
- The suspended loss is not related to the company’s overall management of its operations, but rather consisted of maintenance expenses NEXTEEL incurred on specific production lines that were temporarily suspended. Because the expenses in question are clearly manufacturing related, Commerce erred in recategorizing them as a “general” cost that should be borne by the company as a whole.²⁶⁷
- Even if Commerce determines that these temporary shutdown costs should be allocated to all products, and not just the products of the affected lines, given that these costs were appropriately categorized as COGS, the appropriate adjustment would be to apply an adjustment factor to COM, calculated as the total suspended cost divided by the total COM for the POR, rather than recategorizing the expenses as G&A.

Domestic Interested Parties’ Rebuttal Brief

- NEXTEEL’s argument is inconsistent with Commerce’s established practice with respect to suspended losses. Commerce’s practice is to consider the costs for non-routine extended production shutdowns (including maintenance shutdowns) to be related to the general operations of the company as a whole, not to cost of producing the goods associated with suspended production lines.²⁶⁸
- Thus, Commerce properly allocated the suspension loss to NEXTEEL’s operations as a whole, and not to specific products associated with that production line.

Commerce’s Position: We disagree with NEXTEEL and have continued to classify the suspended losses as G&A expenses and deducted them from the COGS denominator. In this case, NEXTEEL recognized certain losses associated with suspended production lines related to WLP and non-WLP products.²⁶⁹ It is Commerce’s practice to include routine shutdown expenses (*i.e.*, maintenance shutdowns) in a respondent’s reported costs and to associate them to

²⁶⁴ See NEXTEEL Case Brief at 37 (citing NEXTEEL’s Preliminary COP Calculation Memorandum at 2).

²⁶⁵ *Id.* at 36-37 (citing NEXTEEL ACDSQR at S-15-17).

²⁶⁶ *Id.* at 37 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from France*, 67 FR 3143 (January 23, 2002), and accompanying IDM at Comment 13).

²⁶⁷ *Id.* at 37 (citing NEXTEEL ACDSQR at S-15-17).

²⁶⁸ See Domestic Interested Parties Rebuttal Brief at 14-16 (citing PDM at 20; NEXTEEL’s Preliminary COP Calculation Memorandum at 2; NEXTEEL ACDSQR at S-15-17; *2016-2017 Final Results* IDM at Comment 9 (“products are not produced on those production lines to recover the costs associated with those production lines”); and *OCTG 2014-2015 Final Results* IDM at Comment 34 (citing *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 IDM at Comment 9)).

²⁶⁹ See NEXTEEL DQR at D-10.

the products produced on those lines.²⁷⁰ 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.²⁷¹ Unlike a routine maintenance shutdown, once a production line is suspended, it no longer relates to ongoing production. A company can suspend production lines for numerous reasons; for example, a company may decide to suspend a production line while the company assesses whether it should permanently close the production line, or the company has no current sales or necessity to inventory the product produced on those production lines. Regardless of the reason for the extended suspension of production activity, in contrast to routine maintenance shutdowns, products are not produced on those production lines to recover the costs associated with them.

Further, we disagree with NEXTEEL that Commerce should follow the treatment of the suspended losses in the company's normal books and records. The costs of suspended lines were transferred directly to the COGS, in accordance with NEXTEEL's normal accounting treatment.²⁷² In accordance with section 773(f)(1)(A) of the Act, Commerce normally relies on data from a respondent's normal books and records where those records are prepared in accordance with the GAAP of the exporting country and reasonably reflects the costs associated with the production and sales of merchandise. However, in those instances where it is determined that a company's normal books and records do not reasonably reflect the production costs of the merchandise under review, Commerce' practice has been to adjust these costs as necessary.²⁷³ Because NEXTEEL suspended the production lines for an extended period of time during the POR, we consider the associated costs to be related to the general operations of the company as a whole, and not specific to products associated with that production line. Therefore, for the final results, we continued to: 1) include NEXTEEL's suspended losses as a part of its G&A expenses; and 2) exclude from the COGS denominator the reclassified suspended loss in the calculation of the G&A and financial expense ratios.

Comment 7: Capping of Freight Revenue for SeAH

SeAH's Case Brief

- Commerce cannot lawfully cap freight revenue that exceeds freight costs.
- In past proceedings, Commerce justified the capping of freight revenue by stating that freight revenue is a service, and not a part of the sale of merchandise under consideration.²⁷⁴ However, because neither SeAH nor its U.S. affiliates provide freight services themselves, the freight charges in question simply represent the disaggregation of a delivered price into arbitrary amounts for merchandise and freight.

²⁷⁰ See *Cement from Mexico* IDM at Comment 9.

²⁷¹ See *OCTG 2016-2017 Final Results* IDM at Comment 15.

²⁷² See NEXTEEL's May 21, 2019 DQR at 10.

²⁷³ See *Acetone from the Republic of Korea: Final Determination in the Less-Than-Fair-Value Investigation*, 85 FR 8252 (February 13, 2020), and accompanying IDM at Comment 1.

²⁷⁴ See SeAH Case Brief at 39 (citing e.g., *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 64170 (October 28, 2014) (*Circular Welded Pipe from Thailand*), and accompanying IDM at Comment 4).

- Capping freight revenue could lead to the calculation of different dumping margins based solely on how respondents charge their customers (*i.e.*, whether the price is freight-inclusive or not).
- Although Commerce has the discretion to consider separately-invoiced freight revenue as separate from the U.S. price, Commerce did not completely do so in the *Preliminary Results*, because Commerce included some or all of the separately-invoiced freight revenue in the starting U.S. price, and then deducted the actual freight cost in its calculations.²⁷⁵
- By deducting actual freight costs for sales with separately-invoiced freight charges, Commerce necessarily made a finding under the Act that those costs were included in the price used to establish EP and CEP.²⁷⁶ Furthermore, by making a capped upward adjustment for separately-invoiced freight revenue, Commerce also necessarily made a finding that at least a portion of that revenue was part of the starting price used to establish EP and CEP.
- In the *Preliminary Results*, Commerce did not reasonably conclude that separately-invoiced freight revenue is a price for a service, and not part of the price of the merchandise that should be used as the starting point for the calculation of export price and constructed export price. Commerce also failed to explain why profits from the sale of a service should be disregarded in its calculations, while losses on the sales of that same service should be included in such calculations. If freight revenue represents the sale of a service, Commerce cannot make any adjustments for freight costs when a seller charges separately for freight. Freight revenue cannot represent a sale of services when a seller makes a profit on freight but constitute a part of the sale when a seller experiences a loss on freight. Therefore, Commerce must either ignore both profits and losses on separately-invoiced freight, or it must include both in its calculations.²⁷⁷

Domestic Interested Parties' Rebuttal Brief

- It is Commerce's longstanding practice to cap freight revenue at the amount of the underlying freight expense when making adjustments to U.S. price. SeAH continues to advance arguments that have been rejected by Commerce and the courts.²⁷⁸
- SeAH argues that when "{Commerce} deducted the actual freight costs incurred for the sales with separately-invoiced freight charges, it necessarily made a finding under the statute that those costs were included in the 'price used to establish export price and constructed export price,' because otherwise, '{Commerce} would not be permitted to make an adjustment for them under the statute.'"²⁷⁹ However, the CIT has rejected this same argument twice because it is premised on an incorrect reading of the statute.²⁸⁰

²⁷⁵ *Id.* at 41.

²⁷⁶ *Id.* (citing section 772(c)(2)(A) of the Act).

²⁷⁷ *Id.* at 42-43.

²⁷⁸ See Domestic Interested Parties Rebuttal Brief at 6 (citing *NEXTEEL I*, 355 F. Supp. 3d at 1359; and *NEXTEEL II*, 392 F. Supp. 3d at 1293).

²⁷⁹ *Id.* at 7 (citing SeAH Case Brief at 41).

²⁸⁰ *Id.* (citing *NEXTEEL II*, 392 F. Supp. 3d at 1293; and *NEXTEEL I*, 355 F. Supp. 3d at 1359).

- The invoicing decision of an exporter (*i.e.*, whether freight is separately invoiced) does not alter Commerce’s statutory mandate to make requisite adjustments to U.S. price; therefore, it is immaterial as to whether freight is separately invoiced or not.
- SeAH’s argument that Commerce must either ignore or include both profits and losses on separately-invoiced freight revenue is inconsistent with the CIT’s finding that “{i}f Commerce were to alter its methodology...and not cap freight-related revenue by the amount of freight-related expenses, adjustments under {section 772(c)(2)(A) of the Act} could potentially increase the EP or CEP (*i.e.*, Commerce would ‘reduce’ export price by subtracting a negative number). This would contradict the plain import of the statute.”²⁸¹
- The CIT has upheld Commerce’s practice of capping freight revenue.²⁸² As such, SeAH’s arguments should be rejected in the final results.

Commerce’s Position: Commerce adjusts for U.S. movement expenses under section 772(c)(1) of the Act. Further, Commerce’s regulations at 19 CFR 351.401(c) direct Commerce to use, in calculating U.S. price, a price which is net of any price adjustment that is reasonably attributable to the subject merchandise. The term “price adjustment” is defined under 19 CFR 351.102(b)(38) as “any change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and or other adjustments, including, under certain circumstances, a change that is made after the time of sale that is reflected in the purchaser’s net outlay.” Thus, it would be inappropriate to treat the revenues associated with SeAH’s freight expenses as price adjustments under 19 CFR 351.401(c) because these revenues do not represent “changes in the price for subject merchandise,” such as discounts, rebates, and post-sale price adjustments.

As we explained in the *2016-2017 Final Results*, Commerce has declined to treat freight-related revenues as additions to U.S. price under section 772(c) of the Act or as price adjustments under 19 CFR 351.102(b). Rather, we have incorporated freight-related revenues as offsets to movement expenses because they relate to the movement and transportation of subject merchandise.²⁸³

We disagree with SeAH’s argument 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. Here, as in the *2016-2017 Final Results* and other proceedings,²⁸⁴ we find that it is inappropriate to increase the gross unit price for merchandise under consideration as a result of any profit earned by SeAH on the sale of freight.

²⁸¹ *Id.* at 9-10 (citing *Dongguan Sunrise Furniture Co. v. United States*, 865 F. Supp. 2d 1216, 1249 (*Dongguan Sunrise*)).

²⁸² *Id.* (citing *e.g.*, *Dongguan Sunrise*, 865 F. Supp. 2d at 1249-1250).

²⁸³ *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) (*CTL Plate from Germany*), and accompanying IDM at Comment 6.

²⁸⁴ *See 2016-2017 Final Results* IDM at Comment 11; *see also Circular Welded Pipe from Thailand* IDM at Comment 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), and accompanying IDM at Comment 39; and *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying IDM at Comment 2.

We also disagree with SeAH's argument that different dumping margins may result depending on the manner in which an exporter presents its prices. SeAH's argument does not recognize that Commerce applies a freight revenue cap when the customer agrees to pay for delivery and the exporter charges that customer more than the costs incurred, but not when that exporter pays for delivery.²⁸⁵

Moreover, we disagree with SeAH's argument that, in making an adjustment to EP or CEP under section 772(c)(2)(A) of the Act, Commerce is finding that the adjusted costs were included in the price used to establish EP and CEP. SeAH previously raised this argument in *NEXTEEL I*, and the CIT rejected it.²⁸⁶ Specifically, the court found that SeAH's argument is based on "an incorrect reading of the {Act}," and further held that "a proper comparison between the U.S. price and foreign market value would not include a profit earned from freight rather than from the sale of the subject merchandise."²⁸⁷ As a result, the Court concluded that Commerce's capping of SeAH's freight revenue was in accordance with the law.

Finally, we disagree with SeAH's claim 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*, the "plain language of {section 772(c)(2) of the Act} deals exclusively with downward adjustments to U.S. price."²⁸⁸ 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.'"²⁸⁹ These adjustments allow Commerce to achieve an "apples-to-apples" comparison between the CEP or EP and NV.²⁹⁰ Accordingly, we continued to apply the freight revenue cap to SeAH's sales for the purposes of these final results.

Comment 8: G&A Expense Adjustment for SeAH's U.S. Affiliates

Domestic Interested Parties' Case Brief

- Commerce erred in the *Preliminary Results* by failing to allocate the G&A expenses of SeAH's U.S. affiliate, PPA, to all imported pipe from SeAH, whether further manufactured or not, sold in the United States.
- This approach would be consistent with Commerce's expressed intent in the SeAH Preliminary Calculation Memorandum.²⁹¹

²⁸⁵ See, e.g., *CTL Plate from Germany* IDM at Comment 6.

²⁸⁶ See *NEXTEEL I*, 355 F. Supp. 3d at 1358-1359.

²⁸⁷ *Id.* (citing *Florida Citrus Mut. v. United States*, 550 F. 3d 1105, 1110 (Fed. Cir. 2008)).

²⁸⁸ See *Dongguan Sunrise Furniture*, 865 F. Supp. 2d at 1249-50.

²⁸⁹ *Id.*, 865 F. Supp. 2d at 1249.

²⁹⁰ See *2016-2017 Final Results* at Comment 11.

²⁹¹ See Domestic Interested Parties Case Brief at 1 (citing SeAH Preliminary Calculation Memorandum at 3).

- Such an allocation would be in accordance with the statutory requirement to make an adjustment when calculating CEP by deducting selling expenses incurred by or for the account of the affiliated U.S. reseller,²⁹² consistent with Commerce’s past practice, including the prior segment of this proceeding.²⁹³

SeAH’s Rebuttal Brief

- Commerce should not apply PPA’s or State Pipe and Supply Inc.’s (State Pipe) G&A expense ratios to the costs of the imported pipe that has not been further manufactured.
- When a company is only engaged in sales activities, Commerce’s long-standing practice is to treat all G&A expenses as selling expenses; conversely, 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 G&A expenses as selling expenses.²⁹⁴
- At the same time, Commerce’s practice was to include an allocated portion of such a U.S. company’s G&A expenses in its calculation of the adjustment for U.S. further manufacturing costs by calculating an expense rate and allotting the total G&A expenses incurred by the company over total company-wide COGS, and then applying that calculated rate to the sum of the material, labor, and overhead costs for further manufacturing. The amount applied to the further manufacturing costs was included in the adjustment under section 772(d)(2) of the Act. Any remaining amount was disregarded, because it did not fall under any of the other adjustments to U.S. price permitted by the Act.²⁹⁵
- 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 decisions to deduct from CEP the G&A expenses related to non-further manufactured products is contrary to the statute.²⁹⁶
- As a result of this approach, there would be an imbalance in Commerce’s calculations because SeAH engages in both manufacturing and sales operations in Korea; however, Commerce does not include any portion of SeAH’s G&A expenses as a home market indirect selling expense for which a “CEP offset” might be allowed.²⁹⁷
- Thus, consistent with its 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 and State Pipe’s further manufacturing activities.²⁹⁸

²⁹² *Id.* at 3 (citing section 772(a)(d)(1) of the Act).

²⁹³ *Id.* at 3-4 (citing 2016-2017 *Final Results* IDM at Comment 13).

²⁹⁴ See SeAH Rebuttal Brief at 2 (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)).

²⁹⁵ *Id.* at 3 (citing *First Administrative Review of Certain Activated Carbon from China: Final Results of Antidumping Duty Administrative Review*, 74 FR 57995 (November 10, 2009); and *Calcium Aluminate Cement, Cement Clinker, and Flux from France*, 59 FR 14136 (March 25, 1994)).

²⁹⁶ *Id.* at 4 (citing *OCTG 2014-2015 Final Results* IDM at Comment 14; *OCTG 2015-2016 Final Results* IDM at Comment 14; and *OCTG 2016-2017 Final Results* IDM at Comment 6).

²⁹⁷ *Id.* at 5.

²⁹⁸ *Id.*

Commerce’s Position: We revised PPA’s G&A expenses to be included in SeAH’s indirect selling expenses. In their case brief, the Domestic Interested Parties argue that Commerce erred in its *Preliminary Results* by failing to allocate PPA’s G&A expenses for both further-manufactured and back-to-back sales through SeAH.²⁹⁹ We agree that our intent at the time of the *Preliminary Results* was to divide PPA’s G&A expenses over the total cost of goods sold and allocate those cost to all further manufactured products and those that were resold. However, in light of the arguments raised by Domestic Interested Parties, we have reconsidered that decision.

In its rebuttal brief, SeAH argues that PPA’s administrative activities related to the overall activities of the company and notes that Commerce has a long-standing practice of recognizing that, when a company engages only in sales activities, then that company’s G&A expenses should be considered selling expenses. However, SeAH claims that this approach does not apply to PPA because PPA is engaged in both manufacturing activities and sales activities and, thus, these expenses cannot properly be classified as selling expenses.³⁰⁰ Record evidence does not support the notion that PPA is engaged in manufacturing activities. Specifically, in its questionnaire response, SeAH states, “some of the Line Pipe imported by PPA was coated with an epoxy coating in the United States prior to sale to the first unaffiliated customer during the review period,” and that “[t]he coating was applied for PPA by unaffiliated processors that were paid a fee for the epoxy-coating services.”³⁰¹ Given that PPA does not conduct the further manufacturing itself, and there is insufficient evidence on the record to indicate that PPA performs manufacturing activities in another capacity, we disagree with SeAH that PPA is engaged in both manufacturing and sales activities.

Under section 772(d) of the Act, the price used to establish CEP must be reduced by:

- (1) the amount of any of the following expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise (or subject merchandise to which value has been added)—
 - (A) commissions for selling the subject merchandise in the United States;
 - (B) expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees and warranties;
 - (C) any selling expenses that the seller pays on behalf of the purchaser; and
 - (D) any selling expenses not deducted under subparagraph (A), (B), or (C).

Further, under section 772(d)(2) of the Act, Commerce is also directed to reduce CEP by “the cost of any further manufacture or assembly (including additional material and labor). . . .” The plain language of section 772(d)(2) of the Act deals with the further manufacturing costs such as additional material and labor costs. However, unlike the statutory language for COP and CV in sections 773(b)(3) and 773(e) of the Act, G&A expenses are not explicitly defined as being included in further manufacturing under section 772(d)(2) of the Act. Rather, the statutory language under section 772(d)(1)(D) of the Act, covering the adjustments to CEP, is broadly written to include “any selling expenses not deducted” under the other subparagraphs.

²⁹⁹ See Domestic Interested Parties Case Brief at 1-4.

³⁰⁰ See SeAH Rebuttal Brief at 1-2.

³⁰¹ See SeAH’s May 21, 2019 Section E-1 Questionnaire Response at 1.

Therefore, after considering the plain language of the statute, it appears that the G&A expenses of SeAH's affiliated U.S. selling entity, PPA, should be treated as part of the deduction for indirect selling expenses and not part of the deduction for further manufacturing.

G&A expenses are not attributable to specific products (thus, they are not inventoriable expenses, but recognized as period costs), because they support the general operation of a company as a whole. The G&A expenses of the U.S. affiliated selling entity are associated with supporting and accomplishing the greater selling functions of the entity, which is to advance sales in the U.S. market for a respondent. It is clear from the record evidence cited above that PPA is primarily a selling entity and that its G&A activities support those operations. This is consistent with Commerce's practice that, if the U.S. affiliated selling entity provides no further manufacturing services, then Commerce considers everything that the entity does to be part of its selling activities.³⁰² Therefore, to comport with the plain language of the statute and record evidence, PPA's G&A expenses should be considered to support sales activities and included in indirect selling expenses.

Further, we note that this issue was raised with a nearly identical fact pattern in the 2015-2016 administrative review of OCTG from Korea. In *OCTG 2015-2016 Final Results*, Commerce held, as it did in the *Preliminary Results*, that SeAH's affiliate PPA's G&A expenses should continue to be allocated across all U.S. sales of subject merchandise, whether those sales were further manufactured or not.³⁰³ However, upon remand, Commerce found that PPA's G&A expenses should properly be classified as indirect selling expenses.³⁰⁴

We believe that method used in the *OCTG 2015-2016 Redetermination* for allocating the U.S. affiliated selling entity's G&A expenses as indirect selling expenses is based on a reasonable interpretation of sections 772(d)(2) and (1)(D) of the Act, given that the Act is silent on how to treat the U.S. affiliated selling entity's G&A expenses in the calculation of the CEP. Thus, for these final results, we allocated PPA's G&A expenses proportionately to all of the products PPA sold (*i.e.*, both products which PPA directly resold and those it further processed and then resold) as indirect selling expenses under section 772(d)(1)(D) of the Act.³⁰⁵

Allocating the U.S. affiliated selling entity's G&A expenses as an indirect selling expense is also in accordance with Commerce's practice. On June 17, 2020, the CIT sustained Commerce's second remand redetermination of the final results of the 2014-2015 administrative review of the antidumping duty order on OCTG from Korea on the issue of Commerce's treatment of PPA's

³⁰² See *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods From Argentina*, 60 FR 33539, 33550 (June 28, 1995) (*OCTG from Argentina*), and accompanying IDM at Comment 13, where we stated that "we have treated the G&A expenses of Siderca Corp. as a selling expense, since the primary function of Siderca Corp. is one of a selling agent."

³⁰³ See *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 19, 2018) (*OCTG 2015-2016 Final Results*), and accompanying IDM at Comment 13.

³⁰⁴ See *Final Results of Redetermination Pursuant to Court Remand*, November 6, 2019, following *Nexteel Co. v. United States*, Consol. Ct. No. 18-00083 (CIT 2019) (*OCTG 2015-2016 Redetermination*).

³⁰⁵ We made no change from the *Preliminary Results* to the calculation of the G&A expenses incurred on SeAH's U.S. sales through State Pipe because State Pipe itself performed the further manufacturing activities on those sales,

G&A expenses as selling expenses, finding that PPA's primary function is to facilitate SeAH's sales.³⁰⁶

Comment 9: SeAH's CEP Offset Claim

SeAH's Case Brief

- The information on the record clearly demonstrates that the selling functions SeAH performed for its home market sales were far more advanced than those SeAH performed for its U.S. sales to PPA.³⁰⁷
- Commerce's regulations provide that, when assessing whether a CEP offset is appropriate, it will determine the U.S. level of trade (LOT) for CEP sales based on the "constructed" level (*i.e.*, the level after deducting all expenses for U.S. selling and further manufacturing activities).³⁰⁸
- Therefore, for SeAH's U.S. sales through PPA and State Pipe, the relevant LOT for purposes of Commerce's analysis was the level of sales from SeAH to PPA. The subsequent activities that PPA and State Pipe performed on their sales to unaffiliated U.S. customers are irrelevant to the LOT analysis, because those activities are excluded from the determination of the constructed LOT for U.S. CEP sales. By contrast, Commerce's regulations make clear that the relevant LOT for NV is determined based on the starting price or constructed value without adjustment.³⁰⁹ As a result, the activities SEAH performed on its sales to unaffiliated Korean customers are relevant to the LOT analysis because those activities are included in the stating price for home market sales.
- After deducting the selling functions performed by PPA, the selling functions SeAH performed for its home market customers were significantly more advanced when compared to the activities it performed for U.S. sales. As a result, Commerce should grant SeAH a CEP offset in its calculations for the final results.
- Such an approach would be consistent with *LDWP from Korea*, a case with virtually identical facts where Commerce granted SeAH a CEP offset.³¹⁰

Domestic Interested Parties' Rebuttal Brief

- SeAH failed to meet its burden to justify Commerce granting a CEP offset. The party seeking the CEP offset bears the burden of establishing that the differences in selling functions performed in the home and U.S. markets are substantial and SeAH failed to do so.³¹¹
- Commerce's analysis of SeAH's selling activities and its conclusions in the *Preliminary Results* are consistent with the statute and supported by substantial evidence.³¹²

³⁰⁶ See *Nexteel Co. Ltd. vs United States*. Consol. Ct. No. 17-00091.

³⁰⁷ See SeAH Case Brief at 36-37 (citing SeAH's April 29, 2019 Initial Questionnaire Response at 24 (SeAH April 29, 2019 AQR)).

³⁰⁸ *Id.* at 37 (citing 19 CFR 351.412(c)(ii)).

³⁰⁹ *Id.* at 38 (citing 19 CFR 351.412(c)(iii)).

³¹⁰ *Id.* at 38-39 (citing *LDWP from Korea Preliminary Determination PDM* at 21).

³¹¹ *Id.* (citing *Sucocitrico Cutrale Ltda. v. United States*, Court No. 10-00261, Slip Op. 12-71 (CIT 2012), at 10).

³¹² See Domestic Interested Parties Rebuttal Brief at 3 (citing PDM at 19).

- Commerce properly compared SeAH's selling activities in both markets and determined that a CEP offset was not warranted. Commerce should continue to find that a CEP offset for SeAH is not warranted for the purposes of the final results.

Commerce's Position: Consistent with the *Preliminary Results*, we continue to find that a CEP offset is not warranted for SeAH for the purposes of these final results. In determining whether a respondent is entitled to a CEP offset, section 773(a)(7)(B) of the Act states the following:

When normal value is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the constructed export price, but the data available do not provide an appropriate basis to determine under subparagraph (A)(ii) a level of trade adjustment, normal value shall be reduced by the amount of indirect selling expenses incurred in the country in which normal value is determined on sales of the foreign like product but not more than the amount of such expenses for which a deduction is made under section 772(d)(1)(D).³¹³

Moreover, Commerce's regulations at 19 CFR 351.412(c)(2) outline Commerce's policy regarding finding differences in the LOTs as follows:

The Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). *Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing.*³¹⁴

In the *Preliminary Results*, we analyzed SeAH's U.S. and home market selling functions and organized them into the following five categories for analysis: 1) provision of sales support; 2) provision of training services; 3) provision of technical support; 4) provision of logistical services; and 5) performance of sales-related administrative activities. For SeAH's U.S. sales we found that:

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. 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

³¹³ See section 773(a)(7)(B) of the Act.

³¹⁴ See 19 CFR 351.412(c)(2) (emphasis added).

intensity for all of its U.S. sales, we determine that all U.S. sales are at the same LOT.³¹⁵

In addition, in the home market we found that:

According to SeAH, it performed the following selling functions for 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...Based on these selling function categories, 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.³¹⁶

When we compared SeAH's sales in each market in our *Preliminary Results*, we determined the following:

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. 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.³¹⁷

We agree with SeAH that the activities its U.S. affiliates performed on U.S. sales are not relevant to our analysis of its U.S. LOT and, as noted above, we did not include these activities in our LOT analysis. Further, while we acknowledge that the selling functions SeAH performed for its home market and U.S. sales are not identical, we disagree that the few additional activities SeAH performed to make its home market sales were so significant that SeAH's home market LOT constitutes a different marketing stage, within the meaning of 19 CFR 351.412(c)(2).

Finally, we disagree with SeAH's claim that it is entitled to a CEP offset in this proceeding because Commerce granted it a CEP offset in *LDWP from Korea*. Whether SeAH is entitled to a CEP offset is a fact-intensive and case-specific inquiry. Here, we find that the information SeAH provided to support its CEP offset claim does not demonstrate that there were significant differences in the selling functions performed for its home market and U.S. sales. Moreover, the

³¹⁵ See PDM at 18.

³¹⁶ *Id.*

³¹⁷ *Id.*

selling function categories Commerce uses in its analysis have been revised since the date of *LDWP from Korea*.³¹⁸ Consequently, consistent with the *Preliminary Results*, we continue to find no basis to grant SeAH a CEP offset for purposes of the final results.

V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this administrative review in the *Federal Register*.



Agree



Disagree

11/20/2020

X 

Signed by: JEFFREY KESSLER