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FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

Mid Continent Steel & Wire, Inc. v. United States, et al.

Consol. Court No. 15-00213, Slip Op. 17-31 (CIT March 23, 2017)

A. SUMMARY

The Department of Commerce (the Department) has prepared these results of redetermination pursuant to the remand order of the Court of International Trade (CIT or Court) in *Mid Continent Steel & Wire, Inc. v. United States*, *et al.*, Consol. Court No. 15-00213, Slip Op. 17-31 (CIT March 23, 2017) (Mid Continent Remand Order). These remand results concern the final determination in the less-than-fair-value investigation of certain steel nails from Taiwan and the associated antidumping duty order.[1] The Court sustained, in part, and remanded, in part, certain aspects of the *Final Determination*. Specifically, on remand, the Court directed the Department to provide additional explanation or to revise its determination with respect to the general and administrative (G&A) expense ratio[2] calculation for PT Enterprise Inc. and its affiliated producer, Pro-Team Coil Nail Enterprise Inc. (Pro-Team) (collectively, PT).

As set forth in detail below, we have complied with the Court's order by providing additional explanation and enacting certain revisions with respect to PT's G&A expense ratio

[1] *See Certain Steel Nails from Taiwan: Final Determination of Sales at Less Than Fair Value*, 80 FR 28959 (May 20, 2015) (*Final Determination*) and accompanying Issues and Decision Memorandum (IDM); *Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 80 FR 39994 (July 13, 2015) (*Order*).
[2] As discussed in further detail below, the G&A expense ratio refers to G&A expenses (numerator) allocated over the cost of goods sold (COGS) (denominator).

calculation, as appropriate. In accordance with these revisions, we have revised the margin calculation for PT.

B. BACKGROUND

On June 25, 2014, the Department initiated the less-than-fair-value investigation of certain steel nails from Taiwan.[3] Subsequently, PT was selected as one of two mandatory respondents.[4] On December 17, 2014, the Department issued a negative preliminary determination of sales at less than fair value, assigning PT a weighted-average dumping margin of 0.00 percent.[5] Thereafter, the Department conducted a verification of PT,[6] and PT filed a case brief,[7] arguing, among other things, that the Department should alter its treatment of Pro-Team's costs and expenses related to its steam production products in the G&A expense ratio.

Based on its review and analysis of the comments received, and minor corrections presented at the verification of PT, the Department made certain changes to PT's margin calculation unrelated to PT's G&A expense ratio, and published its affirmative *Final Determination* of sales at less than fair value on May 20, 2015, assigning PT a weighted-average dumping margin of 2.24 percent.[8] The antidumping duty order was published on July 13, 2015.[9] Mid Continent Steel & Wire, Inc. (the petitioner); PT; and Unicatch Industrial Co., Ltd., WTA

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[3] *See Certain Steel Nails from India, the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 79 FR 36019 (June 25, 2014).
[4] *See* Memorandum to Christian Marsh, "Antidumping Duty Investigation of Certain Steel Nails from Taiwan: Respondent Selection Memorandum," dated July 24, 2014 (Respondent Selection Memorandum).
[5] *See Certain Steel Nails from Taiwan: Negative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 FR 78053 (December 29, 2014) (*Preliminary Determination*).
[6] *See* Memorandum from Scott Hoefke to the File, "Verification of the Sales Response of PT Enterprises, Inc and Proteam Coil Nail Enterprises. Inc. in the Investigation of Nails from Taiwan," dated February 26, 2015 (PT Sales Verification Report); Memorandum from Laurens Van Houten to Neal M. Halper, "Verification of the Cost Response of PT Enterprise Inc. in the Antidumping Duty Investigation of Certain Steel Nails from Taiwan," dated March 19, 2015 (PT Cost Verification Report).
[7] *See* "Administrative Case Brief of PT/Pro-Team, Antidumping Duty Investigation of Certain Steel Nails from Taiwan," dated March 31, 2015 (PT's Case Brief).
[8] *See Final Determination*, 80 FR at 28961.
[9] *See Order*.

International Co., Ltd., Zon Mon Co., Ltd., Hor Liang Industrial Corporation, President Industrial Inc., and Liang Chyuan Industrial Co., Ltd. (collectively, Taiwan Plaintiffs) appealed certain aspects of the *Final Determination* to the CIT. On March 23, 2017, the CIT sustained in part, and remanded in part, the Department's *Final Determination*. Specifically, as discussed further below, the CIT remanded for further explanation or redetermination the issue of PT's G&A expense ratio calculation.

On May 23, 2017, the Department issued the Draft Results of Remand Redetermination (Draft Results) and invited interested parties to submit comments.[10] We received responses from PT and the petitioner on May 30, 2017.[11]

C. COURT'S HOLDING AND REMAND ORDER

With respect to the calculation of PT's G&A expense ratio and, specifically, the Department's treatment of certain costs and expenses as either G&A expenses or COGS, the Court found that "Commerce does not explain why it allocates certain types of expenses related to steam production to G&A and others to COGS" and ordered Commerce to "explain its methodology for allocating costs associated with Pro Team's separate steam business and…why that methodology is reasonable{,} or reconsider its determination."[12] Regarding the Department's determination to offset PT's COGS, as opposed to its G&A expenses, by the amount of the subsidy it received for its steam production products, the Court held that it was not in a position to "assess the reasonableness of this {determination}" until "Commerce has clarified its practice of allocating all costs not attributable to company-wide administrative

[10] *See* Draft Redetermination Pursuant to Court Remand (Draft Results), dated May 23, 2017.
[11] *See* PT's letter to the Department (PT comments on the Draft Results), dated May 30, 2017; the petitioner's letter to the Department (the petitioner's comments on the Draft Results), dated May 30, 2017.
[12] Slip Op. 17-31 at 37.

expenses, including those relating to non-subject merchandise, to COGS."[13] Accordingly, Commerce was remanded to: (1) explain its methodology for allocating costs and expenses associated with Pro-Team's steam production products and explain why that methodology is reasonable or reconsider its determination; and (2) explain how its allocation methodology in this case conformed with its practice or reconsider its determination.[14] We have addressed these issues below.

As set forth in detail below, we have complied with the Court's order by providing additional explanation and enacting certain revisions with respect to PT's G&A expense ratio calculation, as appropriate. In particular, we have explained that, in calculating PT's G&A expense ratio, the Department's treatment of Pro-Team's costs and expenses related to its steam production products mirrored the way in which these costs and expenses were reported in Pro-Team's books and records (*i.e.*, its audited financial statements).[15] We have further demonstrated that this reliance on Pro-Team's books and records is supported by substantial record evidence, reasonable, and consistent with the Department's practice. In addition, we have explained that the Department erred in offsetting PT's COGS, rather than its G&A expenses, by the amount of the subsidy Pro-Team received for its steam production products. We have revised the G&A expense ratio accordingly, and have further demonstrated that this revision is supported by substantial record evidence, reasonable, and consistent with the Department's practice. In accordance with these revisions, we have revised the margin calculation for PT.

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[13] *Id.* at 39.
[14] *Id.* at 44.
[15] "Steam production products" refers to the production and sale of certain boilers and fuels for steam generation that PT's customers purchase to produce steam. PT itself does not produce steam. *See* PT Cost Verification Report at 11.

In addition, to further facilitate and explain our remand redetermination, we have included a limited number of attachments, containing original record documents with additional notations by the Department (*see* Appendix). Attachment 1 contains PT's income statement, as provided in its section A questionnaire response, with additional markings by the Department.[16] Attachment 2 contains PT's original cost allocation worksheet for fiscal year (FY) 2013 (Exhibit D-15) and corresponding G&A expense ratio calculation (Exhibit D-16), as provided in its section D questionnaire response, with additional markings by the Department.[17] Attachment 3 contains PT's revised cost allocation worksheet for FY 2013 (Exhibit SD-24) and corresponding revised G&A expense ratio calculation (Exhibit SD-21), as provided in its supplemental section D questionnaire response, with additional markings by the Department.[18] Finally, Attachment 4 contains a copy of the Department's G&A expense ratio calculation for the *Final Determination*.[19]

D. REMANDED ISSUES

1. <u>Background</u>

Because PT did not have a viable home- or third-country market, the Department relied on constructed value to determine PT's normal value, pursuant to section 773(a)(4) of the Tariff Act of 1930, as amended (the Act).[20] Pursuant to section 773(e)(2)(A) of the Act, constructed value is equal to the sum of "the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation…for selling, general, and administrative expenses,

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[16] *See* PT's section A response at Exhibit A-12, dated August 28, 2014.
[17] *See* PT's section D response at Exhibits D-15 and D-16, dated September 16, 2014.
[18] *See* PT's supplemental section D response at Exhibits SD-21 and SD-24, dated October 21, 2014.
[19] *See* Memorandum from Laurens van Houten to Neal M. Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – PT Enterprise Inc." (PT Final Cost Calculation Memorandum) at Adjustment 2, dated May 13, 2015.
[20] *See* PT Final Cost Calculation Memorandum at Adjustment 2. *See also* Appendix Attachment 4.

and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country." As the Court recognized, the law does not prescribe a specific methodology for calculating the G&A expenses.[21] Accordingly, Commerce has developed a reasonable practice for calculating the G&A expenses.[22]

In addition, section 773(f)(1)(A) of the Act states that constructed value "shall normally be based upon the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles {(GAAP)} of the exporting country…and reasonably reflect the costs associated with the production and sale of merchandise." Thus, in calculating G&A expenses, the Department normally relies on the classification of such costs as recorded in the audited financial statements of the examined company, so long as they are in accordance with the GAAP of the exporting country and reasonably reflect costs associated with the production and sale of subject merchandise.[23]

Because the Act does not prescribe a specific methodology for calculating G&A expenses, the Department has developed a reasonable approach to calculating G&A expenses,[24] which has been sustained by the Court.[25] Specifically, the Department calculates the G&A expense ratio based on the company-wide G&A expenses of the company (*i.e.*, the operating expenses, per the audited financial statements, which are those costs that do not relate directly to

[21] Slip Op. 17-31 at 33.
[22] *See Ad Hoc Shrimp Trade Action Comm. v. United States*, 616 F. Supp. 2d 1354, 1372 (May 13, 2009) ("there is no bright-line definition of what G&A …expenses are or how the corresponding ratios should be calculated").
[23] *See, e.g., Grain-Oriented Electrical Steel from the Russian Federation: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 59223 (October 1, 2014), and accompanying Issues and Decision Memorandum at 10.
[24] *See* IDM at 55 ("Because there is no definition in the Act or regulations of what a G&A expense is or how the G&A expense ratio should be calculated, the Department has, over time, developed a consistent and predictable practice for calculating and allocating G&A expenses.")
[25] *See Association of American School Paper Suppliers v. United States*, 33 CIT 1742, 1745 (December 10, 2009).

the manufacture of products during the period of investigation or review, but, instead, relate to the general operations of the company during this period) allocated over the company's company-wide cost of sales, or COGS (*i.e.*, the operating costs, per the audited financial statements, which directly relate to the manufacture of specific products).[26] The Department does not calculate the G&A expense ratio based on a consolidated, divisional, or product-specific basis, because the G&A expenses relate to the general operations of the producing company as a whole, are associated with the period of time, and are not related to specific products.[27] This methodology has been consistently applied by the Department and it is a reasonable application of the statute.[28]

2. <u>Calculation of G&A Expenses and Subsidy Offset for PT</u>

On September 16, 2014, PT responded to the Department's section D questionnaire,

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[26] *See id.* ("The Department's longstanding methodology is to calculate a ratio by dividing the company's general expenses by its total cost of sales, as reported in the respondent's audited financial statements").

[27] *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006) (*Certain Lined Paper from India*), and accompanying Issues and Decision Memorandum at Comment 3 (the Department's consistent practice {is} to calculate G&A expenses based on the producing company as a whole and not on a divisional or product-specific basis. …This approach recognizes the general nature of these expenses and the fact that they relate to the company as a whole and is consistent with general accepted accounting principle treatment of such period costs. The Department's methodology also avoids any distortions that may result if, for business reasons, greater amounts of company-wide general expenses are allocated disproportionally among divisions. {The Department} consistently appl{ies} this methodology, unless the respondent provides case-specific facts that clearly support a departure from…normal practice. This approach is both reasonable and predictable"). *See also Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17413 (March 26, 2012), and accompanying Issues and Decision Memorandum at Comment 35. *See also Notice of Final Results of the Eighth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination to Revoke in Part*, 70 FR 71464 (November 29, 2005), and accompanying Issues and Decision Memorandum at Comment 5.

[28] *See* IDM at 55-56 (This reasonable, consistent, and predictable method is to calculate the rate based on the company-wide G&A costs incurred by the producing company allocated over the producing company's company-wide COGS, and not on a consolidated, divisional, or product-specific basis. Moreover, the nature of G&A expenses is that they relate to the administration of the company as a whole.") (citing *Narrow Woven Ribbons With Woven Selvedge From Taiwan; Final Results of Antidumping Duty Administrative Review; 2012-2013,* 80 FR 19635 (April 13, 2015), and the accompanying Issues and Decision Memorandum at 8). *See also Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from the Republic of Korea*, 77 FR 75988 (December 26, 2012) (*Washers from Korea*), and accompanying Issues and Decision Memorandum at Comment 7.

providing, *inter alia*, an initial cost allocation worksheet and an initial calculation of its G&A expense ratio based on Pro-Team's audited financial statements (specifically, its income statement) for the year ending December 31, 2013, but further allocating certain SG&A expenses to product lines.[29] That is, the initial cost allocation worksheet provided by PT itemized a number of costs and expenses attributable to Pro-Team's steam production products versus nail products.[30] In its initial calculation of its G&A expense ratio, PT excluded select costs and expenses which it said were related to Pro-Team's steam production products from both the numerator (*i.e.*, G&A expenses) and the denominator (*i.e.*, COGS) of the G&A expense ratio.[31] Therefore, the initial G&A expense ratio calculation did not represent an overall company-wide calculation, but, rather, appeared to be a product-line-specific calculation based only on the production of nails. However, this was problematic for two reasons.

First, this was inconsistent with Pro-Team's audited financial statements, specifically its income statement, which provided a full accounting of all of Pro-Team's costs and expenses, including its "operating expenses" (*i.e.*, non-manufacturing related expenses) and its "operating costs" (*i.e.*, COGS), and did not subtract costs and expenses related to steam production products.[32] Thus, although certain of Pro-Team's cost allocation worksheet line items (*i.e.*, its cost allocation worksheet at Exhibit D-15) identified certain costs and expenses related to steam production products separately, the company's audited financial statements (*i.e.*, its income statement at Exhibit A-12) made no such distinction. As noted above, the Department calculates

[29] *See* PT's section D response at Exhibits D-15 (cost allocation for FY 2013) and D-16 (G&A expense ratio calculation). *See also* Appendix Attachment 2. *See* PT's section A response at Exhibit A-12 (income statement). *See also* Appendix Attachment 1.
[30] *See* PT's section D response at Exhibit D-15 (identifying, for instance, rent and depreciation expenses associated with "cost of sales" under operating costs (that is directly to products), separate from rent and depreciation expenses for steam under "G&A expenses" under operating expenses). *See also* Appendix Attachment 2.
[31] *See* PT's section D response at Exhibits D-15 and D-16. *See also* Appendix Attachment 2.
[32] *See* PT's section A response at Exhibit A-12 (income statement). *See also* Appendix Attachment 1.

the G&A expense ratio by relying on the operating expenses and operating costs, as provided in the company's audited financial statements.[33] Thus, the initial G&A expense ratio calculation deviated from the company's audited financial statements.

Second, this was inconsistent with the Department's methodology discussed above, that the Department does not calculate the G&A expense ratio based on a consolidated, divisional, or product-specific basis, because the G&A expenses relate to the general operations of the producing company as a whole, are associated with the period of time, and are not related to specific products. As the Department has previously stated:

> This approach recognizes the general nature of these expenses and the fact that they relate to the company as a whole and is consistent with general accepted accounting principle treatment of such period costs. The Department's methodology also avoids any distortions that may result if, for business reasons, greater amounts of company-wide general expenses are allocated disproportionally among divisions. {The Department} consistently appl{ies} this methodology, unless the respondent provides case-specific facts that clearly support a departure from…normal practice. This approach is both reasonable and predictable{.}[34]

In light of these issues, on September 29, 2014, the Department issued a supplemental section D questionnaire to PT, requesting that PT revise its initial G&A expense ratio calculation by, instead, calculating a company-wide G&A expense ratio to include all company-wide G&A expenses in the numerator and company-wide COGS in the denominator (*i.e.*, without the subtraction of costs and expenses related to Pro-Team's steam production products), excluding those expenses which are not a part of the cost to which the rate would be applied (*e.g.*, packing expenses).[35] On October 21, 2014, PT provided a revised cost allocation worksheet and revised

[33] *See Association of American School Paper Suppliers*, 33 CIT at 1745 ("The Department's longstanding methodology is to calculate a ratio by dividing the company's general expenses by its total cost of sales, as reported in the respondent's audited financial statements").
[34] *See* Certain Lined Paper from India at Issues and Decision Memorandum at Comment 3.
[35] *See* PT supplemental section D questionnaire at page 6.

G&A expense ratio calculation.[36]

The revised cost allocation worksheet (Attachment 3) provided by PT, like the initial cost allocation worksheet (Attachment 2) provided by PT, again shows a number of expense accounts itemized to Pro-Team's steam production products, with the remaining expense accounts being attributed to the production of nails, although nails are not directly marked as such.[37] Pro-Team bases its arguments on these itemizations; however, both documents clearly show the financial statement classification for the expense accounts in the first column, as either "cost of sales"[38] or "G&A expenses." Those accounts classified as "cost of sales" are expenses directly attributable to products, while those classified as "G&A expenses" are not attributable to products. For example, the revised cost allocation worksheet shows itemized rent and depreciation expenses associated with nail products and rent and depreciation expenses associated with steam production products under "cost of sales," as well as depreciation expenses associated with nail products and steam production products under "G&A expenses."[39] An expense for research and development (R&D) for steam production products was also itemized under "G&A expenses;" however, there was no corresponding R&D expense listed as a product-specific cost under "cost of sales."[40] The Department normally relies on these classifications, so long as the financial statements are in accordance with the GAAP of the respondent's home country, which they are in this investigation. Here, however, PT argues that the Department should depart from how these costs were classified (*i.e.*, as either cost of sales or G&A expenses) in its own audited financial statements.

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[36] *See* PT's supplemental section D response at Exhibits SD-21(G&A expense ratio calculation) and SD-24 (cost allocation for FY 2013). *See also* Appendix Attachment 3.

[38] For purposes of this remand, cost of sales and COGS are synonymous.
[39] *See* PT's supplemental section D response at Exhibit SD-24. *See also* Appendix Attachment 3.
[40] *See id*.

In the revised cost allocation worksheet provided by PT, all expenses – except for direct and indirect selling expenses – that were classified as "operating expenses" (*i.e.*, non-manufacturing related expenses), regardless of whether they were itemized specifically for steam production products, were correctly included as G&A expenses in the numerator of the revised G&A expense ratio calculation, consistent with Pro-Team's financial statements.[41] All expenses directly related to nail manufacturing and steam production products that were classified as "operating costs" (*i.e.*, COGS) in the revised cost allocation were also correctly included in the denominator of the revised G&A expense ratio calculation, consistent with Pro-Team's financial statements.[42]

Thus, PT complied with the Department's request that the costs and expenses related to Pro-Team's steam production products be included in the revised G&A expense ratio calculation. Additionally, the Department found that the total G&A expenses and COGS included in the revised G&A expense ratio calculation worksheet in Exhibit SD-21[43] reconciled to the amounts recorded in PT's audited financial statements.[44] As a result, the two concerns identified above, *i.e.*, that the G&A expense ratio calculation must reflect the classification of operating costs and operating expenses as reported on the company's audited financial statements, and must be on a company-wide (not product-specific) basis, had been addressed.

PT also offset its G&A expenses with the amounts classified as other income within "non-operating income and gains"[45] in the audited financial statements,[46] which was accounted

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[41] *See* PT's supplemental section D response at Exhibit SD-21. *See also* Appendix Attachment 3.
[42] *Id.*
[43] *Id*.
[44] *See* PT's section A response at Exhibit A-12. *See also* Appendix Attachment 1.
[45] The subsidy at issue was part of the "other income" account.
[46] *See* PT's section A response at Exhibit A-12. *See also* Appendix Attachment 1.

for separately on PT's income statement, similar to how interest income and net foreign exchange gains are recorded as separate line items on PT's audited financial statements. We used the revised G&A expense ratio calculation provided by PT for the preliminary determination.[47]

At verification, the Department obtained details of the other income account that was used by PT to offset its G&A expenses.[48] Based on this information, the Department ascertained that a portion of the other income amount was from an energy subsidy, while the remainder was related to miscellaneous items, such as the sale of assets.[49] PT further clarified that the energy subsidy was provided to the company to promote steam production products.[50]

In addition, at verification, PT's company-wide G&A expenses and COGS were verified.[51] The detailed cost items included in both the G&A expense numerator and COGS denominator are shown on a worksheet in Exhibit CVE 9.[52] The totals in the column named "FY 2013 as per trial balance" reported for "cost of sales total" and "operating expense total" (*i.e.*, selling and G&A expenses) reflect the sum of the trial balance accounts immediately above. The total COGS and selling and G&A expenses in the exhibit tie directly to the operating costs and operating expenses, respectively, in PT's income statement.[53] The other columns in the worksheet show where PT included each of the expenses for reporting purposes (*i.e.*, as either

[47] *See* Memorandum from Laurens van Houten to Neal M. Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – PT Enterprise Inc." (PT Preliminary Cost Calculation Memorandum), dated December 17, 2014.
[48] *See* PT Cost Verification Report at pages 21, 22 and Cost Verification Exhibit (CVE) 9, dated March 19, 2015.
[49] *Id.*
[50] *Id.*
[51] *See* PT Cost Verification Report and Exhibit CVE 9 (containing a copy of Exhibit SD-24). PT's supplemental section D response at Exhibits SD-21 and SD-24. *See also* Appendix Attachment 3.
[52] *Id.*
[53] *See* PT's section A response at Exhibit A-12, dated August 28, 2014. *See also* Appendix Attachment 1.

G&A expenses, COGS, selling expenses, or interest expenses).[54] The worksheet shows that PT included all of the trial balance accounts, which add up to the financial statements' total "operating costs" (with the exception of two accounts that were classified as either G&A expenses or selling expenses by PT) in the column labeled "Total COGS."[55] The worksheet also shows that PT included all of the trial balance accounts, which total up to the financial statements' total "operating expenses" (with the exception of amounts classified as direct or indirect selling expenses by PT) in the columns named "G&A expenses."[56] Moreover, at verification, the Department reviewed this worksheet with company officials and found no issues with the company's identification of costs as either COGS, G&A expenses, or selling expenses.

In its case brief, PT argued that all costs and expenses related to steam production products should be excluded from the calculation of G&A expenses.[57] Pro-Team argued in the alternative that, if the Department included expenses related to steam production products in the calculation of the G&A expense ratio, the Department should offset the G&A expenses by the energy subsidy received by PT.[58]

For the *Final Determination*, the Department adjusted PT's G&A expense ratio as calculated in the *Preliminary Determination*.[59] Specifically, the Department removed PT's reported subsidy income as an offset from the net G&A expenses (the numerator). Instead, the Department included the subsidy in the denominator of the G&A expense ratio calculation (*i.e.*, COGS) as an offset to COGS. This was consistent with PT's explanation that the purpose of the

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[54] *See* PT Cost Verification Report and Exhibit CVE 9 (containing a copy of Exhibit SD-24). PT's supplemental section D response at Exhibits SD-21 and SD-24. *See also* Appendix Attachment 3.
[55] *See id.*
[56] *See* PT Cost Verification Report and Exhibit CVE 9 (containing a copy of Exhibit SD-24). PT's supplemental section D response at Exhibits SD-21 and SD-24. *See also* Appendix Attachment 3.
[57] *See* PT's Case Brief at 1.
[58] *Id*.
[59] *See* PT Final Cost Calculation Memorandum, at Adjustment 2. *See also* Appendix Attachment 4.

subsidy was to reduce the production costs related to steam production products. Beyond this adjustment, the Department continued to rely on the G&A expenses and COGS reported by PT, and did not reallocate any of these expenses. Accordingly, the only adjustment enacted by the Department in the *Final Determination* was to offset the denominator (*i.e.*, COGS), rather than the numerator (*i.e.*, G&A expenses), of the G&A expense ratio by the amount of the energy subsidy received by PT.[60]

Setting aside the Department's treatment of the subsidy, addressed separately below, the above discussion demonstrates that the G&A expense ratio relied upon by the Department in the *Final Determination* is supported by substantial evidence and is reasonable. It bears repeating that it is consistent with the Department's practice in calculating G&A expenses to rely on the classification of costs and expenses as recorded in the audited financial statements of the examined company, so long as they are in accordance with the GAAP of the exporting country and reasonably reflect costs associated with the production and sale of subject merchandise. Accordingly, the Department acted reasonably in relying on Pro-Team's audited financial statements. Additionally, the Department's G&A expense ratio calculation in the *Final Determination* adhered to the Department's practice of calculating the G&A expense ratio based on the company-wide G&A expenses of the company (*i.e.*, the operating expenses, per the audited financial statements, which are those costs that do not directly relate to the manufacture of products during the period of investigation or review) allocated over the company's company-wide cost of sales, or COGS (*i.e.*, the operating costs, per the audited financial statements, which directly relate to the manufacture of specific products). As discussed above, the Department does not calculate the G&A expense ratio based on a consolidated, divisional, or product-specific

[60] *See Final Determination*, and accompanying IDM at 55-56; PT Final Cost Calculation Memorandum at Adjustment 2.

basis, because the G&A expenses relate to the general operations of the producing company as a whole, and not to specific products. This methodology has been consistently applied by the Department, and it is a reasonable application of the statute. Thus, the Department's calculation of the G&A expense ratio is supported by substantial evidence, reasonable, and consistent with the Department's practice.

3. <u>Revision to the G&A Expense Ratio for the Subsidy Offset</u>

We have reviewed the record evidence on the energy subsidy received by Pro-Team, which was classified as a part of non-operating income and gains on PT's audited financial statements, and have reconsidered how to treat the subsidy for this remand redetermination. As stated above, in the *Final Determination*, the Department removed PT's reported subsidy income as an offset from the net G&A expenses (the numerator). Instead, the Department included the subsidy in the denominator of the G&A expense ratio calculation (*i.e.*, COGS) as an offset to COGS. This was consistent with PT's explanation that the purpose of the subsidy was to reduce the production costs related to steam production products.[61]

However, after further consideration, we believe the subsidy should be included in the numerator (*i.e.*, G&A expenses), of the G&A expense ratio. Such treatment would be consistent with section 773(f)(l)(A) of the Act, as Pro-Team's audited financial statements and the revised cost allocation worksheet show that the subsidy was recorded as part of non-operating other income, and, therefore, the subsidy was not directly applied as an offset to the cost of sales of steam production products, nor was it even included generally as an offset to PT's operating costs on the financial statements.[62]

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[61] *See* PT Cost Verification Report and Exhibit CVE 9 (containing a copy of Exhibit SD-24). PT's supplemental section D response at Exhibits SD-21 and SD-24. *See also* Appendix Attachment 3.
[62] *See* PT's supplemental section D response at Exhibits SD-21 and SD-24. *See also* Appendix Attachment 3. *See* PT's section A response at Exhibit A-12. *See also* Appendix Attachment 1.

In the *Final Determination*, the Department assigned the subsidy as an offset to the operating costs for steam production products, and by doing so, reduced the denominator of the G&A expense ratio, which increased the G&A rate for nails. Our revised treatment is reasonable, because Pro-Team's financial statements indicate that the subsidy did not relate to operating expenses, but, rather, to general operations. Accordingly, we have recalculated the G&A expense ratio to reflect PT's company-wide G&A expenses, offset by the energy subsidy, divided by the company-wide COGS. This approach is consistent with the Department's treatment of subsidies in other cases.[63]

E. SUMMARY AND ANALYSIS OF INTERESTED PARTIES' COMMENTS ON THE DRAFT RESULTS

1. Taiwan Plaintiffs' Comments

While the Taiwan Plaintiffs agree with the Department's decision to reduce G&A expenses, rather than COGS, by the amount of the subsidy received by Pro-Team, they continue to assert that the Department should have accepted Pro-Team's G&A expenses as reported in PT's initial section D response at Exhibit D-16, by excluding from both the numerator (G&A expenses) and denominator (COGS) expenses that PT assigned to steam production products.[64] The Taiwan Plaintiffs argue that this method is preferable to the methodology adopted by the

[63] *See Stainless Steel Bar from Brazil: Final Results of Antidumping Duty Administrative Review*, 74 FR 33995 (July 14, 2009), and accompanying Issues and Decision Memorandum at Comment 3, where the Department stated that "with respect to other income VMSA claimed as an adjustment to its G&A, subsidies and grants received are typically treated as allowable offsets to G&A." *See Notice of Final Determination of Sales at Less Than Fair Value: Live Swine from Canada*, 70 FR 12181 (March 11, 2005), and accompanying Issues and Decision Memorandum at Comment 2, where the Department stated: "{T}he Department normally includes the grants received from the government in the reported costs." *See Notice of Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from South Africa*, 60 FR 22550, 22556 (May 8, 1995) (*Furfuryl Alcohol Final Determination*). In *Furfuryl Alcohol Final Determination*, the Department included in the G&A rate calculation, the government grant received by the respondent which was recorded as grant revenue in the respondent's financial statements. *See Notice of Final Determination of Sales at Less than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30355 (July 14, 1996) (*Pasta Final Determination*). In *Pasta Final Determination*, the Department included the government grant received during the period of investigation as an offset to the respondent's G&A expenses.

[64] *See* Taiwan Plaintiffs' Comments on the Draft Results of Remand Redetermination at page 2.

Department in the Draft Results because: (1) Pro-Team's books and records are maintained according to GAAP in Taiwan; (2) Pro-Team's steam production products are a separate line of business, recorded separately in Pro-Team's accounting records; and (3) Pro-Team's G&A expenses allocated to its steam production products consist primarily of product-specific R&D and depreciation, expenses which the Department and the courts have accepted on a product-specific basis, as well as other expenses which Pro-Team allocates to steam production products according to Taiwanese GAAP.[65] Accordingly, the Taiwan Plaintiffs request that the Department modify its Draft Results by calculating Pro-Team's G&A expenses based on PT's initial section D response at Exhibit D-16.[66]

2. Petitioner's Comments

While the petitioner generally supports the Draft Results, which responds to and addresses the particular questions and concerns raised by the CIT, the petitioner disagrees with certain aspects of the Department's Draft Results.[67] Specifically, the petitioner disagrees with the Department's proposal to reconsider its original determination to offset PT's G&A expenses by the amount of the subsidy. The petitioner argues that the Department should reverse this proposed change, and continue to apply the approach used in the *Final Determination*.[68]

The petitioner argues that including the subsidy as an offset to COGS was consistent with PT's explanation that the purpose of the subsidy was to reduce the production costs related to steam production products. Therefore, the petitioner argues that the subsidy should continue to reduce the denominator of the G&A expense ratio.[69] The petitioner claims that nothing has

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[65] *See id.*
[66] *See id.*
[67] *See* Petitioner's Comments on the Draft Results of Remand Redetermination at page 2.
[68] *See id.*
[69] *See id.*

changed since the *Final Determination* to warrant reconsideration of how the Department treated the subsidy at issue.[70]

The petitioner claims that PT's arguments before the CIT incorrectly claim that the Department failed to allocate certain expenses.[71] The petitioner argues that PT's expenses were properly allocated consistent with the Department's practice and PT's normal books and records. Therefore, the petitioner argues that the Department's treatment of the subsidy at issue, *i.e.*, as an offset to COGS, was appropriate considering the record evidence, and should not be changed.[72]

3. <u>The Department's Position</u>

We disagree with both the Taiwan Plaintiffs' and the petitioner's arguments.

We disagree with the Taiwan Plaintiffs' argument that the Department should have accepted Pro-Team's G&A expenses as reported in PT's initial section D response at Exhibit D-16, by excluding from both the numerator (G&A expenses) and denominator (COGS) expenses that PT assigned to steam production products.

As an initial matter, as noted above, in calculating G&A expenses, the Department normally relies on the classification of related costs and expenses as recorded in the audited financial statements of the examined company, so long as they are in accordance with the GAAP of the exporting country and reasonably reflect costs associated with the production and sale of subject merchandise. In addition, the Department does not calculate the G&A expense ratio based on a consolidated, divisional, or product-specific basis, because the G&A expenses relate to the general operations of the producing company as a whole, and not to specific products.

Here, as discussed above, Pro-Team's initial G&A expense ratio calculation did not

[70] *See id.* at page 3.
[71] *See id.*
[72] *See id.*

represent an overall company-wide calculation, but, rather, appeared to be a product-line-specific calculation based only on the production of nails. This was problematic for the reasons highlighted above.

First, this was inconsistent with Pro-Team's audited financial statements, specifically its income statement, which provided a full accounting of all of Pro-Team's costs and expenses, including its "operating expenses" (*i.e.*, non-manufacturing related expenses) and its "operating costs" (*i.e.*, COGS), and did not subtract costs and expenses related to steam production products.[73] Thus, although certain of Pro-Team's cost allocation worksheet line items (*i.e.*, its cost allocation worksheets at Exhibit D-15 and SD-24) identified certain costs and expenses related to steam production products separately, the company's audited financial statements (*i.e.*, its income statement at Exhibit A-12) made no such distinction. As noted above, the Department calculates the G&A expense ratio by relying on the operating expenses and operating costs, as provided in the company's audited financial statements.[74] Thus, the initial G&A expense ratio calculation deviated from the company's audited financial statements.

Second, this was inconsistent with the Department's practice, as discussed above, of not calculating the G&A expense ratio on a consolidated, divisional, or product-specific basis, because the G&A expenses relate to the general operations of the producing company as a whole, are associated with the period of time, and are not related to specific products. As the Department has previously stated:

> This approach recognizes the general nature of these expenses and the fact that they relate to the company as a whole and is consistent with general accepted accounting principle treatment of such period costs. The Department's methodology also avoids any

[73] *See* PT's section A response at Exhibit A-12 (income statement). *See also* Appendix Attachment 1.
[74] *See Association of American School Paper Suppliers*, 33 CIT at 1745 ("The Department's longstanding methodology is to calculate a ratio by dividing the company's general expenses by its total cost of sales, as reported in the respondent's audited financial statements").

> distortions that may result if, for business reasons, greater amounts of company-wide general expenses are allocated disproportionally among divisions. {The Department} consistently appl{ies} this methodology, unless the respondent provides case-specific facts that clearly support a departure from…normal practice. This approach is both reasonable and predictable{.}[75]

In light of these issues, we requested that PT provide a company-wide G&A expense ratio, consistent with Department practice.[76] PT complied with the Department's request that all company-wide costs and expenses be included in the G&A expense ratio calculation.[77] We relied on this G&A expense ratio, which PT submitted, for the *Final Determination* and the Draft Results. The Department did not reallocate any costs and expenses, and, instead, relied solely on the company-wide G&A expense ratio submitted by PT, as reported in its audited financial statements. Therefore, consistent with the Department's practice, we did not deviate from the financial statements as presented.

With respect to the Taiwan Plaintiff's arguments that Pro-Team's books and records are maintained according to Taiwan GAAP and that Pro-Team's steam production products business is a separate line of business, recorded separately in Pro-Team's accounting records, we do not disagree. However, we note that, as discussed above, for purposes of determining the G&A expense ratio calculation, we examine how the company classified its costs and expenses in its audited financial statements, and whether those financial statements are maintained in accordance with Taiwan GAAP. Here, Pro-Team's financial statements were maintained in accordance with Taiwan GAAP, and we relied on them as indicated above. Furthermore, as discussed above, the fact that Pro-team's internal accounting records track its steam production

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[75] *See* Certain Lined Paper from India at Issues and Decision Memorandum at Comment 3.
[76] *See* PT supplemental section D questionnaire at page 6, dated September 16, 2014. *See also* Appendix Attachment 2.
[77] *See* PT's supplemental section D response at Exhibits SD-21 and SD-24, dated October 21, 2014. *See also* Appendix Attachment 3.

products in certain accounts does not require the Department to rely on the initial G&A expense ratio calculation, for the reasons stated above.

Taiwan Plaintiffs' argument that the Department should rely on PT's original G&A expense ratio calculation because Pro-Team's G&A expenses allocated to its steam production products consist primarily of product-specific R&D and depreciation expenses allocated to the steam production products per Taiwanese GAAP is without merit. The product-specific depreciation expenses related to steam production products were already included in the cost of sales denominator of the G&A rate calculation provided by PT. The depreciation expenses in question here are the amounts classified as operating expenses (*i.e.*, non-manufacturing related expenses) in Pro-Team's audited financial statements and in its revised cost allocation worksheet.[78] In addition, in Pro-Team's own financial statements, the R&D expenses in question were also specifically classified as operating expenses (*i.e.*, non-manufacturing related expenses), rather than as operating costs (*i.e.*, COGS) which are those expenses that are directly associated with products. For the *Final Determination*, in calculating the G&A expense ratio for PT, the Department relied on the G&A expenses and COGS classifications as reported by PT in its audited financial statements, in accordance with Taiwan GAAP.

Moreover, although Taiwan Plaintiffs argue that the Department should remove costs and expenses related to Pro-Team's steam production products from the company-wide G&A expense ratio calculation because those costs and expense consist primarily of product-specific R&D and depreciation expenses, this argument fails to address: (1) that the Department has an established practice of calculating company-wide G&A expense ratios based on the company's audited financial statements, as discussed above; and (2) that the Department relied on PT's own

[78] *See* PT's supplemental section D response at Exhibit SD-24. *See also* Appendix Attachment 3.

classification and allocation of costs and expenses as recorded in its audited financial statements, which included those related to steam production products, when calculating PT's G&A expense ratio. Accordingly, Taiwan Plaintiffs' argument fails to undermine the reasonableness of the Department's G&A expense ratio calculation in the *Final Determination*.

PT would like the Department to abandon its practice of calculating a company-wide G&A expense ratio, and, instead, accept a product-line-specific methodology where G&A line items are assigned to specific product lines. In PT's audited financial statements, none of the G&A expenses were treated as directly attributable to steam production products; rather, they were reported in PT's financial statements as period costs along with all other G&A expenses, indicating that they are general in nature and not product-specific. Moreover, it is the Department's practice to rely on the books and records of the exporter or producer of subject merchandise if such records are kept in accordance with the GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise.[79] PT's audited financial statements, which are in accordance with GAAP, meet these criteria. Accordingly, the Department reasonably relied on PT's allocation of costs and expenses, as presented in its revised G&A expense ratio calculation, and as reflected in its audited financial statements, in calculating PT's G&A expense ratio.

We disagree with the petitioner's argument to offset PT's COGS by the amount of the subsidy. In the *Final Determination*, the Department assigned the subsidy as an offset to the operating costs for steam production products (COGS), and by doing so, reduced the denominator of the G&A expense ratio, which increased the G&A rate for nails. However, after

[79] Section 773(f)(1)(A) of the Act requires the Department to rely on the records of the exporter or producer of the merchandise if such records are kept in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise.

further consideration, as discussed above, we believe the subsidy should be included in the numerator (*i.e.*, G&A expenses) of the G&A expense ratio. Such treatment would be consistent with section 773(f)(l)(A) of the Act, as Pro-Team's audited financial statements show that the subsidy was recorded as part of non-operating other income (*see* the revised cost allocation worksheet at Exhibit SD-24), and that, therefore, the subsidy was not directly applied as an offset to the cost of goods sold of steam production products, nor was it even included generally as an offset to PT's operating costs on the financial statements.[80] Our revised treatment is reasonable, because Pro-Team's financial statements indicate that the subsidy related to the general operations of the company as a whole, and not directly to manufacturing products. Accordingly, we have recalculated the G&A expense ratio to reflect PT's company-wide G&A expenses, offset by the energy subsidy, divided by the company-wide COGS. This approach is consistent with the Department's treatment of subsidies in other cases.[81]

F. FINAL RESULTS OF REDETERMINATION

Pursuant to the Mid Continent Remand Order, we have revised our calculations for these final results of redetermination, in accordance with the discussion above. As a result, PT's final

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[80] *See* PT's supplemental section D response at Exhibits SD-21 and SD-24. *See also* Appendix Attachment 3. *See* PT's section A response at Exhibit A-12. *See also* Appendix Attachment 1.

[81] *See Stainless Steel Bar from Brazil: Final Results of Antidumping Duty Administrative Review*, 74 FR 33995 (July 14, 2009), and accompanying Issues and Decision Memorandum at Comment 3, where the Department stated that "with respect to other income VMSA claimed as an adjustment to its G&A, subsidies and grants received are typically treated as allowable offsets to G&A." *See Notice of Final Determination of Sales at Less Than Fair Value: Live Swine from Canada*, 70 FR 12181 (March 11, 2005), and accompanying Issues and Decision Memorandum at Comment 2, where the Department stated: "{T}he Department normally includes the grants received from the government in the reported costs." *See Notice of Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from South Africa*, 60 FR 22550, 22556 (May 8, 1995) (*Furfuryl Alcohol Final Determination*). In *Furfuryl Alcohol Final Determination*, the Department included in the G&A rate calculation, the government grant received by the respondent which was recorded as grant revenue in the respondent's financial statements. *See Notice of Final Determination of Sales at Less than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30355 (July 14, 1996) (*Pasta Final Determination*). In *Pasta Final Determination*, the Department included the government grant received during the period of investigation as an offset to the respondent's G&A expenses.

margin has been revised to 2.16 percent. Because the all others rate was based on PT's final margin,[82] the all others rate has also been revised to 2.16 percent.

6/21/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

[82] *See Final Determination* at 28961.