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April 14, 2021

**MEMORANDUM TO:** Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

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

**SUBJECT:** Decision Memorandum for the Preliminary Results of the 2018-2019 Administrative Review of the Antidumping Duty Order on Welded Line Pipe from the Republic of Korea

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on welded line pipe (WLP) from the Republic of Korea (Korea), in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). The period of review (POR) is December 1, 2018, through November 30, 2019. The administrative review covers 30 producers/exporters of the subject merchandise. Commerce selected two respondents for individual examination: NEXTEEL Co., Ltd. (NEXTEEL) and SeAH Steel Corporation (SeAH). We preliminarily determine that sales of the subject merchandise have not been made at prices below normal value (NV) during the POR.

## II. BACKGROUND

In December 2015, Commerce published in the *Federal Register* the *Order* on WLP from Korea.<sup>1</sup> On December 3, 2018, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the *Order* on WLP from Korea for the period December 1, 2018, through November 30, 2019.<sup>2</sup> Pursuant to section 751(a)(1) of the Act, and 19 CFR 351.213(b)(1), the following parties submitted requests to conduct an administrative review: Husteel Co., Ltd. (Husteel); the Domestic Interested Parties;<sup>3</sup> Hyundai Steel Company

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

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 66880 (December 6, 2019).

<sup>3</sup> The Domestic Interested Parties that requested the review are: Maverick Tube Corporation (Maverick), California Steel Industries, TMK IPSCO, and Welspun Tubular LLC USA. Subsequently, Stupp Corporation, a division of Stupp Bros., Inc, and American Cast Iron Pipe Company, joined the proceeding as domestic interested parties, and



(Hyundai Steel); NEXTEEL; and SeAH.<sup>4</sup> On February 6, 2020, based on these timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review on WLP from Korea.<sup>5</sup>

In the *Initiation Notice*, Commerce indicated that, in the event that we limit the respondents selected for individual examination, in accordance with section 777A(c)(2) of the Act, we would select mandatory respondents for individual examination based upon U.S. Customs and Border Protection (CBP) entry data.<sup>6</sup> On February 18, 2020, Commerce released U.S. import data from CBP and provided an opportunity for interested parties to comment on these data.<sup>7</sup> On February 25, 2020, NEXTEEL submitted comments on respondent selection.<sup>8</sup>

In March 2020, after considering the large number of potential producers/exporters involved in this administrative review and the resources available to Commerce, we determined that it was not practicable to examine all exporters/producers of subject merchandise for which a review was requested.<sup>9</sup> As a result, pursuant to section 777A(c)(2)(B) of the Act, we determined that we could reasonably individually examine the two producers/exporters accounting for the largest volume of WLP from Korea during the POR (*i.e.*, NEXTEEL and SeAH).<sup>10</sup> Accordingly, on March 2, 2020, we issued the AD questionnaire to these companies.

From April to June 2020, NEXTEEL and SeAH submitted timely responses to Commerce's AD questionnaire.<sup>11</sup> On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.<sup>12</sup>

On July 21, 2020, Commerce tolled all deadlines in administrative reviews by 60 days.<sup>13</sup> Also in July 2020, the Domestic Interested Parties submitted factual information alleging that Commerce

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California Steel Industries withdrew from the proceeding. In addition, TMK IPSCO now appears as IPSCO Tubulars Inc.

<sup>4</sup> See Husteel's Letter, "Welded Line Pipe from Korea, Case No. A-580-876: Request for Administrative Review," dated December 23, 2019; Domestic Interested Parties' Letter, "Request for Administrative Review," dated December 30, 2019; Hyundai Steel's Letter, "Request for Administrative Review," dated December 31, 2019; NEXTEEL's Letter, "Administrative Review Request," dated December 31, 2019; and SeAH's Letter, "Request for Administrative Review," dated December 31, 2019.

<sup>5</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 6896 (February 6, 2020) (*Initiation Notice*).

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

<sup>7</sup> See Memorandum, "Release of Customs Entry Data from U.S. Customs and Border Protection," dated February 18, 2020.

<sup>8</sup> See NEXTEEL's Letter, "NEXTEEL's Respondent Selection Comments," dated February 25, 2020.

<sup>9</sup> See Memorandum, "Respondent Selection," dated March 2, 2020.

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

<sup>11</sup> See NEXTEEL's Letter, "NEXTEEL's Section A Questionnaire Response," dated April 6, 2020 (NEXTEEL AQR); SeAH's Letter, "Response to Section A of Department's March 2 Questionnaire," dated April 6, 2020 (SeAH AQR); NEXTEEL's Letter, "NEXTEEL's Sections C and D Questionnaire Response," dated June 16, 2020 (NEXTEEL CDQR); and SeAH's Letter, "Response to Sections B, C, D and E of Department's March 2 Questionnaire," dated June 16, 2020 (SeAH BCDEQR).

<sup>12</sup> See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated April 24, 2020.

<sup>13</sup> See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

should find that a particular market situation (PMS) existed in Korea during the POR,<sup>14</sup> and as a result, Commerce should adjust the respondents' reported costs of production (COP).<sup>15</sup> On July 24, 2020, Commerce issued a letter inviting all interested parties to submit factual information and comments regarding the alleged PMS in this administrative review.<sup>16</sup> On August 17, 2020, Hyundai Steel, NEXTEEL, and SeAH each submitted factual information and comments concerning the PMS allegation.<sup>17</sup> In December 2020 and January 2021, we issued supplemental questionnaires to both respondents. We received timely responses to these supplemental questionnaires in January and February 2021.<sup>18</sup>

In December 2020, we extended the preliminary results of this review to no later than April 19, 2021.<sup>19</sup>

### III. SCOPE OF THE *ORDER*

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

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

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<sup>14</sup> See Domestic Interested Parties' Letter, "Particular Market Situation Allegation and Supporting Factual Information – Qualitative Submission," dated July 21, 2020 (PMS Allegation).

<sup>15</sup> See Domestic Interested Parties' Letter, "Particular Market Situation Allegation and Supporting Factual Information – Qualitative Submission," dated July 20, 2020 (PMS Quantitative Submission).

<sup>16</sup> See Commerce's Letter, Accepting PMS Allegation, dated July 24, 2020 (PMS Letter).

<sup>17</sup> See Hyundai Steel's Letter, "Rebuttal Factual Information Relating to PMS Allegation," dated August 17, 2020 (Hyundai Steel PMS Comments); NEXTEEL's Letter, "Particular Market Situation Comments and Rebuttal Factual Information," dated August 17, 2020 (NEXTEEL PMS Comments); and SeAH's Letter, "Resubmission of PMS Rebuttal," dated August 19, 2020 (SeAH PMS Comments).

<sup>18</sup> See NEXTEEL's Letter, "NEXTEEL's Sections ACD Supplemental Questionnaire Response," dated January 5, 2021; SeAH's Letter, "Response to the Department's December 10 Questionnaire," dated January 7, 2021; and SeAH's Letter, "Administrative Review on the Antidumping Duty Order on Welded Line Pipe from Korea – Response to the Department's December 10 Questionnaire," dated January 7, 2021 (SeAH SQRABC); and SeAH's Letter, "Administrative Review on the Antidumping Duty Order on Welded Line Pipe from Korea – Response to the Department's January 21 Questionnaire," dated February 4, 2021.

<sup>19</sup> See Memorandum, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated December 1, 2020.

## IV. DISCUSSION OF THE METHODOLOGY

### A. Date of Sale

Section 351.401(i) of Commerce's regulations states that, "in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business."

Further, the regulations provide that Commerce may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>20</sup> Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.<sup>21</sup>

NEXTEEL reported the earlier of invoice date or factory shipment date as the date of sale for its U.S. sales.<sup>22</sup> SeAH reported the earlier of invoice date or factory shipment date as the date of sale for all home market and U.S. sales.<sup>23</sup> Accordingly, as NEXTEEL's and SeAH's reporting is consistent with our practice, we are preliminarily relying on the respondents' reported date of sale.

### B. Comparisons to Normal Value

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

#### 1. Determination of Comparison Method

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

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<sup>20</sup> See 19 CFR 351.401(i); see also *Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

<sup>21</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum (IDM) at Comment 10; and *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

<sup>22</sup> See NEXTEEL CDQR at C-14.

<sup>23</sup> See SeAH SQRABC at 18 and 36.

Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in LTFV investigations.<sup>24</sup>

In numerous AD investigations and reviews, Commerce has applied a “differential pricing” analysis for determining whether application of the average-to-average method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>25</sup> Commerce finds that the differential pricing analysis used in investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

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

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

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<sup>24</sup> See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying IDM at Comment 1; see also *JBF RAK LLC v. United States*, 790 F.3d 1358, 1363-65 (Fed. Cir. 2015) (“{T}he fact that the {Act} is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties.”) (citations omitted).

<sup>25</sup> See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium, or large (0.2, 0.5, and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

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

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

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

## 2. Results of the Differential Pricing Analysis

For NEXTEEL, based on the results of the differential pricing analysis, Commerce preliminarily finds that 87.79 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>26</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for NEXTEEL.

For SeAH, based on the results of the differential pricing analysis, Commerce preliminarily finds that 45.75 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>27</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for SeAH.

### C. Product Comparisons

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

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

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

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<sup>26</sup> See Memorandum, "Preliminary Results Margin Calculation for NEXTEEL Co., Ltd.," dated concurrently with this memorandum (NEXTEEL Preliminary Calculation Memorandum).

<sup>27</sup> See Memorandum, "Preliminary Results Margin Calculation for SeAH," dated concurrently with this memorandum (SeAH Preliminary Calculation Memorandum).

physical characteristics are as follows: epoxy finish, grade, outside diameter, wall thickness, end finish, and surface finish.

#### **D. Export Price and Constructed Export Price**

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

#### **NEXTEEL**

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight expenses, foreign brokerage and handling expenses, export permit fees, export quota certificate fees, international freight expenses, marine insurance expenses, U.S. brokerage and handling expenses, and U.S. harbor maintenance fees.

#### **SeAH**

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

In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which include direct selling expenses (*i.e.*, imputed credit expenses, warranty expenses, and bank charges) and indirect selling expenses. Additionally, in accordance with section 772(d)(2) of the Act, we deducted further manufacturing expenses in calculating CEP. We adjusted the further manufacturing expenses incurred in the United States by SeAH's affiliate, State Pipe and Supply,

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<sup>28</sup> See, e.g., *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 63291 (October 16, 2012), and accompanying IDM at Comment 6.

<sup>29</sup> See SeAH Preliminary Calculation Memorandum.



Inc. (State Pipe), by applying SeAH's consolidated financial expense ratio to these costs.<sup>30</sup> Finally, we made an adjustment for CEP profit allocated to these selling expenses, in accordance with section 772(d)(3) of the Act.

## **E. Normal Value**

### **1. Particular Market Situation**

#### **a. Background**

In the previous administrative reviews of WLP from Korea, Commerce found that a PMS existed in Korea which distorted the COP of WLP, based on our consideration of the cumulative effects of: (1) subsidization of Korean hot-rolled steel products by the Korean government; (2) the distortive pricing of unfairly traded Chinese hot-rolled coil (HRC); (3) strategic alliances between Korean HRC suppliers and Korean WLP producers; and (4) distortive government control over electricity prices in Korea.<sup>31</sup> As noted above, in July 2020, the Domestic Interested Parties submitted factual information and a letter in which they argued that Commerce should find that a PMS continues to exist in Korea in the instant POR, and that we should make corrective adjustments to the respondents' reported costs.<sup>32</sup> In addition to the four factors alleged in the previous reviews,<sup>33</sup> the Domestic Interested Parties alleged that the following two additional factors contributed to the PMS in Korea during the POR: (5) distorted shipping rates for inbound iron ore and coal HRC inputs; and (6) distorted costs of iron ore used to produce Korean HRC.<sup>34</sup> In July 2020, we invited interested parties to submit factual information to rebut, clarify, or correct the factual information in the PMS Allegation.<sup>35</sup> In August 2020, Hyundai Steel, NEXTEEL, and SeAH submitted factual information and comments concerning the PMS Allegation.<sup>36</sup>

#### **b. Interested Parties' Arguments**

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

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<sup>30</sup> See SeAH Preliminary Calculation Memorandum.

<sup>31</sup> See *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 76517 (November 30, 2020) (*2017-2018 Final Results*), and accompanying IDM at Comment 2: *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 27762 (June 14, 2019) (*2016-2017 Final Results*), and accompanying IDM at Comment 2; and *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 33919 (July 18, 2018) (*2015-2016 Final Results*), and accompanying IDM at Comment 1, unchanged in *Welded Line Pipe from the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 39682 (August 10, 2018).

<sup>32</sup> See PMS Allegation; and PMS Quantitative Submission.

<sup>33</sup> In this review, the Domestic Interested Parties expanded their definition of the first factor to include the Korean government's involvement in the restructuring of the Korean steel industry. See PMS Allegation at 7 and 19-24.

<sup>34</sup> See PMS Allegation.

<sup>35</sup> See PMS Letter.

<sup>36</sup> See Hyundai Steel PMS Comments; NEXTEEL PMS Comments; and SeAH PMS Comments.

purchased from Korean producers, and further distorts the Korean HRC market through its intervention in restructuring the industry; overcapacity in Chinese steel production has resulted in the Korean market being flooded with cheap Chinese steel products, which exerts downward pressure on Korean domestic steel prices; Korean HRC producers and WLP producers engage in strategic alliances; and the Korean government distorts electricity prices. The Domestic Interested Parties contend that during the POR, Korean companies continued to import significant volumes of Chinese HRC, and that the average unit value (AUV) of these imports was low compared to the AUV of imports from other countries into Korea and the AUV of Chinese HRC exports to other countries.<sup>37</sup>

In this review, the Domestic Interested Parties also allege that global bulk shipping overcapacity during the POR, as well as government subsidies to Korean shipbuilders and Korea's largest shipping company, distorted Korea's inbound bulk shipping market, which impacted the acquisition prices of iron ore and coking coal, contributing to a PMS within Korea.<sup>38</sup> Finally, the Domestic Interested Parties allege that the cost of iron ore used to produce Korean HRC was distorted over the POR due to government subsidization of the iron ore industry in Australia, Korea's largest supplier of iron ore.<sup>39</sup>

The Domestic Interested Parties assert that, as in the two previous administrative reviews of this order, as well as in other reviews of Korean products where Commerce found a PMS, Commerce should quantify the impact of the PMS on HRC by adjusting the respondents' costs using the countervailing duty (CVD) rates determined in *Hot-Rolled Steel from Korea*.<sup>40</sup> Further, the Domestic Interested Parties argue that Commerce should make adjustments to account for the impact of HRC supplied by Chinese and Japanese suppliers, strategic alliances, the Korean government's control of electricity, and distortions in the Australian and Korean iron ore markets. To account for the effect of global overcapacity, driven by Chinese overcapacity, the Domestic Interested Parties contend that Commerce should average all subsidy rates from *Hot-*

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<sup>37</sup> See PMS Allegation.

<sup>38</sup> *Id.* at 42-45.

<sup>39</sup> *Id.* at 45-48.

<sup>40</sup> *Id.* at 56-57 (citing 2016-2017 *Final Results* IDM at Comment 3; and *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016), as amended in *Certain Hot-Rolled Steel Flat Products from Brazil and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders*, 81 FR 67960 (October 3, 2016) (collectively, *Hot-Rolled Steel from Korea*). The Domestic Interested Parties also cite 2015-2016 *Final Results* IDM at Comment 3; *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 24085 (May 24, 2019), and accompanying IDM at Comment 3; *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 17146 (April 18, 2018), and accompanying IDM at Comment 2; *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 18105 (April 17, 2017), and accompanying IDM at Comment 3; *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 83 FR 50892 (October 10, 2018), and accompanying Preliminary Decision Memorandum (PDM) at 13-14; *Large Diameter Welded Pipe from the Republic of Korea: Final Determination of Sales at Less than Fair Value and Postponement of Final Determination*, 84 FR 6374 (February 27, 2019), and accompanying IDM at Comment 1; and *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 63619 (December 11, 2018) (*CWP Korea AD AR 16-17 Prelim*), and accompanying PDM at 12-16.

*Rolled Steel from Korea*, including POSCO's rate, to adjust the cost of all non-POSCO and non-Korean HRC purchases.<sup>41</sup> In addition, the Domestic Interested Parties argue that Commerce should increase the respondents' reported costs for all HRC purchases from both Korean and non-Korean suppliers, using a global excess capacity-based regression analysis provided on the record that quantifies the impact of global steel excess capacity on the price of HRC in Korea, and derive a corresponding percentage adjustment factor that, when applied to the respondents' costs of HRC, accounts for the distortions inherent to an overcapacity-driven PMS.<sup>42</sup>

NEXTEEL contends that the Domestic Interested Parties have not provided sufficient evidence to demonstrate that a PMS existed during the POR that distorted the production costs of WLP. Further, according to NEXTEEL, the Domestic Interested Parties failed to acknowledge that the U.S. Court of International Trade (CIT) reversed Commerce's PMS findings in prior segments of this proceeding, as well as in the OCTG and circular welded pipe AD reviews, and instructed Commerce to recalculate the margins in these cases without a PMS adjustment.<sup>43</sup> NEXTEEL argues that, with respect to the Domestic Interested Parties' PMS claims, the following factors do not support their argument that a PMS exists: (1) global steel overcapacity, especially with respect to China and Korea, was at significantly reduced levels prior to and during the POR;<sup>44</sup> (2) the Korean government does not intervene in subsidizing or restructuring the Korean HRC market to any significant degree, considering the negligible level of subsidization in the Korean HRC market, as demonstrated by Commerce's recent review of the HRC CVD order;<sup>45</sup> (3) the lack of evidence that the Korean government distorted electricity prices during the POR, or that electricity prices are not market based;<sup>46</sup> (4) allegedly distorted shipping rates are not relevant to NEXTEEL's WLP COP;<sup>47</sup> and (5) the lack of evidence that iron ore costs were distorted during the POR, which in any case is not relevant to NEXTEEL because it does not import or purchase iron ore to produce WLP.<sup>48</sup> As a result, NEXTEEL contends that no PMS adjustments are warranted.

NEXTEEL states that, should Commerce determine to make a PMS adjustment to the respondents' HRC costs, it should not rely on the adjustments proposed by the Domestic Interested Parties because they are based on flawed reasoning and data.<sup>49</sup> Finally, NEXTEEL argues that the Domestic Interested Parties' regression analysis is based on faulty and self-serving assumptions.<sup>50</sup> Accordingly, NEXTEEL contends that Commerce should not rely on this regression analysis for making any PMS adjustments.

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<sup>41</sup> *Id.* at 57-58.

<sup>42</sup> See PMS Quantitative Submission.

<sup>43</sup> See NEXTEEL PMS Comments at 12-15 (citing *Husteel Co., Ltd. et al. v. United States*, 426 F. Supp. 3d 1376 (CIT January 3, 2020)); *NEXTEEL Co., Ltd. v. United States*, 355 F. Supp. 3d 1336 (CIT 2019); *NEXTEEL Co., Ltd. v. United States*, 392 F. Supp. 3d 1276 (CIT 2019); and *Hyundai Steel Company v. United States*, 415 F. Supp. 3d 1293 (CIT 2019)).

<sup>44</sup> *Id.* at 23-42.

<sup>45</sup> *Id.* at 42-43.

<sup>46</sup> *Id.* at 44-47.

<sup>47</sup> *Id.* at 47-52.

<sup>48</sup> *Id.* at 52-56.

<sup>49</sup> *Id.* at 57-63.

<sup>50</sup> *Id.* at 63-68 and Regression Appendices I and II.

SeAH contends that the Domestic Interested Parties' PMS allegation is unpersuasive and based in large part on second-hand and out-of-date newspaper articles and anachronistic reports. Further, SeAH notes that the factual record presented is largely the same as that in previous segments of this proceeding, which the CIT has found not to be supported by substantial evidence and not in accordance with domestic and international law.<sup>51</sup> According to SeAH, the information presented by the Domestic Interested Parties fails to support its PMS allegation for the various factors because it is misleading, incorrect, or obsolete.<sup>52</sup> Finally, SeAH asserts that the Domestic Interested Parties' regression analysis makes numerous quantitative and qualitative assumptions that render it incomplete and invalid.<sup>53</sup>

Hyundai Steel expresses support for NEXTEEL's and SeAH's comments and provides an analysis which it claims demonstrates that its costs for both self-produced and purchased HRC were not distorted by any PMS alleged by the Domestic Interested Parties.<sup>54</sup>

c. Analysis

Section 504 of the Trade Preferences Extension Act of 2015<sup>55</sup> added the concept of the "particular market situation" to the definition of "ordinary course of trade," found at section 771(15) of the Act. This addition expanded Commerce's consideration of the existence of a PMS not only in the circumstances of determining NV under section 773(a)(1)(A) of the Act, but also for purposes of CV under section 773(e) of the Act. Through section 773(e) of the Act, "particular market situation" also applies to COP under section 773(b)(3) of the Act. Section 773(e) of the Act states that "if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the {COP} in the ordinary course of trade, {Commerce} may use another calculation methodology under this subtitle or any other calculation methodology." Section 773(e) of the Act does not specify whether to consider these allegations individually or collectively.

In this administrative review, we considered the six components of the Domestic Interested Parties' PMS allegation as a whole, based on their cumulative effect on the Korean market for the inputs to produce WLP. First, the Domestic Interested Parties argue that the Korean government's subsidization of HRC distorts the HRC market and impacts the production costs of WLP within Korea.<sup>56</sup> Additionally, HRC, as an input of WLP, constitutes a substantial proportion of the cost of WLP production; thus, distortions in the HRC market have a significant impact on production costs for WLP.<sup>57</sup> The Domestic Interested Parties cite the subsidy rates in *Hot-Rolled Steel from Korea* as evidence of the subsidization of hot-rolled steel in Korea, but the investigation took place during the 2014 calendar year. The preliminary CVD rate for the 2018 calendar year, the most recent administrative review of this order, is 0.51 percent, barely above

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<sup>51</sup> See SeAH PMS Comments at 3-5.

<sup>52</sup> *Id.* at 6-14.

<sup>53</sup> *Id.* at 14-15 and Appendices 39-42.

<sup>54</sup> See Hyundai Steel PMS Comments.

<sup>55</sup> See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015).

<sup>56</sup> See PMS Allegation at 10-11.

<sup>57</sup> *Id.* at 10.

*de minimis*.<sup>58</sup> Although Commerce acknowledges that there is subsidization of HRC in Korea, recent evidence shows that the subsidization was minimal during the POR.

The Domestic Interested Parties also argue that, due to global overcapacity, largely driven by Chinese overcapacity, large quantities of unfairly priced Chinese steel products have flooded the Korean steel market, which places downward pressure on steel prices, including HRC, in the Korean market.<sup>59</sup> However, the majority of the evidence provided by the Domestic Interested Parties does not cover the POR.<sup>60</sup> Further, other information in the PMS allegation frequently contradicts the Domestic Interested Parties' arguments. For example, the Domestic Interested Parties provided data showing a steady decline over recent years of imports of Chinese HRC into Korea, declining by 44 percent from 2015 to 2019.<sup>61</sup> The share of Chinese HRC imports into Korea declined from 52.68 percent of total HRC imports in 2015 to 31.51 percent of total HRC imports in 2019.<sup>62</sup> Moreover, data provided by the Domestic Interested Parties indicates that the AUVs of Korean imports increased by about 32 percent from 2015 to 2019.<sup>63</sup> Indeed, the PMS allegation includes no contemporaneous data that show how overcapacity in China is distorting prices in Korea. There is nothing in the PMS allegation that demonstrates how market penetration of the Korean market by Chinese imports of HRC is suppressing prices in the Korean HRC market. Rather, the record evidence cited above shows that, in recent years, Korean import AUVs have risen, contradicting the Domestic Interested Parties' claims.

With respect to the Domestic Interested Parties' contention that certain Korean HRC suppliers and Korean WLP producers attempt to compete by engaging in strategic alliances, Commerce agrees that the record evidence demonstrates that such strategic alliances likely exist in Korea.<sup>64</sup> In this review, the Domestic Interested Parties submitted the same evidence provided in prior segments of this proceeding. Although the Domestic Interested Parties have not provided specific evidence showing that strategic alliances were directly created between HRC suppliers and WLP producers in the current POR, we have determined in the past that the strategic alliances between certain Korean HRC suppliers and Korean pipe producers are relevant as an element of our analysis. These strategic alliances may have created distortions in the prices of HRC in the past and may continue to affect HRC pricing in a distortive manner during this POR and in the future.<sup>65</sup>

With respect to the allegation of distortion present in the electricity market, consistent with the SAA, Commerce may find a PMS to exist where there is government control over prices to such an extent that home market prices cannot be considered to be competitively set. Commerce has previously found that electricity in Korea functions as a tool of the government's industrial policy.<sup>66</sup> Furthermore, the largest electricity supplier, KEPCO, is a government-controlled

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<sup>58</sup> See *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review*, 2018, 86 FR 10533 (February 22, 2021).

<sup>59</sup> See PMS Allegation at 24.

<sup>60</sup> *Id.* at Exhibits 35-43.

<sup>61</sup> *Id.* at Exhibit 56.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 34-36.

<sup>65</sup> See, e.g., 2017-2018 *Final Results* IDM at Comment 2

<sup>66</sup> *Id.*

entity. However, much of the data provided by the Domestic Interested Parties is not contemporaneous with the POR. Thus, there is no evidence that this factor created such a substantial market distortion in Korea during the POR to warrant a PMS determination.

The Domestic Interested Parties argue that global bulk shipping overcapacity during the POR, coupled with government subsidies to the Korean shipbuilding industry, distorted the acquisition prices for raw materials in the Korean steel market.<sup>67</sup> The Domestic Interested Parties also claim that the Australian iron ore industry is distorted due to government subsidization and, because Korea imports a majority of its iron ore from Australia, this situation distorts the cost of HRC.<sup>68</sup> The Domestic Interested Parties provide various articles and data originally submitted with the PMS allegation in the 2018-2019 review of OCTG from Korea.<sup>69</sup> However, many of these articles predate the POR, and the Domestic Interested Parties provide no evidence to demonstrate how these factors affect the HRC market. We note that in the 2018-2019 review of OCTG from Korea, we determined that this factual information was insufficient to prove that global bulk shipping overcapacity and anomalies in the Australian iron ore market led to distortions in the Korean steel market.<sup>70</sup> We are preliminarily making the same determination in this review.

In this administrative review, we considered the six components of the Domestic Interested Parties' PMS allegation as a whole, based on their cumulative effect on the Korean market for the inputs to produce WLP. Based on the qualitative evidence, however, Commerce preliminarily finds that the Domestic Interested Parties have not supported their allegation of a PMS.

Upon examining the data and exhibits that the Domestic Interested Parties provided in their allegation, we preliminarily find this information to be insufficient in proving that a PMS existed in Korea during the POR due to the lack of contemporaneous data and other supporting evidence. The data provided by the Domestic Interested Parties regarding HRC subsidization, Chinese HRC importation into Korea, strategic alliances, the Korean electricity market, global shipping capacity, and subsidization of Australian iron ore, largely predate the POR. Moreover, as noted above, the Domestic Interested Parties have not demonstrated the impact of each of these factors on the COP of WLP during the POR. Therefore, Commerce preliminarily determines that the evidence submitted in the Domestic Interested Parties' PMS allegation is insufficient to warrant the conclusion that a PMS existed in Korea during the POR.

## 2. Home Market Viability and Selection of Comparison Market

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

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<sup>67</sup> See PMS Allegation at 42-45.

<sup>68</sup> *Id.* at 45-48.

<sup>69</sup> *Id.* at Exhibits 53 and 54.

<sup>70</sup> See Memorandum, "Particular Market Situation Analysis in the 2018-2019 Review of OCTG from Korea," dated April 19, 2021; see also *Certain Oil Country Tubular Goods from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2018-2019*, 86 FR 6868 (January 25, 2021), and accompanying PDM at 13-14.

of their U.S. sales of subject merchandise, in accordance with section 773(a) of the Act and 19 CFR 351.404.

For NEXTEEL, based on this comparison, we determined that the aggregate volume of its respective home market sales of the foreign like product was insufficient to permit a proper comparison with U.S. sales of the subject merchandise, pursuant to section 773(a)(1)(C)(ii) of the Act. We further determined that the aggregate quantity of the foreign like product sold by NEXTEEL in any third country market was less than five percent of the aggregate volume of its U.S. sales, and, therefore, NEXTEEL had no viable third country market.<sup>71</sup> Accordingly, for NEXTEEL, we used CV as the basis for calculating NV, in accordance with section 773(a)(4) of the Act.

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

### 3. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>72</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>73</sup> In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),<sup>74</sup> we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.<sup>75</sup>

When Commerce is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more

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<sup>71</sup> See NEXTEEL AQR at A-2 – A-3.

<sup>72</sup> See 19 CFR 351.412(c)(2).

<sup>73</sup> *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (*OJ from Brazil*), and accompanying IDM at Comment 7.

<sup>74</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general, and administrative (SG&A) expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

<sup>75</sup> See *Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>76</sup>

In this administrative review, as discussed above, we based NV on CV for NEXTEEL. When NV is based on CV, the NV LOT is that of the sales from which we derive SG&A expenses and profit.<sup>77</sup> In accordance with 19 CFR 351.412(d), Commerce will make its LOT determination under paragraph (d)(1) of this section on the basis of sales of the foreign like product by the producer or exporter. As discussed below in the “Calculation of NV Based on CV,” section, because we based NV on CV calculated using SeAH’s CV selling expenses and profit ratio from the present administrative review, we compared SeAH’s home market LOT to NEXTEEL’s U.S. sales LOT.

### SeAH

In the home market, SeAH reported that it made sales through two channels of distribution (*i.e.*, direct shipments of uncoated WLP to unaffiliated customers, and sales of WLP that underwent additional processing).<sup>78</sup> 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 service, engineering services, and technical assistance.<sup>79</sup>

Selling activities can be generally grouped into five selling function categories for analysis: (1) provision of sales support;<sup>80</sup> (2) provision of training services;<sup>81</sup> (3) provision of technical support;<sup>82</sup> (4) provision of logistical services;<sup>83</sup> and (5) performance of sales-related

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<sup>76</sup> See, *e.g.*, *OJ from Brazil* IDM at Comment 7.

<sup>77</sup> See, *e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 47081 (August 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004).

<sup>78</sup> See SeAH BCDEQR at 13-14.

<sup>79</sup> See SeAH AQR at Appendix A-5-A.

<sup>80</sup> The provision of sales support may include sales forecasting strategic/economic planning, advertising, sales promotion, sales/marketing support, market research, and other related activities. See *Acetone from Belgium: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 84 FR 49999 (September 24, 2019), and accompanying PDM at 17.

<sup>81</sup> The provision of training services may include personnel training/exchange, distributor/dealer training, and other related activities. *Id.*

<sup>82</sup> The provision of technical support may include engineering services, technical assistance, and other related activities. *Id.*

<sup>83</sup> The provision of logistical services may include inventory maintenance, post-sale warehousing, repacking, freight and delivery, and other related activities. *Id.*



administrative activities.<sup>84</sup> Based on the selling function categories noted above, we find that SeAH performed sales support, training services, technical support, logistical services, and sales-related administrative activities for its home market sales. Because we find that there were no differences in selling activities performed by SeAH to sell to its home market customers, we determine that there is one LOT in the home market for SeAH.

With respect to the U.S. market, SeAH reported that it made sales through three channels of distribution: (1) back-to-back sales through its U.S. affiliate, PPA, to unaffiliated U.S. customers; (2) sales from State Pipe's inventory; and (3) sales of uncoated merchandise from PPA's inventory. For all three channels of distribution, SeAH reported that it performed the following selling functions for all sales to U.S. customers: sales forecasting, market research, strategic/economic planning, sales/marketing support, sales negotiation, order input/processing, invoicing, receipt of customer payment, personnel training/exchange, advertising/sales promotion, procurement/sourcing services, inventory maintenance, packing, provision of freight and delivery, provision of guarantees to customer, provision of warranty services, engineering services, and technical assistance.<sup>85</sup> Based on the selling function categories noted above, we find that SeAH performed sales support, training services, technical support, logistical services, and sales-related administrative activities for its reported sales to customers in the United States. Because SeAH performed the same selling functions at the same relative level of intensity for all of its U.S. sales, we determine that all U.S. sales are at the same LOT.

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.<sup>86</sup> Therefore, based on the totality of the facts and circumstances, we preliminarily determine that SeAH's home market LOT is at the same stage of distribution as SeAH's CEP LOT. Consequently, we preliminarily find that no LOT adjustment is warranted for SeAH.

## NEXTEEL

In the U.S. market, NEXTEEL reported that it made sales through two channels of distribution: (1) sales to unaffiliated trading companies in Korea for export to the United States (Channel 1); and (2) sales made directly to unaffiliated customers in the United States (Channel 2).<sup>87</sup> NEXTEEL reported that it performed the following selling functions for all sales to U.S. customers: sales forecasting; strategic/economic planning; advertising; sales/marketing support; market research; personnel training/exchange; inventory maintenance; freight and delivery arrangement; packing; order input/processing; and warranty service.<sup>88</sup> Accordingly, based on the selling function categories noted above, we find that NEXTEEL performed sales support, training services, logistical services, and sales-related administrative activities for all of its reported U.S. sales. Because NEXTEEL performed the same selling functions at the same

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<sup>84</sup> The performance of sales-related administrative activities may include order input/processing, rebate programs, warranty service, and other related activities. *Id.*

<sup>85</sup> See SeAH AQR at Appendix A-5-A.

<sup>86</sup> *Id.* at A-21-A-23 and Appendix A-5.

<sup>87</sup> See NEXTEEL AQR at A-11.

<sup>88</sup> *Id.* at Exhibit A-7-A.

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

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

#### 4. Cost of Production Analysis

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

##### a. Calculation of the COP

#### NEXTEEL

As explained above, NEXTEEL had no viable home or third country market; thus, for NEXTEEL, we used CV as the basis for calculating NV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the costs of materials and fabrication employed in producing the subject merchandise, plus amounts for general and administrative (G&A) expenses, interest, profit, selling expenses, and U.S. packing costs. We examined NEXTEEL's cost data and preliminarily determined that our quarterly cost methodology is not warranted. Because we did not find significant cost changes, we have continued to calculate an annual weighted-average CV.<sup>89</sup>

We relied on the CV data submitted by NEXTEEL, except as follows:<sup>90</sup>

- We revised the costs reported for non-prime WLP products that were not capable of being used in the same applications as prime WLP products to reflect their lower market values and allocated the difference to prime WLP products.
- We revised NEXTEEL's G&A and financial expense ratios to reclassify certain shutdown losses related to the company as a whole from the COGS denominators to G&A expenses.

In the absence of a comparison market, we are unable to calculate CV profit using the preferred method under section 773(e)(2)(A) of the Act (*i.e.*, based on the respondent's own home market or third country sales made in the ordinary course of trade). When the preferred method is unavailable, we must instead rely on one of the three alternatives outlined in sections 773(e)(2)(B)(i) through (iii) of the Act. Those alternatives are: (i) the use of the actual amounts

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<sup>89</sup> See NEXTEEL Preliminary Calculation Memorandum.

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

incurred and realized by the specific exporter or producer in connection with the production and sale in the foreign country of merchandise that is in the same general category of products as the subject merchandise; (ii) the use of the weighted average of the actual amounts incurred and realized by exporters or producers (other than the respondent) in connection with the production and sale of the foreign like product, in the ordinary course of trade country, for consumption in the foreign country; or (iii) based on any other reasonable method, except that the amount for profit may not exceed the amount realized by exporters or producers (other than the respondent) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise (*i.e.*, the “profit cap”).

We preliminarily find SeAH’s combined CV profit and selling expenses based on its POR home market sales made in the ordinary course of trade to be the best source for determining NEXTEEL’s CV profit and selling expenses. SeAH’s combined selling expense and profit reflects the profit of a Korean WLP producer, for comparison market sales of the merchandise under consideration, in the ordinary course of trade. Also, by combining the CV profit and selling expense ratios of SeAH, we are able to protect the proprietary nature of the information. Thus, we have preliminarily calculated NEXTEEL’s CV profit and selling expenses under section 773(e)(2)(B)(ii) of the Act using SeAH’s combined CV profit and selling expenses based on its POR home market sales made in the ordinary course of trade.<sup>91</sup>

## SeAH

We relied on the COP and CV data submitted by SeAH without adjustment.<sup>92</sup>

### b. Results of the COP Test

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

For SeAH, we found that, for certain products, more than 20 percent of SeAH’s home market sales were at prices less than the COP and, in addition, such sales did not provide for the

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<sup>91</sup> See Memorandum, “Preliminary Results Constructed Value Selling Expenses and Profit Ratio for NEXTEEL Inc. (NEXTEEL),” dated concurrently with this memorandum.

<sup>92</sup> See SeAH Preliminary Calculation Memorandum.

recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

#### 5. Calculation of NV Based on Comparison Market Prices

For SeAH, we calculated NV based on prices to unaffiliated customers in the home market. We made adjustments, where appropriate, from the starting price for discounts. We made a deduction from the starting price for movement expenses, in accordance with section 773(a)(6)(B)(ii) of the Act, which included, where appropriate, inland freight expenses and warehousing expenses. SeAH used its affiliate SeAH L&S to arrange for delivery and storage services of its merchandise to the customer for all home market sales.<sup>93</sup> In addition, SeAH L&S operated one of two warehouses through which SeAH distributed its merchandise.<sup>94</sup> Because SeAH L&S did not provide the same services to unaffiliated parties, nor did SeAH use unaffiliated companies to arrange for its deliveries or warehousing services, we were unable to test the arm's-length nature of the fees paid by SeAH. Therefore, we based these expenses on the affiliate's costs.<sup>95</sup>

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

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

#### 6. Calculation of NV Based on CV

As explained above, NEXTEEL did not have a viable home or third country market; thus, for NEXTEEL, we used CV as the basis for calculating NV.<sup>96</sup> For SeAH, where we were unable to find a comparison market match of identical or similar merchandise, we based NV on CV in accordance with section 773(a)(4) of the Act. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

We made adjustments to CV for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparisons to NEXTEEL's EP sales, we made circumstances-of-sale adjustments by deducting the CV direct selling and imputed credit expenses from, and adding U.S. direct selling expenses (*i.e.*, warranty expenses and bank charges) and U.S. imputed credit expenses to, CV. In addition, where commissions were granted

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<sup>93</sup> See SeAH BCDEQR at 30-31.

<sup>94</sup> *Id.* at 28-29; and SeAH SQRBC at 24-26. SeAH operated the other warehouse it used in the home market during the POR.

<sup>95</sup> See SeAH Preliminary Calculation Memorandum.

<sup>96</sup> See NEXTEEL Preliminary Calculation Memorandum.

on NEXTEEL's U.S. sales, we made a commission offset for SeAH's home market indirect selling expenses, in accordance with 19 CFR 351.410(e).

**F. Currency Conversion**

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

**V. RECOMMENDATION**

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

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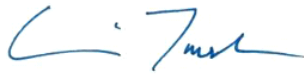
\_\_\_\_\_  
Agree

☐

\_\_\_\_\_  
Disagree

4/14/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance